



**Sunrise General Services Limited & another v Divine (K)
Connection Limited & another (Commercial Suit E126 of 2021)
[2025] KEHC 12258 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E126 OF 2021
H NAMISI, J
AUGUST 29, 2025**

BETWEEN

SUNRISE GENERAL SERVICES LIMITED 1ST PLAINTIFF

MAGDI ABBAS ELMUBARAK SULIMAN 2ND PLAINTIFF

AND

DIVINE (K) CONNECTION LIMITED 1ST DEFENDANT

BONIFACE KIMANI 2ND DEFENDANT

RULING

1. Before the Court is Notice of Motion dated 15 September 2024 seeking the following orders:
 - i. That this Honourable Court strikes out the 2nd Defendant/Applicant as a party to this suit;
 - ii. That the costs of this suit be born by the Plaintiff.
2. The Application, which is supported by an Affidavit sworn by the Applicant, is premised on the following grounds:
 - i. The 2nd Defendant/Applicant is not a party to any of the transaction documents between any of the Plaintiffs and the Defendant;
 - ii. There are no agreements that accord any rights or responsibilities personally upon the 2nd Defendant/Applicant;



- iii. There is no claim that is made personally against the 2nd Defendant/Applicant. Further, to the extent that there is no privity between the Plaintiffs and the 2nd Defendant/Applicant, there is no cause of action that is disclosed as against the 2nd Defendant/Applicant in this suit;
 - iv. The 1st Defendant is a limited liability company, has a separate legal personality from the 2nd Defendant/Applicant and the 2nd Defendant/Applicant cannot be held legally accountable for any of the actions of the 1st Defendant;
 - v. The matter can be fully determined without the 2nd Defendant/Applicant's involvement;
 - vi. It is only fair and an expeditious effectuation of justice that the 2nd Defendant/Applicant be struck out from these proceedings.
3. The Plaintiffs/Respondents opposed the Application through Replying Affidavit sworn by the 2nd Plaintiff/Respondent, who is a director of the 1st Plaintiff/Respondent. He avers that vide Agreement dated 6 June 2018, the 2nd Defendant/Applicant agreed to sell his aircraft, FOKKER F-27 Mark 50, to the 1st Plaintiff/Respondent for the sum of USD 650,000/-. The 2nd Defendant/Applicant signed the Agreement as a Director of the 1st Defendant/Applicant. The 2nd Defendant/Applicant signed the Letter of Intent to Purchase the Aircraft dated 21 May 2018 and the Bill of Sale dated 5 June 2018. The Plaintiff/Respondents aver that the 2nd Defendant/Applicant received the purchase price and subsequently issued a receipt. The Plaintiffs/Respondent argue that the 2nd Defendant/Applicant is an integral party to the suit and that the same cannot proceed without him.
 4. The Application was canvassed by way of written submissions.

Analysis and Determination

5. I have carefully considered the Application, responses and the submissions herein.
6. The 2nd Defendant/Applicant referenced Order 1 Rule 10(2) of the Civil Procedure Rules, which allows for the striking out of improperly joined parties. He emphasized the tests for a necessary party, as articulated in *Amon -vs- Raphael Tuck & Sons*, All ER 273, which case was adopted and discussed in *Pizza Harvest Ltd -vs- Felix Midigo* [2013] eKLR. This test states that a person is a necessary party only if they would be bound by the result of the action and if the question cannot be effectually and completely settled without their presence. The 2nd Defendant/Applicant asserted that he has no connection to the reliefs sought and that the reliefs can be granted without his involvement.
7. The 2nd Defendant/Applicant emphasized the long-standing legal principle that a company is a separate legal person, distinct from its directors, as established in the case of *Salomon -vs- Salomon* AC 78. He relied on the case of *Victor Mabachi & Another -vs- Nurture Bates Ltd* [2013] eKLR for the principle that an agent should not be sued where the principal is disclosed. He further referenced the case of *Charles Ray Makuto -vs- Almakony Ltd & Another* [2016] eKLR which discussed the limited circumstances under which the corporate veil may be lifted, specifically in cases of fraud or improper conduct. The 2nd Defendant/Applicant argued that such circumstances are not present in this case, thus shielding him from personal liability for the 1st Defendant's actions.
8. In conclusion, the 2nd Defendant/Applicant argued that he is not a party to any contract between the 1st Plaintiff and the 1st Defendant. He relied on the cases of *Afroplast Industries Ltd -vs- Sanlam Insurance Co Ltd & Another* [2021] eKLR and the *Agricultural Finance Corporation -vs- Lengetia* [1982 -88] 1KAR 772 to argue that a contract only affects its parties, and since he is not a party to the contract, no cause of action can lie against him personally.



9. Similarly, the Plaintiffs/ Respondents relied on the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, arguing that the 2nd Defendant/Applicant's role was so intertwined with the 1st Defendant's alleged obligations that his absence would render any judgment incomplete or difficult to enforce. They relied on the case of *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] KEHC 1192 (KLR) with regard to the five guiding principles for joinder, namely:
- (i) the party must be necessary;
 - (ii) they must be a proper party;
 - iii. there must be a relief flowing from that defendant to the plaintiff;
 - iv. the ultimate order or decree cannot be enforced without their presence in the matter; and
 - v. their presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.
10. The Plaintiffs/ Respondents also relied on the case of *Departed Asians Property Custodian Board -vs- Jaffer Brothers Ltd* 1 EA 55 which clarified the distinction between parties who ought to have been joined and those whose presence is necessary for effectual and complete settlement. They relied on the cases of *Civicon Ltd -vs- Kvuwatt Ltd & 2 others* [2015]eKLR and *Green Square Limited -vs- Sheladia Associates & 2 Others* [2017] eKLR.
11. The power to strike out or add parties is a fundamental aspect of civil procedure, aimed at ensuring that all relevant parties are before the Court for a just and efficient resolution of disputes. This power is primarily derived from Order 1 Rule 10(2) of the Civil Procedure Rules. It is also pertinent to note that Order 1 Rule 9 provides a crucial safeguard; no suit shall be defeated by reason of misjoinder or non-joinder of parties. This provision underscores the procedural flexibility aimed at ensuring substantive justice prevails over technicalities.
12. The power to strike out pleadings, including the striking out of a party from a suit, is also found under Order 2 Rule 15. This rule allows for striking out on grounds such as disclosing no reasonable cause of action, being scandalous, frivolous or vexatious, prejudicing or delaying fair trial, or being an abuse of court process.
13. A keen observation of the documents presented by the Plaintiffs/Respondents in respect of the transaction reveals that the transaction was between the 1st Defendant as the Seller and the 1st Plaintiff/ Respondent as the Purchaser. The Agreement dated 6 June 2018 clearly denotes that the subject aircraft was the property of the 1st Defendant. Similarly, the Letter of Intent to Purchase dated 21 May 2018 and the Bill of Sale dated 5 June 2018 denote two parties; the 1st Defendant as the Seller and the 1st Plaintiff as the Buyer. The subsequent receipt issued on 29 November 2018 was issued by the 1st Defendant. The only connection herein with the 2nd Defendant/Applicant is the fact that the documents were all signed by the 2nd Defendant/Applicant as Director of the 1st Defendant. There is no mention whatsoever of any other involvement by the 2nd Defendant/Applicant in capacity other than as Director.
14. A Company is a separate entity from its directors and shareholders. It can sue and be sued on its own and unless it can be shown that the Directors had any misgivings or are involved in fraud, they do not become personally liable for the deeds of the Company. In the case of *George Williams Omondi &*



Another Vs- Co-operative Bank of Kenya Ltd & 2 Others [2016] eKLR, where the Court cited the case of H M B Kayondo vs Somani Amirali, Kampala HCCS No.183 of 1994, it was held that;

“There is no doubt that a Company duly registered is a legal entity distinct from the subscribers or those who formed it. Once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities, appropriate to itself. The company is at law a different person altogether from the subscribers to the memorandum; and though it may be that after incorporation the business is precisely the same as before, and the same persons are managers, and the same hands receive the profits, the Company is not, in law, the agent of the subscribers or trustees for them. Nor are the subscribers as members like any shape or form except to the extent and the incidence of incorporated is the same whether the shares in the company are in the hands of one man or many... Courts are in general precluded from treating a company as the alias, agent, trustee or nominee of its members, but they will nevertheless do so if corporate personality is being blatantly used as a cloak for fraud or improper conduct and this is what is meant by lifting the veil of incorporation...Since the defendant was the sole proprietor of his company, he knew or ought to have known that the company did not have funds to meet the cheques on due dates. To permit the defendant to hide behind corporate personality will amount to allowing him to escape the consequences of his breach of fiduciary trust placed in him by the plaintiff...Accordingly, the corporate veil is lifted and the defendant held personally liable.” [Emphasis added].”

15. The Applicant has not alleged nor proved any misgivings on the part of the Directors neither has he asked for the corporate lifting of the veil. In the case of Victor Mabachi & Another (Supra), the Court held that:

“a company as a body corporate, is a persona juridica, with separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil”.

16. In the premise, the Application is merited. The suit against the 2nd Defendant/Applicant is hereby struck out. Costs thereof to be borne by the Plaintiffs.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Plaintiffs/Respondents: N/A

2nd Defendant/Applicant: Mr. Torotwa

Court Assistant: Lucy Mwangi

