



Regal Press Kenya Limited v Oakland Media Services Limited & another (Civil Suit 537 of 2007) [2024] KEHC 1638 (KLR) (Commercial and Tax) (23 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1638 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 537 OF 2007
FG MUGAMBI, J
FEBRUARY 23, 2024**

BETWEEN

THE REGAL PRESS KENYA LIMITED RESPONDENT

AND

OAKLAND MEDIA SERVICES LIMITED 1ST APPELLANT

MUNDIA MUCHIRI 2ND APPELLANT

JUDGMENT

Background

1. The respondent provided printing services for the 1st appellant between 31st May 2006 to 17th July 2007, amounting to a total value of Kshs 8,256,425.90. The 1st appellant partially settled this amount by paying Kshs 522,080/= leaving an outstanding balance of Kshs 7,734,345/=. Due to the failure of the 1st appellant to fully settle the debt, the respondent initiated legal proceedings by filing a plaint on 16th October 2007, to which the 1st appellant responded with a statement of defence on 6th December 2007.
2. Subsequently, the respondent sought a summary judgment against the 1st appellant, leading to a consent judgment being entered on 21st February 2008, where the 1st appellant was ordered to pay the outstanding balance plus costs and interest. Following this judgment, on 15th January 2009, the respondent made an application to pierce the corporate veil of the 1st appellant, aiming to hold its director personally liable for the company's debt.
3. The 1st appellant, through its director, the 2nd appellant, filed a replying affidavit asserting that directors cannot be held personally liable for the company's debts, attributing the failure to settle the debt to financial difficulties. After a hearing, which included an examination of the 1st appellant's director under oath, the Deputy Registrar ruled in favor of the respondent's application.



4. The ruling was based on the finding of discrepancies in the company's books of accounts, which were not satisfactorily explained, indicating possible fraud. Consequently, it was decided that lifting the corporate veil was necessary, making the directors personally liable for the company's outstanding debts.
5. Aggrieved by the Deputy Registrar's decision, the appellants filed an appeal, challenging the ruling on several grounds outlined in a Memorandum of Appeal dated 30th November 2016. It is their prayer that the ruling delivered on 5th October 2016, and the subsequent orders arising therefrom be set aside and that costs of this appeal be awarded to the appellants.
6. Pursuant to this Court's directions of 8th February 2023, the appellant filed written submissions dated 24th February 2023 while the respondent filed written submissions dated 24th April 2023.

Analysis

7. I have carefully considered the record of appeal, submissions and authorities put in by opposing parties. It is evident that the critical issues revolve around the jurisdiction of the Deputy Registrar to lift the corporate veil, the sufficiency of evidence to warrant such an action and the principles guiding the lifting of the corporate veil. These grounds in the Memorandum of Appeal can therefore be summarized into two:
 - i. Whether the Deputy Registrar acted beyond her jurisdiction in finding the 2nd appellant, Mr. Mundia Muchiri, a director of the 1st appellant personally liable to settle the debts of the 1st appellant.
 - ii. Whether the Deputy Registrar erred in law and in fact in finding that there were sufficient grounds to warrant the lifting of the corporate veil of the 1st appellant.
8. On the first issue of jurisdiction, the subject of the impugned ruling was an application by the respondent brought under, Order 22, Rule 35 of the *Civil Procedure Rules*, on examination of a judgment-debtor as to his property. It provides as follows:

“Where a decree is for the payment of money, the decree-holder may apply to the court for an order that—

 - a. the judgment-debtor;
 - b. in the case of a corporation, any officer thereof; or
 - c. any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for the attendance and examination of such judgment-debtor or officer, or other person, and for the production of any books or documents.”
9. This Court has already established that the concept of piercing the corporate veil differs significantly from proceedings initiated under Order 22 Rule 35 of the *Civil Procedure Rules*. This distinction has been illustrated in prior judgments, notably in the case of *Peter O. Ngoge T/A OP Ngoge & Associates v Ammu Investment Company Limited*, [2012] eKLR and further reinforced in *Michael Kyambati v Principal Magistrate, Milimani Commercial Courts, Nairobi & another*, [2016] eKLR), to name but a few examples.



10. An application made under Order 22 Rule 35 is specifically aimed at facilitating discovery by allowing for the examination of a company's agent. However, it does not encompass the act of piercing the corporate veil. Piercing the corporate veil refers to the process of disregarding the company's separate legal personality, thereby exposing the directors as individuals rather than as agents of the company. Consequently, directors may face liabilities in their personal capacities instead of their roles as company agents. Nothing therefore stops the Deputy Registrar from ordering the examination of directors under the [Civil Procedure Rules](#).
11. Be that as it may, the Court has inherent powers to lift the company's corporate veil if after the conclusion of the examination it becomes apparent that there was fault or fraud on the part of the company's directors or officers. This remedy cannot be pursued under Order 22 rule 35 of the [Civil Procedure Rules](#). The legal framework for this action is encapsulated within the the [Companies Act](#) (2015). Although the Act does not explicitly mention the lifting of the corporate veil, it contains clauses - specifically sections 443, 444, and 218 to 220 - that provide for circumstances that may necessitate such measures.
12. It is crucial to recognize that under the [Companies Act](#) (2015), a "Court" is defined as the High Court unless another court is explicitly designated. Upon examining the Act, and more specifically sections 443, 444, and 218 to 220, it is evident that these provisions do not reference any court other than the High Court as being empowered to pierce the corporate veil.
13. In the case of [Michael Kyambati v Principal Magistrate, Milimani Commercial Courts, Nairobi & another](#), [2016] eKLR, which was cited in the appellant's submissions, the Court addressed a similar issue to the one at hand and found that the learned magistrate did not have the jurisdiction under the above provision to grant orders whose effect were to lift the corporate veil of the judgment debtor in order to render the applicant personally liable for the debts of the judgment debtor. I agree entirely with the Learned Judge.
14. Given this perspective, it becomes unnecessary to delve into the second issue regarding the correctness of the learned magistrate's findings.

Determination

15. For the reasons stated, the appeal is successful and the same is allowed with the consequence that the ruling delivered on 5th October 2016, and the subsequent orders arising therefrom be and are hereby set aside. The appellants shall have the costs of this appeal.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 23RD DAY OF FEBRUARY 2024.

F. MUGAMBI

JUDGE

