



**Brandworld Communications Limited & 2 others v Improtech Kenya Limited & another  
(Civil Appeal E730 of 2022) [2024] KEHC 5851 (KLR) (Civ) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E730 OF 2022**

**WM MUSYOKA, J**

**MAY 24, 2024**

**BETWEEN**

**BRANDWORLD COMMUNICATIONS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**PROCHEM (EA) LIMITED ..... 2<sup>ND</sup> APPELLANT**

**SOLARIS DEVELOPMENT COMPANY LIMITED ..... 3<sup>RD</sup> APPELLANT**

**AND**

**IMPROTECH KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DECORITE (EA) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal arising from the ruling of Hon. DO Mbeja, Principal Magistrate,  
PM, delivered on 29th October 2021, in Milimani CMCCC No. 7154 of 2019)*

**JUDGMENT**

1. The suit, at the primary court, had been initiated by the 1<sup>st</sup> respondent, against the 2<sup>nd</sup> respondent, for a sum of Kshs. 1,040,000.00, being taxes that the 2<sup>nd</sup> respondent should have paid on equipment sold to it by the 1<sup>st</sup> respondent, and which it had failed to pay. The relevant court process was served on the 2<sup>nd</sup> respondent, but it never appeared, nor defended the claim, and a judgment was given in favour of the 1<sup>st</sup> respondent, on 23<sup>rd</sup> November 2020.
2. The appeal herein does not arise from that judgment, but rather from execution proceedings that the 1<sup>st</sup> respondent levied to recover the judgment amount. Upon execution being levied, through Vintage Auctioneers, where some office items were proclaimed or attached, the appellants moved the trial court, under a Motion, dated 2<sup>nd</sup> July 2021, seeking the lifting of that attachment, and a permanent injunction to restrain the 1<sup>st</sup> respondent from attaching their assets. They argued that the



- assets proclaimed/attached belonged to them, and they attached documents to prove the same. The 1<sup>st</sup> respondent countered that Motion, by arguing that the deponent of the affidavit in support, one Kirimi Rintaugu, was a director of not only the appellants, but the 2<sup>nd</sup> respondent as well. Indeed, it was he, Kirimi Rintaugu, who had executed the sale agreement, the subject of the suit before the trial court, on behalf of the 2<sup>nd</sup> respondent. It was averred that the 2<sup>nd</sup> respondent was hiding behind the appellants, to avoid liability. In the end, the trial court agreed with the 1<sup>st</sup> respondent, and found that there was a connection between the appellants and the 2<sup>nd</sup> respondent, and that corporate veil could be lifted in favour of the 1<sup>st</sup> respondent. The Motion was dismissed, on 29<sup>th</sup> October 2021.
3. It is that ruling, of 29<sup>th</sup> October 2021, that provoked the instant appeal, as the appellants were aggrieved by it. The grounds, in the memorandum of appeal, dated 29<sup>th</sup> August 2022, revolve around the trial court disregarding the corporate principle of veil incorporation; the trial court erring in finding and holding that the 1<sup>st</sup> respondent could attach the property of the appellant, to settle a debt owed by the 2<sup>nd</sup> respondent; the trial court did not properly apply the decision in *Kolaba Enterprises Limited vs. Shamsuddin Hussein Varvani & another [2014]* eKLR (Gikonyo, J); among others.
  4. Directions were given on 8<sup>th</sup> December 2023, for disposal of the appeal by way of written submissions. There has been compliance, by both sides. There is only 1 issue for determination, as emerging from the grounds of appeal in the memorandum of appeal, and the submissions filed by the parties, and that is whether the trial court was justified in lifting the appellants and the 2<sup>nd</sup> respondent's veils of incorporation.
  5. The concept of incorporation of companies, and their separateness, in legal terms, from their shareholders and directors, was pronounced in *Salomon vs. Salomon & Company [1897] AC 22* (Lord McNaughten). Local decisions, such as *Victor Mabachi & another vs. Nurtun Bates Limited [2013]* eKLR (Kihara Kariuki PCA, Mwilu & Gatembu, JJA) and *Ricatti Business College of East Africa Limited vs. Kyanzavi Farmers Limited [2016]* eKLR (Mwilu, Azangalala & Kantai, JJA), have restated that principle. The principle is that the directors and shareholders of the company would not be liable for contracts that they sign on behalf of the company, given that the company is a separate and distinct entity from its shareholders and directors.
  6. Halsbury's Laws of England, 4<sup>th</sup> edition, paragraph 90, describes the principle of lifting or piercing the corporate veil. Despite the protection afforded by incorporation of a company or firm, sometimes it becomes necessary to pierce the veil of incorporation, with the objective of enabling justice, to facilitate litigation, so that the company is treated as identical to the natural persons who control it. It happens where there is fraud or improper conduct, and where the character of the company, or the nature of the persons who control it are relevant factors. The court would go behind the artificial status of the company, and dig into who the persons behind it are, in terms who would be directing or controlling the activities of the company. However, besides that, the veil will not be pierced, even though a natural person's connection with it may cause a transaction with it to be subjected to scrutiny. See *Victor Mabachi & another vs. Nurtun Bates Limited [2013]* eKLR (Kihara Kariuki PCA, Mwilu & Gatembu, JJA), *MultiChoice Kenya limited vs. Mainkam Limited & another [2013]* eKLR (Mabeya, J) and *Kolaba Enterprises Limited vs. Shamsuddin Hussein Varvani & another [2014]* eKLR (Gikonyo, J).
  7. Locally, the courts have applied those exceptions. In the Ugandan case of *Mugenyi & Company Advocates vs. The Attorney General [1999] 2 EA 199*, the court identified the instances when the veil of corporate personality may be pierced or lifted, and these include: where the companies are in the relationship of holding and subsidiary companies; where a shareholder has lost the privileges of limited liability, and has become directly liable to certain creditors, on the ground that that business continued after the membership had dropped below the legal minimum, to the knowledge of that shareholder; in



certain matters relating to taxation; in the law relating to exchange control; in the law relating to trading with the enemy; in the law of merger control in the United Kingdom; in competition of the European Economic Community; in the abuse of certain circumstances; where the device of incorporation is used for some illegal or improper purposes; and where the private company is founded on personal relationship between the members.

8. From the above, it would be clear that the veil of incorporation is not to be lifted willy-nilly, the instances, mentioned in *Mugenyi & Company Advocates vs. The Attorney General* [1999] 2 EA 199, ought to be considered. See *Lucy Mukembura Kimani vs. Nzuri Feeds Suppliers Limited* [2014] eKLR (J. Ngugi, J). In the instant case, the trial court lifted the veil, ostensibly as the 2<sup>nd</sup> respondent was hiding behind it to obstruct justice, and evade paying debts. Yet, the lifting of corporate veil could only result in attachment of the properties of the directors and shareholders of the company, and not the property of another company. The 1<sup>st</sup> respondent did not establish, before the trial court, and the trial court did not make a finding, that the 2<sup>nd</sup> respondent was a subsidiary of the appellants, or vice versa. The only factor lunched upon was that Kirimi Rintaugu was a director in all the 4 companies, which, of itself, was not adequate. The documents incorporating the 4 companies were not produced, to bring out the relationship between them, as a precursor to determining whether the appellants could be saddled with the debts and liabilities of the 2<sup>nd</sup> respondent. The trial court was, therefore, in error, in holding the property of the appellants could be utilised to settle the debts of the 2<sup>nd</sup> respondent, before the actual relationship between the 4 companies had been established. It was not enough to make that assessment on the basis that they had 1 common director, or operated business from the same premises.
9. I have read through *Catherine Kinyany vs. MCL Saatchi & Saatchi & another* [2014] eKLR (M. Onyango, J), *Paul Imison Holder vs. Jodad Investments Limited & 2 others* [2017] eKLR (Onguto, J), *Boleyn Wall Panel Limited vs. Nesco Services Limited: Boleyn International (K) Limited* [2021] eKLR (Odunga, J), *Gabriel Kahindi Kenga vs. Anglo Danish (Foods) Limited; Coast Anglo Meats Limited* [2021] eKLR (Ongaya, J), among the others filed by the 1<sup>st</sup> respondent, and I agree, in principle, with what is stated in them. However, I disagree with the notion that mere common directorship, sharing of premises by different firms, and the common use of equipment appliances and furniture by the firms, would be adequate basis to conclude that the said firms were one and the same. There would be need to delve deeper, into the actual ownership and shareholding in the companies involved, before a determination is made one way or the other. That is what the trial court should have done, establish the actual legal relationship between the 4 companies involved, before finding and holding that they were one and the same, and the assets of one could be utilised to settle the debt of the other. Doing otherwise, would be to take a too simplistic approach to a situation where legal rights are involved, and could be violated, where a casual approach is adopted.
10. In the end, I find that there is merit in the appeal herein. It is allowed, with the result that the orders made in the ruling of the trial court, of 29<sup>th</sup> October 2021, are hereby set aside. Each party shall bear their own costs.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 24<sup>TH</sup> DAY OF MAY 2024**

**W MUSYOKA**

**JUDGE**

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates



Mr. Ombati, instructed by Ombati Ong'au & Company, Advocates for the appellants.

Mr. Ndegwa, instructed by W. Ndegwa & Associates, Advocates for the 1<sup>st</sup> respondent.

