

KENYA / JUDGMENT

Kitonga & another v Agton Commercial Agencies Ltd [2026] KEHC 13489 (KLR)

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COURT

High Court

BEFORE

JWW Mong'are

CASE / FILE NUMBER

Miscellaneous Application E005 of 2026

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Kitonga & another v Agton Commercial Agencies Ltd (Miscellaneous Application E005 & E006 of 2026 (Consolidated)) [2026] KEHC 13489 (KLR) (10 September 2026) (Ruling) Neutral citation:

[2026] KEHC 13489 (KLR) Republic of Kenya In the High Court at Machakos Miscellaneous Application E005 & E006 of 2026 (Consolidated) JWW Mong'are, J September 10, 2026 Between James Kivulu Kitonga 1 st Applicant Dennis Mboya Mulwa 2 nd Applicant and Agton Commercial Agencies Limited Respondent

Ruling

Introduction and Background 1. Before the court for determination are the Applicants' applications dated 30 th January 2026 made under inter alia Article 159(2)(d) of the Constitution , sections 1A,1B & 3A of the Civil Procedure Act (Chapter 21 of the Laws of Kenya), and Order 22 Rule 35 of the Civil Procedure Rules seeking orders inter alia that the directors and/or shareholders of the Respondent, as listed in its current CR12 be summoned to attend court to show cause why the corporate veil should not be lifted and why they should not be held personally liable for the decretal sum totaling Kshs.491,302.04. That in default of compliance with the summons, the court be pleased to lift the corporate veil of the Respondent and hold its directors/shareholders personally and jointly liable for the full decretal sum, plus interest and costs. 2. The applications are supported by grounds on their faces and the affidavits of Irene Mule, an advocate in conduct of this matter on behalf of the Applicants sworn on 30 th January 2026. Despite service, there was no response by the Respondent to the applications.

Analysis and Determination

3. From the applications and submissions, the issues for the court's determination are whether the directors and/or shareholders of the Respondent, as listed in its current CR12 should be summoned to attend court to show cause why the corporate veil should not be lifted and

why they should not be held personally liable for the decretal sums and in default of the summons, whether the corporate veil of the Respondent should be lifted. 4. As stated in the introductory part and as submitted by the Applicants, their applications are grounded under inter alia Order 22 Rule 35 of the Rules which 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. 5. Whereas a company is a separate legal entity from its members and shareholders as espoused by the Court in the English case of *Salmon vs Salmon* [1987] AC 78, this position is not cast in stone as there are instances where the corporate veil of a company may be pierced and/or lifted. The Court of Appeal, in *Riccatti Business College of East Africa Limited v Kyanzavi Farmers Company Limited* [2016] KECA 763 (KLR) held that “The Court may lift the corporate veil in exercising its inherent jurisdiction to do justice and fairness for the ends of justice. This jurisdiction may be exercised only in special circumstances where the Court finds improper conduct, fraud or when a company is a sham, acting as an agent of the shareholders or evading tax revenues.” 6. The Applicants posit that they obtained valid judgments and decrees against the Respondent in the Small Claims Court, SCCC No. E477 of 2024 but that the Respondent has no known attachable assets and all execution efforts have been frustrated. That a current CR12 reveals the directors and shareholders, who the Applicants allege are hiding behind the corporate veil to evade the decree, that the Respondent was incorporated and is operated as a “mere shell” or “alter ego” of its directors, established with the predominant purpose of avoiding liability. 7. For these reasons, the Applicants depone that it is in the interest of justice to summon and examine the directors to compel them to disclose the company's assets and if they fail, to hold them personally liable. 8. Going through the applications and the submissions, it is undisputed that valid decrees exist and remain wholly unsatisfied. I find that the Applicants have demonstrated that they have attempted execution but were unsuccessful due to conservatory orders shielding the assets which shows that ordinary execution mechanisms have failed. The Respondent has not disclosed its assets or financial means owing to the fact that they have also failed to file a response to contest the Applicants' claims. This failure means the facts deposed by the Applicants remain uncontroverted and that the Respondent's directors are the only persons with knowledge of the company's financial affairs and assets. I find that the Applicants have met the threshold for the issuance of a Notice to Show Cause and summons for oral examination of the Respondent's directors to attend court and disclose the company's financial position and assets. 9. On whether the corporate veil should be pierced or lifted, I will first give the Respondent's directors to explain themselves before issuing this order considering it has not been disputed that the company is a “mere shell,” an “alter ego,” and was established to avoid liability. This directly falls under the exceptions in *Riccatti* (supra). Conclusion and Disposition 10. In the foregoing, I allow the Applicants' applications dated

30 th January 2026 as follows: 1. Summons are hereby issued, compelling the directors and/or shareholders of the Respondent/Judgment Debtor, AGTON COMMERCIAL AGENCIES LIMITED, as listed in its current CR12, to attend Court for oral examination on why they should not be held personally liable for the decretal sums totaling Kshs.491,302.04 owed by the Respondent to the Applicants 2. In default of compliance with the summons for oral examination without a reasonable excuse acceptable to the Court, the Court shall pierce and/or lift the corporate veil of AGTON COMMERCIAL AGENCIES LIMITED and in such an event, the directors shall be held jointly and severally personally liable for the full decretal sums in both matters, plus interest and costs. 3. The costs of both applications are awarded to the Applicants and shall be borne by the Respondent, or in default, by the directors personally and the costs are assessed at Kshs. 35,000.00. DATED SIGNED AND DELIVERED VIRTUALLY THIS 10 TH DAY OF SEPTEMBER 2026 J W W MONGARE JUDGE In the presence of; Ms. Mule for the Applicant/Decree Holder N/A for the Respondent Abdisalan- Court Assistant

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