



REPUBLIC OF KENYA



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Jepkemoi v Zaburi Enterprises Company Ltd & 2 others (Miscellaneous Civil Application 43 of 2023) [2024] KEHC 2343 (KLR) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 43 OF 2023**

JRA WANANDA, J

MARCH 8, 2024

BETWEEN

STACY JEPKEMOI APPLICANT

AND

ZABURI ENTERPRISES COMPANY LTD 1ST RESPONDENT

INTERLINK MERCHANDISE LIMITED 2ND RESPONDENT

INTERLINK TRADERS LIMITED 3RD RESPONDENT

RULING

1. The Application before Court is the Notice of Motion dated 8/03/2023 filed through Messrs Komen Kipchirchir & Co. Advocates. In a lengthy list of prayers, the Applicant seeks the following orders:
 - i. [.....] spent.
 - ii. [.....] spent
 - iii. That this Honourable be pleased to compel the directors and shareholders of the 1st Respondent M/s Zaburi Enterprises Company Limited, namely; Njoroge O. Kimani (Secretary), Joseph Kipkoech Kimurto ID No. [.....] (director shareholder), Paul Kiprotich Kimurto ID No. [.....] (director shareholder), & Beatrice Jebiwot Chepkering (director shareholder) to personally attend Court in Eldoret Chief Magistrate's Court Civil Case No. 1224 of 2017 between the Applicant versus Respondent on such date as may be ordered to be examined on oath as the 1st Respondent's/Judgment-Debtor's means and assets and to produce its books of the accounts and other documentary evidence relevant to revealing the assets of the said Zaburi Enterprises Company Limited.
 - iv. That this Honourable be pleased to compel the directors and shareholders of the 2nd Respondent M/s Interlink Merchandise Limited, namely; Joseph Kipkoech Kimurto ID No.



[.....] (director shareholder), Paul Kiprotich Kimurto ID No. [.....] (director shareholder), Rael Kipyego (director shareholder) & Beatrice Jebiwott Chepkiyeng (director shareholder) to personally attend Court in Eldoret Chief Magistrate's Court Civil Case No. 1224 of 2017 between the Stacy Jepkemoi (Applicant) versus Zaburi Enterprises Company Limited (1st Respondent) on such date as may be ordered or allocated by the said Court and be examined on oath as to the 1st Respondent's/Judgment-Debtor's means and assets and to produce its books of the accounts and other documentary evidence relevant to revealing the assets of the said Zaburi Enterprises Company Limited & its subsidiary and/or holding company M/s, Interlink Merchandise Limited.

- v. That this Honourable be pleased to compel the directors and shareholders of the 3rd Respondent M/s Interlink Enterprises Company Limited, namely; John Opamo Ahodo (Secretary), Joseph Kipkoech Kimurto ID No. [.....] (director shareholder), Rael Kipyego (director shareholder) Paul Kiprotich Kimurto ID No. [.....] (director shareholder), & Beatrice Jebiwot Chepkiyeng (director shareholder) to personally attend Court in Eldoret Chief Magistrate's Court Civil Case No. 1224 between the Stacy Jepkemoi (Applicant) versus Zaburi Enterprises Company Limited (1st Respondent) on such date as may be ordered or allocated by the said Court and be examined on oath as to the 1st Respondent's/Judgment-Debtor's means and assets and to produce Respondents' books of accounts and other documentary evidence relevant to revealing the assets of the said Zaburi Enterprises Company Limited, Interlink Merchandise Limited & Interlink Traders Limited.
- vi. That upon personal attendance and examination of the directors and/or shareholders of the 1st Respondent M/s Zaburi Enterprises Company Limited namely; Njoroge O. Kimani (Secretary), Joseph Kipkoech Kimurto (director shareholder) & Beatrice Jebiwot Chepkeying (director shareholder), the Honourable Court be pleased to pierce into and lift the corporate veil of the Respondent herein Zaburi Enterprises Company Limited and the said directors of M/s Zaburi Enterprises Company Limited be and hereby jointly and severally held personally liable to pay the Applicant the decretal sum and taxed costs amounting to Kshs 2,237,432,425 plus interest at 14% per annum from 27-02-2020 in Eldoret Chief Magistrate's Court Civil Case No. 1224 of 2017 between Stacy Jepkemoi (Applicant) versus Zaburi Enterprises Company Limited (1st Respondent).
- vii. That upon personal attendance and examination of the directors and/or shareholders of the 2nd and 3rd Respondents M/s Interlink Merchandise Limited, namely; Joseph Kipkoech Kimurto ID No. [.....] (director shareholder) & Rael Kipyego (director shareholder) & Beatrice Jebiwot Chepkiyeng (director shareholder) and M/s Interlink Merchandise Limited & Interlink Traders Limited respectively and the respective directors/shareholders of M/s Interlink Merchandise Limited & Interlink Traders Limited named herein be and are hereby jointly and severally held personally liable to pay the Applicant the decretal sum and taxed costs amounting to Kshs 2,237,432,425 plus interest of 14% per annum from 27-02-2020 in Eldoret Chief Magistrate's Court Civil Case No. 1224 of 2017 between Stacy Jepkemoi (Applicant) versus Zaburi Enterprises Company Limited (1st Respondent).
- viii. That warrants of attachment and sale of assets of the respective directors and shareholders of the 3 Respondent companies M/s Zaburi Enterprises Company Limited, M/s Interlink Merchandise Limited & Interlink Traders Limited indicated in (6) above do issue in execution of the decree dated 27-02-2017 in Eldoret Chief Magistrate's Court Civil Case No. 1224 of 2017 between Stacy Jepkemoi (Applicant) versus Zaburi Enterprises Company Limited (1st Respondent).



- ix. That in the alternative to (8) above, Notice to Show Cause be issued compelling the said directors and shareholders of the 1st, 2nd & 3rd Respondents M/s Zaburi Enterprises Company Limited; namely; Njoroge O. Kimani (Secretary), Joseph Kipkoech Kimurto ID No. [.....] (director shareholder), Paul Kiprotich Kimurto ID No. [.....] & Beatrice Jebiwot Chepkiyeng (director shareholder), ID No. [.....], M/s Interlink Merchandise Limited, namely; Joseph Kipkoech Kimurto ID No. [.....] (director shareholder), & Rael Kipyego (director shareholder) & Beatrice Jebiwot Chepkiyeng (director shareholder), Paul Kiprotich Kimurto ID No. [.....], Rael Kipyego (director shareholder) Paul Kiprotich Kimurto ID No. [.....] (director shareholder), & Beatrice Jebiwot Chepkiyeng (director shareholder) AND M/s Interlinks Traders Limited namely; John Opamo Ahodo (Secretary), Joseph Kipkoech Kimurto ID No. [.....] (director shareholder), Rael Kipyego (director shareholder) Paul Kiprotich Kimurto ID No. [.....] (director shareholder), & Beatrice Jebiwot Chepkiyeng (director shareholder) to show cause as why the said directors and/or shareholders should not be committed to civil jail for failure to pay full decretal sum and taxed costs in Eldoret Chief Magistrate’s Court Civil Case No. 1224 of 2017.
- x. That costs of this Application be provided for.
2. As aforesaid, the prayers, as drafted, are unnecessarily too lengthy and verbose. There is too much avoidable duplicity and repetition. With a little bit of some brevity and innovation, the prayers could have been shortened, simplified and more comprehensible.
3. Be that as it may, the Application is expressed to be brought under Sections 323 of the Companies Act, Cap. 486 & Sections 90, 148, 194, 787, 996 & 1002 of the Companies Act (Act No. 17 of 2015) and Sections 1A, 1B, 3A, & 34 of the Civil Procedure Rules 2010 & Order 22 Rule 35(b) & (c) of the Civil Procedure Rules and “all enabling provisions of the law”. The grounds of the Application are as set out on the face thereof and the same is supported by the Affidavit sworn by the Applicant, Stacy Jepkemoi.
4. In the equally lengthy Affidavit, the Applicant deponed that he is the Plaintiff/Decree holder in Eldoret Chief Magistrate’s Court Civil Case No. 1224 of 2017 between herself versus Zaburi Enterprises Company Limited, that the said suit was heard to conclusion and Judgment was awarded to the Applicant, the decretal sum was Kshs 1,177,445/- with interest from 2/10/2017, that aggrieved by the said Judgment, the 1st Respondent appealed in Eldoret High Court Civil Appeal No. 57 of 2020, that by the Judgment dated 29/07/2022, the Appeal was dismissed, that the Applicant then applied for and was issued with Warrants of Attachment and Sale of the 1st Respondent’s property, that the Auctioneers proclaimed against the 1st Respondent’s property, that upon such proclamation, the 3rd Respondent, Joseph Kipkoech Kimurto (director and shareholder of the 1st Respondent) and one Lilian Jeruto Kigen filed an Application objecting to the attachment on grounds that the proclaimed goods do not belong to the 1st Respondent, that pursuant thereto, the Court issued a Stay of execution, and that the objection related to 9 motor vehicles and also assets, items and stock situated in the properties, Uasin Gishu/Kimumu/515 and Uasin Gishu/Kimumu/516.
5. The Applicant deponed further that a scrutiny of the logbooks for the motor vehicles indicates that they are registered on hire purchase in favour of several banking institutions and other individuals, that it is therefore clear that the 1st Respondent does not have any attachable properties hence the need to have the directors and shareholders of the 1st Respondent to be summoned to appear in Court and be held personally and directly liable to pay the decretal sum of Kshs 2,237,432.435 plus interest, that through her Advocates, the Applicant conducted a search via ecitizen portal on the particulars of directorship and shareholding of the Respondent companies and their corporate links, that the beneficial owners of all these companies and particularly M/s Interlink Traders Limited are Joseph



Kipkoech Kimurto and Paul Kipruto Kimurto among others, are directors of all the 3 companies and these directors either testified or were adversely mentioned in the proceedings, and that it is therefore necessary for the Court to pierce into the Respondent companies and lift their veils to have the directors/shareholders held personally liable to realize the decretal sum.

1st Respondent's Replying Affidavit

6. The 1st Respondent opposed the Application vide the brief Replying Affidavit filed on 11/04/2023 through Messrs Bundotich Korir & Co. Advocates and sworn by Joseph Kipkoech Kimurto who described herself as one of the directors of the 1st Respondent. He deponed that the 1st Respondent closed business on 10/05/2017 when it sold to the Applicant the only business it had and has since then not acquired any asset, that the veil of incorporation is not to be lifted merely because the company has no assets or is unable to pay its debts and thus insolvent, in such a situation, the law provides a remedy other than the director of the company being saddled with the debts of the company, that the 1st Respondent, being a body corporate, is a persona juridica with separate independent identity in law, distinct from its shareholders, directors and agents, that the Applicant has not established nor met the threshold, grounds or principles guiding the Court insofar as the lifting of the veil of incorporation is concerned, that the named directors have not participated in any fraudulent acts or underhand dealings within the company so as to warrant them being held personally liable for the debts of the company, that the 1st Respondent was registered on 21/02/2014, 3 years before the transaction between the Applicant and the 1st Respondent that led to the suit took place, that as such, it cannot be argued that the company was formed or established so as to escape liability, that the 1st Respondent is a separate legal entity distinct from the 2nd and 3rd Respondents and neither of the two is a holding or subsidiary company of the other and as such, no liabilities or obligations of the 1st Respondent can be visited upon the 2nd or 3rd Respondents.

2nd and 3rd Respondent's Grounds of Opposition

7. On their part, the 2nd Respondent, through Messrs T.K. Rutto & Co. Advocates and the 3rd Respondent, through Messrs J.K. Kaptich & Co. Advocates filed Grounds of Opposition on 11/04/2023. The two are a replica of each other and are basically to the effect that the Respondent companies are distinct from each other and that neither is a holding or subsidiary company of the other and as such, no liabilities or obligations of the 1st Respondent can be visited upon the others.

Applicant's Further Affidavit

8. With leave of the Court, the Applicant swore the Further Affidavit filed on 14/07/2023. She deponed that there is indeed an element of common directorship and shareholding between all the 3 Respondent companies, that Joseph Kipkoech Kimurto is also a director and a beneficial owner in all the 3 companies, that in the proceedings before the lower Court, the said Joseph Kipkoech Kimurto admitted being a director of the 1st Respondent, and that this is also proven in the documents produced as exhibits.
9. It is therefore clear that the matters deponed in the Further Affidavit are simply repetitions of matters already set out in the Applicant's Supporting Affidavit. In short, and with due respect, the Further Affidavit does not seem to have been necessary.

Hearing of the Application

10. Directions were then given that the Application be canvassed by way of written Submissions. Counsels for the 2nd and 3rd Respondents however informed the Court that they will not be filing any



Submissions. The 1st Respondent filed its Submissions on 25/10/2023. Regarding the Applicant however, up to the time that I concluded this Ruling, I had not come across its Submissions.

1st Respondent's Submissions

11. Counsel for the 1st Respondent submitted that this Court lacks jurisdiction to order for summoning of the said directors as the Court envisaged by Order 22(35)(b) is the trial Court which handled the matter, that the Application ought to fail because it has been made before a Court that did not hear the matter and that the reliefs ought to have been sought before the Magistrates Court. He further argued that where there exists other sufficient and adequate avenues or forum to resolve a dispute, a party ought to pursue that avenue and not invoke the Court process. He cited the case of *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR.
12. Regarding lifting the veil of incorporation, Counsel submitted that it is a long-standing legal principle that a company is a separate person distinct from its members. He cited the case of *Salmon v Salmon* [1897] AC 78 and also the case of *Victor Mabachi & Another v Nurtun Bates Ltd*, Civil Appeal No. 247 of 2005 [2013] eKLR in which, he submitted, 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 lifting of the veil, for example, where there is fraud or improper conduct. He also cited Court of Appeal at Eldoret Civil Appeal Case No. 239 of 2013, *Charles Ray Makuto v Almakony Limited & Another* [2016] eKLR and submitted that the Applicant sued the 1st Respondent knowing that the same was a limited liability company as the company was in existence prior to the transactions that led to the suit, as such, it cannot be said that the same was formed to escape liability, and that there is no evidence of any fraudulent activity undertaken by the directors. He argued that the Court cannot lift nor pierce the veil of incorporation merely because the company cannot meet its financial obligations. In conclusion, he cited the case of *China Wu Yi Company Ltd v Ederman Property Ltd & 2 Others* [2013] eKLR.

Analysis and Determination

13. Upon examination of the record and the pleadings filed, including the Affidavits and Submissions, I find the issues that arise for determination herein to be as follows:
 - i. Whether this Court has jurisdiction to entertain the present Application considering that the decree sought to be enforced is from the Magistrate's Court.
 - ii. Whether therefore this Court should lift the veil of incorporation over the 1st Respondent and allow the Applicant to execute the Magistrate's Court decree against the directors/shareholders of the 3 Respondent companies.
14. I now proceed to determine the above issues.

i. Whether this Court has jurisdiction to entertain the present Application

15. It is not disputed that the decree of the Magistrates' Court issued in favour of the Applicant as against the 1st Respondent has not been settled. There is also no dispute that execution of the decree by attachment of assets has failed because no attachable asset belonging to the 1st Respondent has been traced. On its part, the 1st Respondent claims that it has since closed shop although no evidence of its formal winding-up as a company has been presented. The question is therefore whether the 1st Respondent's corporate veil and that of its associated companies should be lifted and the directors held personally liable to pay the decree.



16. The locus classicus case on the issue of the corporate nature of a company is the English case of *Salomon & Salomon & Co. Ltd v Salomon* [1897] A.C. 22 H.L. This is the case that emphatically established the principle that a company is a separate and distinct person from its shareholders and directors. It is however also true that, out of necessity and to prevent abuse of this principle, over time, the law has developed principles allowing for lifting or “piercing” of the corporate veil. This “lifting of the veil” principle therefore opens the way for persons who control companies, in appropriate cases, to be held personally liable to pay the company’s debts. Courts therefore have the power, upon examination of the directors, where the circumstances warrant lifting the corporate veil of the Company, to order a director to personally discharge the debts of the company.
17. Regarding the circumstances under which the corporate veil may be lifted, *Halsbury’s Laws of England*, 4th Edition, Vol. 7 (1), Paragraph 90 states as follows:
- “Notwithstanding the effect of a company’s incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual’s connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be pierced”.
18. In the case of *Multichoice Kenya Ltd v Mainkam Ltd & Anor.* [2013] eKLR, Mabeya J held as follows;
- “I agree that directors are generally not personally liable on contracts purporting to bind their company. If the directors have authority to make a contract, then only the company is liable on it. To my mind, there is no doubt that ever since famous case of *Salomon v Salomon* [1897] A.C. 22 Courts have applied the principle of corporate personality strictly. But exceptions to the principle have also been made where it is too flagrantly oppose to justice or convenience. Other instances include when a fraudulent and improper design by scheming directors or shareholders is imputed. In such exceptional cases, the law either goes behind the corporate personality to the individual members or regards the subsidiary and its holding company as one entity.”
19. In the case of *Kolaba Enterprises Ltd v Shamsudin Hussein Varvani & Ano* [2014] eKLR, the Court held as follows;
- “It should be appreciated that the separate corporate personality is the best legal innovation ever in company law. See the famous case of *Salomon & Co Ltd V Salomon* [1897] A.C. 22 H.L that a company is different person altogether from its subscribers and directors. Although it is a fiction of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in instances where the statute or the law provides for the lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities”



20. Ringera, J (as he then was) in *Ultimate Laboratories v Tasha Bioservice Limited* Nairobi H.C.C.C No. 1287 of 2000, stated on lifting of the corporate veil that;

“However, that fundamental principle of incorporation may be disregarded, lifted, or pierced in exceptional circumstances both under express statutory provisions (of which Section 323 of the *Companies Act* is but one example only) and under judicial interpretation or intervention. As regards the latter, English authorities establish the broad principle that the corporate veil will be lifted by the courts if, among other situations, corporate personality is being used as a mask for fraud or improper conduct

21. In quoting *Palmer's Company Law Vol. 1 (22nd Ed)*, in the case of *Mugenyi & Company Advocates v The Attorney General* [1999] 2 EA 199, the Court listed 10 instances in which the veil of corporate personality may be lifted, as follows:

- “1. Where companies are in the relationship of holding and subsidiary companies’
2. Where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors on the ground that business continued after the membership had dropped below the legal minimum, to the knowledge of the shareholder;
3. In certain matters relating to taxation;
4. In the law relating to exchange control;
5. In the law relating to trading with the enemy;
6. In the law of merger control in the United Kingdom;
7. In competition of the European Economic Community;
8. In abuse of law in certain circumstances;
9. Where the device of incorporation is used for some illegal or improper purpose; and
10. Where the private company is founded on personal relationship between the members.”

22. It is therefore evident that in a case such as the instant one, the corporate veil will only be lifted where it is demonstrated that the actions of the directors or shareholders smacks of bad faith and that the corporate veil is being used as a mask to fraudulently shield such directors or shareholders from execution of the decree. The veil may therefore be pierced where it appears that the business of the company has for instance been carried on with intent to defraud creditors of any other person or for any fraudulent purpose. Only where justice of the case demands should the corporate veil be disregarded and lifted.

23. The proper procedure before a Court determines whether to lift the veil of incorporation is to first summon such directors to Court to be orally examined as to whether it has any and/or what property and/or means of satisfying the decree. The directors may in the process be also called upon to produce any books of accounts or documents, for purposes of scrutiny. It is during this process that the Court may then determine whether the directors are guilty of bad faith, or wilful acts meant to avoid settlement of the decree or even outright fraud. Should the existence of such circumstances be



established, then the Court may go ahead to lift the corporate veil and hold the directors or shareholders personally liable to settle the decree.

24. In this instant matter, it is not in dispute that the decree sought to be enforced through the present Application was issued in Eldoret Chief Magistrates Court Civil Case No. 1224 of 2017. When I first laid my eyes on the Application therefore, my first question was, why has the Application been filed here in the High Court? For this reason, I painstakingly combed through the Application and the Supporting Affidavit with a view to finding out whether any explanation had been given for the choice of the High Court as the forum to hear the Application rather than the same being filed before the same Magistrate's Court that issued the decree. I was also curious to understand why the Application has been filed before the High Court as a Miscellaneous Cause. To my disappointment, there was absolutely no explanation. The Applicant's Further Affidavit filed subsequently similarly had no mention of the issue of choice of forum.
25. I therefore had to go through the sections of the Companies Act and the other provisions of law cited as supporting the Application, to try and find out whether the trial Court has been divested of jurisdiction or whether there is any provision requiring the Applicant to come to the High Court for the relief sought. There, too, I came to nought. As it stands therefore, this Court has not been presented with any justification why it should usurp the role of the trial Court which issued the decree and which is the one possessed with the jurisdiction to oversee the execution and/or enforcement of its orders, including decrees. It has not been demonstrated or even alleged, for that matter, that the trial Court is now functus officio.
26. The closest I have come in trying to unravel why the Applicant chose to come to this Court is in respect to the definition part of the Companies Act (Act No. 17 of 2015) where it is stated as follows:
- “the Court” means (unless some other court is specified) the High Court;”
27. If this is the provision that the Applicant has relied on to come to this Court, then it is mistaken. That definition relates to proceedings commenced strictly under the Companies Act and handled as such. Such proceedings would include matters such as liquidation, winding-up, insolvency, and alteration of company registers, among others. The instant case is different since it had nothing to do with the Companies Act. The case is long concluded and was in any event, an ordinary claim for damages for breach of a lease agreement. It was not “proceedings” under the Companies Act to warrant invocation of the definition aforesaid. The execution of the decree is being pursued, not under the Companies Act, but under Part III of the Civil Procedure Act and Order 22 of the Civil Procedure Rules.
28. Indeed, in his Submissions, the 1st Respondent's Counsel raised the same concern. Although he acknowledged that Order 22 Rule 35(b) and (c) of the Civil Procedure Rules entitles the Court to order for the examination of a director of a Judgment-debtor company or any officer thereof in Court for the purposes of providing answers in respect to the company's ability or means to satisfy the decree, he however contended that such power lies with the Court of the first instance whose decree is sought to be executed.
29. On this point, Order 22 Rule 35 aforesaid is couched in the following terms:
- “Where a decree is for 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.”
30. However, Section 18 of the [Civil Procedure Act](#) above must be read with Section 34(1) thereof which provides as follows:
- “All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
31. There is then Section 29 of the same [Act](#) which defines the term “court which passed a decree” as follows.
- “The expression “court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include: -
- a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance;
- b) Where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.”
32. Explanation (a) above points to the trial Court as the Court to oversee execution of its decree and the situation cited in (b) above does not arise in the instant situation since the trial Court has not ceased to exist nor has it been alleged or demonstrated that it has since been divested of jurisdiction. In the circumstances, I find that this Court has no original jurisdiction to deal with matters arising out of execution of the decree of the Magistrate’s Court. This Court’s jurisdiction is only on appeals. Although the High Court has inherent powers, the same has to be exercised within procedural boundaries.
33. The Applicant’s recourse is to therefore file the Application before the same Court of first instance, namely, the Magistrate’s Court that issued the decree.
34. This finding is sufficient to dispose of the Application in favour of the Respondents. I will therefore not delve into the second issue.

Final Orders

35. The upshot of my findings above is that the Application fails due to lack of jurisdiction. Accordingly, I order as follows:
- a. The Applicant’s Notice of Motion dated 8/03/2023 is hereby dismissed.
- b. Considering that the Application was necessitated by the 1st Respondent’s failure to settle a lawful decree, each party shall bear its own costs of the Application.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 8TH DAY OF MARCH 2024



WANANDA J.R. ANURO

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPTY REGISTRAR

