



Seokang Limited v Kenya Electricity Transmission Company Limited & another (Commercial Suit E041 of 2019) [2025] KEHC 5753 (KLR) (Commercial and Tax) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5753 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E041 OF 2019**

NW SIFUNA, J

MAY 9, 2025

BETWEEN

SEOKANG LIMITED PLAINTIFF

AND

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED 1ST
DEFENDANT**

ISOLUX INGENERIA S.A. KENYA 2ND DEFENDANT

RULING

1. This Court is called upon to determine the Notice of Motion dated 16th July 2024 brought by the 2nd Defendant/Applicant under Schedule 5, Paragraph 23 of the *Insolvency Act*, Sections 1A and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks a stay of the current proceedings pending the conclusion of insolvency proceedings currently ongoing in Commercial Court No. 1 of Madrid, Spain, being insolvency matter No. 700/2017. The Applicant also prays that costs be in the cause.
2. The factual background, as presented by the Applicant, it that it is undergoing insolvency in ordinary insolvency proceedings No. 700/2017 in Commercial Court No. 1 of Madrid, Spain and that this Court has previously, through Hon. Lady Justice Kasango, recognized those proceedings as foreign main proceedings within the meaning of the UNCITRAL Model Law on Cross-Border Insolvency as adopted in Kenya under Section 720 and Schedule 5 of the *Insolvency Act*, 2015.
3. The Plaintiff opposes the application on grounds that the 2nd Defendant is not the same entity as the one subject to the Spanish insolvency proceedings; that the recognition order issued by Justice Kasango was granted without full disclosure or proper consideration of all relevant facts and parties; that there has been an inordinate delay in the foreign proceedings; and that the said recognition order should



be modified to permit the 2nd Defendant to participate in these proceedings, at least for the limited purpose of confirming whether liability was assigned to the 1st Defendant.

4. The application was heard by way of written submissions, supplemented by the oral highlights by counsels.
5. The key issues for determination before this Court are: (a) Whether the proceedings against the 2nd Defendant ought to be stayed pending the outcome of the Spanish insolvency proceedings; and (b) Whether this Court has the jurisdiction to modify or depart from orders issued by a judge of concurrent jurisdiction (Justice Kasango).
6. The law governing cross-border insolvency in Kenya is provided for under Section 720 of the *Insolvency Act*, which incorporates the UNCITRAL Model Law on Cross-Border Insolvency into Kenyan law. Schedule 5, Paragraphs 22 and 23 of the Act outline the effects of recognizing a foreign main proceeding, including:

Paragraph 22

“Upon recognition of a foreign proceeding that is a foreign main proceeding, there shall be a stay of proceedings against the debtor and its assets.”

Paragraph 23

“The Court may grant any appropriate relief where necessary to protect the debtor’s assets or creditors’ interests.”

7. Thus, recognition of foreign main proceedings has the automatic effect of staying proceedings against the company or debtor subject to such proceedings.
8. In this case, it is not disputed that a recognition order was issued by Hon. Justice Kasango. While the Plaintiff has questioned the basis and scope of that order, no formal review or appeal has been brought before this Court to set it aside.
9. In *Re Global Tours & Travels Ltd Nairobi HC Winding Up Cause No. 43 of 2000*, the court held as follows:

“A court of law should lean towards preserving the substratum of the company when there are pending insolvency proceedings, and particularly where there is a risk that assets may be dissipated or the process may be undermined.”

10. The recognition order unless and until set aside triggers the protective regime intended by the Model Law. The Plaintiff’s argument that the 2nd Defendant is a distinct entity or that Justice Kasango may have been misled is a matter best addressed in a formal application for review or revocation of the recognition order, not in the current Application.
11. Further sections 428 of the *Insolvency Act* (“the Act”) provides for the Power to stay or restrain proceedings against company when liquidation application has been made; as herebelow:

Section 428

1. At any time after the making of a liquidation application, and before a liquidation order has been made, the company, or any creditor or contributory, may
 - a. if legal proceedings against the company are pending in the Court—apply to the Court for the proceedings to be stayed; and



- b. if proceedings relating to a matter are pending against the company in another court —apply to the Court to restrain further proceedings in respect of that matter in the other court.
 2. On the hearing of an application under subsection (1)(a) or (b), the Court may make an order staying or restraining the proceedings on such terms as it considers appropriate.
12. Under the provisions of Section 428 of the Act the court has jurisdiction to stay court proceedings once a liquidation application, in this a case a petition, has been lodged. This Court is satisfied that there is an active foreign insolvency proceeding, that a prima facie recognition order has been issued, and that the Applicant falls within the protective reach of that regime. A stay is warranted to avoid parallel litigation and conflicting outcomes.
13. On the second issue the Plaintiff urges this Court to modify or limit the effect of Justice Kasango’s recognition order to compel the 2nd Defendant to participate in these proceedings, at least for the limited purpose of confirming its liability status.
14. However, this submission misconstrues the hierarchical structure of the High Court. This court does not have appellate or supervisory authority over another judge of the same court. Accordingly, any party aggrieved by the orders issued by Justice Kasango must either apply for review before her or file an appeal in the Court of Appeal. This Court cannot purport to vary or suspend those orders.

Final Disposition

15. The Notice of Motion dated 16th July 2024 is meritorious and is hereby allowed. Consequently, the proceedings against the 2nd Defendant are hereby stayed pending the conclusion of the foreign insolvency proceedings in Madrid (Commercial Court No. 1, Case No. 700/2017), or until further orders of this Court. The costs of this Application shall be in the cause.

DATED AND DELIVERED AT NAIROBI ON THIS 9TH DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

