



**Rono v Langat & 3 others (Civil Case E009 of 2024)
[2024] KEHC 8886 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL CASE E009 OF 2024
JK SERGON, J
JULY 24, 2024**

BETWEEN

DAVID KIMUTAI RONO PLAINTIFF

AND

ISAIAH KIPKOECH LANGAT 1ST DEFENDANT

IEBC 2ND DEFENDANT

MOMUL TEA FACTORY LIMITED 3RD DEFENDANT

TEA BOARD OF KENYA 4TH DEFENDANT

RULING

1. David Kimutai Rono, the Plaintiff herein filed an action by way of the Plaint dated 12th July, 2024 against Isaiah Kipkoech Langat, IEBC, Momul Tea Factory Limited and Tea Board of Kenya being the 1st, 2nd, 3rd, and 4th Defendants respectively.
2. In the aforesaid Plaint, the Plaintiff sought for Judgment as follows inter alia:
 - a. A declaration that the elections conducted by the 2nd, 3rd & 4th Defendants in Chemamul Zone on 28/6/2024 and announced on 29/06/2024 were not free and fair and were marred with irregularities;
 - (b) An Order invalidating the elctions results that were announced on 29th June, 2024 by the 2nd Defendant;
 - (c) An Order cancelling the Certificate issued to the 1st Defendant by the 2nd Defendant that declared the 1st Defendant as Director-Elect for Chemamul Zone;



- (d) An Order barring the 2nd, 3rd & 4th Defendants and Tea Growers from inaugurating, swearing in and or confirming the 1st Defendant on 17/7/2024 as the Director representing Tea Growers in Chemamul Zone.
 - (e) An injunction barring the 1st Defendant from being sworn in on 17/7/2024, participating in the meetings and events organised by the 3rd Defendant, purporting to represent Chemamul Zone as a Director and or undertaking the roles of a Director for the 3rd Defendant.
 - (f) An Order directing the 2nd, 3rd & 4th Defendants to undertake repeat of Elections of Director in Chemamul Zone as provided for in Clause 4 (2) & (8) of the Manual for Elections of Directors.
 - (g) Each party to bear its/his own costs.
 - (h) Any other relief this Honourable Court may deem fit to grant.
3. The Plaintiff contemporaneously filed with the Plaintiff the Motion dated 12th July, 2024 whereof he sought for the following Orders Inter alia:
- i. That pending the hearing and determination of this Application and the suit herein, the elections for director representing Chemamul Zone in Momul Tea Factory conducted on 28th & 29th June, 2024 between 4 pm and 1 am be declared null and void owing to electoral irregularities and for being not free and fair.
 - ii. That pending the hearing and determination of this Application and suit herein, this Honourable Court do set aside election of and cancel the certificate issued to the 1st Respondent by the 2nd Respondent as the Director-Elect representing Chemamul Zone of Momul Tea Factory Limited.
 - iii. That pending the hearing and determination of this application and the suit herein, this Honourable Court do issue an Order staying the inauguration and or confirmation of the 1st Defendant by the 2nd, 3rd & 4th Respondent on 17th July, 2024 as the Director of Momul Tea Factory Limited.
 - (iv) That pending the hearing and determination of this application and the suit herein, the Honourable Court do issue an injunction barring the 1st Respondent from acting, performing, attending and or representing himself as the Director of the 3rd Respondent.
 - iv. That the Honourable Court do order that the flawed elections undertaken on 28th and 29th June, 2024 between 4 pm and 1 am be repeated owing to glaring irregularities of voter manipulation, intimidation and failure of many Seventh Day Adventist Tea Growers within Chemamul Zone to exercise their constitutional right to vote as the time for the elections coincided and conflicted with their time of worship and Christian beliefs.
 - v. That the costs of this Application be provided for.
4. The aforesaid motion was placed before this court under a Certificate of Urgency on 15th July, 2024. Upon considering the Application exparte, this court Certified the Application as Urgent and further granted the following Orders:
- a. Pending the interpartes hearing of the Motion dated 12th July, 2024 an Order is issued staying the inauguration and or confirmation of Isaiah Kipkoech Langat by the 2nd, 3rd, and 4th Defendants scheduled for 17th July, 2024 as the Director of Momul Tea Factory Limited.



- b. Pending the interpartes hearing of the Motion dated 12th July, 2024 an Order of Injunction is issued barring Isaiah Kipkoech Langat from acting, performing, attending and or representing himself as the Director of Momul Tea Factory Limited.
5. Upon being served with the aforesaid ex parte Orders, the 1st and 3rd Defendants took out the Motion dated 17th July, 2024 whereof they sought for the following Orders:-
- i. That this Application be certified as urgent and service of the same be dispensed with in the first instance.
 - ii. That the Honourable Court be pleased to stay execution of the *ex-parte* order given of 15th July, 2024 and issued on 16th July, 2024 barring Isaiah Kipkoech Langat, the 1st Respondent from acting, performing, attending and/or representing himself as the Director of Momul Tea Factory Limited pending the hearing and determination of this Application.
 - iii. That the Honourable Court be pleased to discharge, vary and/or set aside the *ex-parte* order issued on 15th July, 2024 barring Isaiah Kipkoech Langat, the 1st Respondent from acting, performing, attending and/or representing himself as the Director of Momul Tea Factory Limited pending the hearing and determination of this Application.
 - iv. That the Honourable Court be pleased to discharge vary and/or set aside the *ex-parte* issued on 15th July, 2024 barring Isaiah Kipkoech Langat, the 1st Respondent from acting, performing, attending and/or representing himself as the Director of Momul Tea Factory Limited pending the hearing and determination of this suit.
 - v. That necessary directions be made.
6. The 2nd Defendant on its part filed the Motion dated 16th July, 2024 whereof it sought for the following Orders Inter alia:
- (a) That this Application be certified urgent and heard *ex-parte* in the first instance.
 - (b) That pending the hearing and determination of this application inter-partes, this Honourable Court be pleased to set aside and/or lift the *ex-parte* conservatory orders issued on the 16th July, 2024.
 - (c) That this Honourable Court be pleased to set aside and/or lift the *ex-parte* conservatory orders issued on the 16th July, 2024.
 - (d) That costs of this application be provided for.
7. The aforesaid Motions are the subject matter of this Ruling.
8. It is the submission of Mr. Muite SC that the *ex-parte* Orders were procured by the Plaintiff through deliberate concealment of material facts namely; that the 1st Respondent was a sitting Director and that he would remain until a new Board is constituted. It is also argued that the exparte Order of Injunction is highly prejudicial to the running of the 3rd Respondent's affairs noting that the 1st Respondent remains the Chairperson of its board duly tasked with overseeing the Company's activities.
9. Mr. Muite SC further argued that the Order barring the 1st Respondent from acting and or performing any function as Director of the 3rd Respondent has an effect of unduly unseating or removing him from office despite the fact that he was duly elected into office way back in 2021 which office he continues to hold until a new Board is constituted. The Learned Senior Counsel further argued that the Plaintiff had failed to disclose the fact that the elections were conducted pursuant to the Orders issued pursuant



- to Nairobi H.C. Petition No E254 of 2020 consolidated with Petition No E243 of 2020 and E083 of 2021.
10. For the above reasons, Learned Senior Counsel urged this Court to discharge the *ex-parte* Orders.
Mr. Lilan, Learned Advocate for the 2nd Defendant, on his part adopted the arguments of Mr. Muite Senior Counsel. He pointed out that the *ex-parte* Orders were obtained without full and frank disclosure of material facts to with:- First, that pursuant to the Mediation Agreement recorded in H.C. Petition No 254 of 2020, it was agreed that small holder tea factory companies were to hold nomination elections of directors by the end of June, 2024 and that it was agreed that Special General Meeting (SGM) was to be convened within 21 days of those nomination elections for the purpose of confirming the newly elected leaders.
 11. The Learned Advocate pointed out that the said decision and consent agreement have not been set aside since its adoption on 22nd April, 2024.
 12. It is further pointed out that the decree provided timelines on what should be done at what time. It is also the submission of Mr. Lilan that the *ex-parte* Orders will occasion a significant injustice and undue prejudice to the Applicant and the Farmers of Chemamul Zone who will not be represented by their choice of Director thus disenfranchising them.
 13. The Learned Advocate further argued that the Plaintiff failed to first approach the available Dispute Resolution Mechanism provided.
 14. In response to the submissions of the 1st, 2nd, and 3rd Respondents, Mr. E. K. Korir, Learned Advocate for the Plaintiff on his part urged this court to dismiss the two Applications arguing that they lack merit. He argued that the Plaintiff's suit seeks to annul the Elections conducted in Chemamul Zone.
 15. He pointed out that the Court cannot stick to strict timelines at the expense of Justice. The Learned Advocate further argued that the Plaintiff is not guilty of any material non-disclosure. Mr. Korir also pointed out that the Plaintiff could not approach IEBC because their offices were closed by then.
 16. Having considered the rival argument over the two Applications, it is apparent that the Election which Plaintiff seeks to annul were conducted pursuant to the decision reached by Consent/Mediation in Nairobi Constitutional Petition No E.254 of 2020 consolidated with Nairobi Constitutional Petitions No E.243 of 2020 and E.083 of 2021. It has been argued that the Plaintiff failed to disclose the aforesaid fact. It is stated that had the Plaintiff disclosed that fact, this Court would not have issued the *ex-parte* order. With due respect, I am not persuaded by that argument.
 17. The Plaintiff is not before this Court to challenge the holding of Elections of directors as decreed by the court pursuant to the aforesaid Petitions. The Plaintiff is simply before this Court seeking to challenge the manner the Elections were conducted.
 18. The aforesaid Consent/Mediation decision did state that the consequent Elections should not be challenged. The main issue which has to be determined in the fullness of time when the suit comes up for hearing is Inter alia whether the Elections were properly conducted and whether they were free and fair.
 19. The other important issue which was ably argued before this court is whether it was appropriate to grant an *ex-parte* order barring the 1st Defendant from acting, performing, attending and or representing himself as the Director of Momul Tea Factory Limited pending the inter-partes hearing of the Motion dated 12th July, 2024.



20. It is argued that the 1st Defendant was elected as a director in 2021 and should therefore continue to hold office until a new Board is constituted. With respect, I agree that the aforesaid order should not have been granted *ex-parte*. A cursory look at the 3rd Respondent's Articles of Association will reveal that the current Directors including the 1st Defendant should continue holding office until a new Board is constituted and confirmed or appointed during a new Special General Meeting and or in an Annual General Meeting to be called.
21. In the end, the two motions partially succeed giving rise to issuance of the following Orders:-
- i. The Order staying the inauguration and or confirmation of the 1st Defendant by the 2nd, 3rd and 4th Defendants as the Director of Momul Tea Factory Limited pending the Inter-partes hearing of the Motion dated 12th July, 2024 is maintained.
 - ii. The Order for Injunction barring the 1st Defendant from acting, performing, attending and or representing himself as the director of Momul Tea Factory Limited pending the inter-partes hearing of the Motion dated 12th July, 2024 is set aside.
 - iii. Costs to abide the outcome of the Motion dated 12th July, 2024.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 24TH DAY JULY, 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Muite SC & Lilan for 1st, 2nd, 3rd, & 4th Defendants

Lilan & Koech

E. K. Korir for Plaintiff

