



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**JUDICIAL REVIEW NO. 1 OF 2020**

**FORMERLY JUDICIAL REVIEW NO. 70 OF 2020 – NAIROBI AND JUDICIAL REVIEW NO. 1 OF 2020 - KERICHO**

**BETWEEN**

**STEGRO SACCO LIMITED.....PETITIONER**

**AND**

**PAUL KIBET TOO.....1<sup>ST</sup> RESPONDENT**

**SAMUEL KIPLANGAT TOWETT ..... 2<sup>ND</sup> RESPONDENT**

**RICHARD KIPROTICH KIRUI .....3<sup>RD</sup> RESPONDENT**

**BENARD KIPKOECH RONO .....4<sup>TH</sup> RESPONDENT**

**RICHARD CHERUIYOT LANGAT.....5<sup>TH</sup> RESPONDENT**

**PHILIP KIPNGETICH BII .....6<sup>TH</sup> RESPONDENT**

**DANIEL KIPKOECH MUTAI .....7<sup>TH</sup> RESPONDENT**

**REUBEN KIMUTAI TERER ..... 8<sup>TH</sup> RESPONDENT**

**ZAKAYO KIPKEMOI SANG..... 9<sup>TH</sup> RESPONDENT**

**PAUL KIMUTAI KOSKE .....10<sup>TH</sup> RESPONDENT**

**REGISTRAR OF COMPANIES..... 11<sup>TH</sup> RESPONDENT**

**STEGRO (EPZ) TEA FACTORY LIMITED.....12<sup>TH</sup> RESPONDENT**

**AND**

**PAUL KIBET TOWETT .....1<sup>ST</sup> INTERESTED PARTY**

**RICHARD KIPTOO CHERUIYOT .....2<sup>ND</sup> INTERESTED PARTY**

**SAMUEL KIMUTAI LANGAT.....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. This matter has been litigated in various files containing several applications, some of which are pending.
2. What is presently before this court for determination is the Notice of Motion Application dated 28<sup>th</sup> September 2020. The Application was

filed under JR Number 1 of 2020 – Kericho that is now JR Number 1 of 2020 – Bomet.

3. The Notice of Motion Application sought the following orders:

- (i) **THAT** the Honourable Court be pleased to certify this application urgent, dispense with service and hear it ex-parte in the first instance.
- (ii) **THAT** this Honourable Court be pleased to join the proposed 1<sup>st</sup> to 12<sup>th</sup> Interested Parties as Interested parties into the proceedings herein pending the hearing and determination of this Application.
- (iii) **THAT** this Honourable Court be pleased to stay proceedings in KERICHO PETITION NO. 7 OF 2018 and Decree dated 22<sup>nd</sup> November 2019 pending the hearing and determination of this Application.
- (iv) **THAT** this Honourable Court be pleased to give directions on these two matters.
- (v) **THAT** costs be in the cause.

4. The Application was based on grounds on the face of it and the Supporting Affidavit sworn by Samuel Kimutai Langat dated on 28<sup>th</sup> September 2020.

5. On 8<sup>th</sup> December 2020, Ongeri J allowed the Application in terms of prayer 2 which meant that **Zakayo Sang, Paul Koske, Benard Rono, Paul Too, Reuben Terer, Philip Bii, Daniel Mutai, Samwel Towett, Richard Langat, Richard Kirui, Stegro EPZ Tea Factory and Bomet Tea Company Limited** joined the proceedings as Interested Parties.

6. On 5<sup>th</sup> July 2021, when the matter came up for directions, Mr. Mengich, counsel for the Interested Parties made an oral application where he sought an Order for Status Quo pending the hearing of the Application dated 28<sup>th</sup> September 2020. The court directed the parties to file skeletal submissions on the question of the Status Quo. Counsel for the Interested Parties filed a case summary between STEGRO SACCO LIMITED and STEGRO (EPZ) TEA FACTORY LIMITED, a Supplementary Affidavit by Paul Kibet Towett dated 26<sup>th</sup> July 2021. Counsel for the Ex-parte Applicants in Bomet JR Number 1 of 2020 filed their skeletal submissions dated 19<sup>th</sup> July 2021.

7. This Ruling is therefore limited to the issue of Status Quo only.

#### **The Interested Parties' submissions**

8. The Interested Parties filed a case summary and a Supplementary Affidavit in support of its case for the grant of a Status Quo Order. Neither of these were really helpful save that Mr. Mengich, counsel for the Interested Parties directed the court to an attachment labelled "SKA 5" and stated that that was what he understood as Status Quo. The court had a chance to peruse the said annexure and it revealed the twelve (12) directors and shareholders of STEGRO (EPZ) TEA FACTORY as **Samuel Kimutai Langat, Richard Kiptoo Cheruiyot, Paul Kibet Towett, Samuel Kiplangat Towett, Benard Kipkoech Rono, Philip Kipngetch Bii, Daniel Kipkoech Mutai, Richard Kiprotich Kirui, Richard Cheruiyot Langat, Paul Kibet Too, Bomet Tea Factory and Stegro Credit and Savings Co-operative Society Limited.**

#### **The Ex-parte Applicants' submissions.**

9. The Ex-parte Applicant opposed the prayer of Status Quo and submitted that the prayer was done orally on 5<sup>th</sup> July 2021 and the same was not in the aforementioned application save for an order of stay of execution.

10. The Ex-parte Applicants further submitted that counsel for the Interested Parties was forum shopping in this Court as his Application for stay in KERICHO ELC 65 OF 2015 was scheduled for directions on 28<sup>th</sup> July 2021. That it would be unjust for this court to usurp the jurisdiction of the Environment and Land Court which was clearly demarcated in Article 162(2)(b) of the Constitution of Kenya 2010 in ordering for a Status Quo to be maintained in respect of a Consent filed in the said ELC Court

11. The Ex-parte Applicant submitted that the Interested Parties were not specific as to what aspect of the EPZ (Tea Factory) and the SACCO should be maintained but only requested generally for an order of maintenance of Status Quo. They relied on the case of **Michael Odera Vs Commissioner of Lands & 2 Others (2014) eKLR** to support this submission.

12. The only issue that arises for determination is whether the Status Quo Order should issue.

#### **Analysis and determination.**

13. It is important to note that this Application was not done formally but was done orally in court. The pending Application dated 28<sup>th</sup> September 2020 seeks to stay proceedings in Petition 7 of 2018 and the Decree dated 22/11/2019 and does not contain the prayer for status quo.

14. The Black's Law Dictionary, 10<sup>th</sup> Edition defines Status Quo as the situation that currently exists. In the case of **The Chairman Business Premises Tribunal at Mombasa Ex-Parte Baobab Beach Resort Msa Misc. Application No. 26 of 2010**, the Court held that:-

**“In my view, an order for status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon the establishment of a right, or at an interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to the pending proceedings before the hearing and determination thereof.**

**It does not depend on proof of right or prima facie case, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”** (Emphasis added)

15. In essence therefore, a status quo is meant to preserve the subject matter or leave matters as they were at the day of making the order. It follows therefore that before granting such an order the court must establish what the status quo is from the pleadings, evidence on record or submissions of the parties.

16. In explaining his understanding on the status quo, Counsel for the Interested Parties referred the court to an annexure (“SK A5”) that contained directors of the 12<sup>th</sup> Respondent as at 22<sup>nd</sup> June 2020. The Directors at this point were **Samwel Kimutai Langat, Richard Kiptoo Cheruiyot, Paul Kibet Towett, Samuel Kiplangat Towett, Benard Kipkoech Rono, Philip Kipngetch Bii, Daniel Kipkoech Mutai, Richard Kiprotich Kirui, Richard Cheruiyot Langat, Paul Kibet Too, Bomet Tea Company Limited and Stegro Credit and Savings Co-operative Society Limited.** The Respondents and the Interested Parties neither agreed nor disputed that Annexure SK A5 contained the current status.

17. This court therefore turned to the evidence on record and it appears that there had been removal of directors, subsequent elections of directors, disobedience of various court orders. There have been several suits between STEGRO SACCO LIMITED and STEGRO (EPZ) TEA FACTORY that have clouded the real issues between these two entities. In addition, counsel for the Ex-parte Applicants drew the court’s attention to the existence of **KERICHO ELC NO. 65 OF 2015** in which an application for stay was pending. No effort however was made to clarify the relationship between that suit and the present application. In any event, the mandate of this court vis-à-vis that of ELC is clear cut in law.

18. This Court had requested for the provision of file number JR 463 of 2017 and Misc. Application 171 of 2018. However, the two files are yet to be availed to enable this court peruse them.

19. I do agree with the submissions of the Ex-parte Applicants that the Order for Status Quo was not specific as to what aspect of the EPZ (Company) and the SACCO were to be maintained and that the prayer was of a general nature. My perusal of the available material shows that the dispute between the parties is convoluted and therefore in the absence of a consensus on what status quo entails in this case, this court is reluctant to grant such an order.

20. I also agree with the sentiments by Kaniaru J. in the case of **Michael Odera Vs Commissioner of Lands & 2 Others (2014) eKLR**, where he held that:-

**“It is plain in my view that there was no meeting of minds or consensus as to what the maintenance of the Status Quo entailed. To the applicant, maintenance of the Status Quo meant a restraining order much like the prayer for restraining order- which prayer 3- in the applicant’s application filed here on 1/11/2011 and dated 1/11/2011. But if that was the position, I expect that there would be another order showing that application as settled or conceded to. But there is no such order and the application is still pending. This then shows that it is doubtful whether the Status Quo meant what the applicant asserts. When the 3<sup>rd</sup> Defendant then comes up with its own understanding of what the order meant, it is not surprising. And the resulting uncertainty is exactly where the problem lies. The uncertainty makes it difficult for me to hold the 3<sup>rd</sup> defendants manager in contempt. The specifics, parameters and particulars of the Status Quo should have been clarified. A mere sweeping statement that Status Quo be maintained is not helpful.”** (Emphasis added)

21. It is therefore clear that this court will only properly entertain any pending interlocutory applications after the Status Conference on the suit and perusal of the related files.

22. In the final analysis and based on the reasons above, I decline to grant the Order for Status Quo.

23. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 4TH DAY OF OCTOBER, 2021.**

.....  
**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Ms. Mengech holding brief for Ms. Chepkoech for the Ex-parte Applicant, Mr. Kenduiwo holding brief for Mr. Mengich for the Interested Parties and Kiprotich (Court Assistant).**