

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
JUDICIAL REVIEW NO. 1 OF 2020

**(As consolidated with Nairobi JR 463 of 2017,
Kericho Petition Number 7 of 2018 and
Kericho Judicial Review Number 1 of 2020**

STEGRO SACCO LIMITED

PETITIONER

AND

PAUL KIBET TOO 1ST

RESPONDENT

SAMUEL KIPLANGAT TOWETT 2ND

RESPONDENT

RICHARD KIPROTICH KIRUI 3RD

RESPONDENT

BENARD KIPKOECH RONO 4TH

RESPONDENT

RICHARD CHERUIYOT LANGAT 5TH

RESPONDENT

PHILIP KIPNGETICH BII 6TH

RESPONDENT

DANIEL KIPKOECH MUTAI 7TH

RESPONDENT

REUBEN KIMUTAI TERER 8TH

RESPONDENT

ZAKAYO KIPKEMOI SANG 9TH

RESPONDENT

PAUL KIMUTAI KOSKE 10TH

RESPONDENT

REGISTRAR OF COMPANIES 11TH

RESPONDENT

STEGRO (EPZ) TEA FACTORY LIMITED.... 12TH

RESPONDENT

AND

PAUL KIBET TOWETT 1ST

INTERESTED PARTY

RICHARD KIPTOO CHERUIYOT 2ND

INTERESTED PARTY

SAMUEL KIMUTAI LANGAT 3RD
INTERESTED PARTY

RULING

1. From my appreciation of the record, I have noted that this matter has been litigated in Nairobi, Kericho and Bomet. For purposes of clarity, it is important from the outset to note down the various cases involving the above parties which have ultimately led to the case before this court.

Nairobi Judicial Review Number 463 of 2017.

(Nehemiah Kipngetich Langat & 2 others vs

Zakayo Sang & 11 others)

2. This case involved Stegro Sacco limited. The Applicants i.e. Nehemiah Kipngetich Langat, Johnstone Kipkirui Korir and Viola Chepkirui sought orders of mandamus and prohibition through an ex-parte Application dated 24th July 2017. The

Applicants wanted an order to compel the Commissioner of Co-operatives Development to implement an Inquiry Report which had found that the officials of Stegro Sacco i.e. Zakayo Sang, Paul Koskei, Benard Rono, Paul Too, Reuben Terer, Philip Bii, Daniel Mutai, Samuel Towett and Richard Langat had engaged in massive mismanagement of Stegro Sacco and wanted them barred from holding office. The Applicants also wanted an order barring the Commissioner of Co-operatives Development from recognising the above persons as officials of Stegro Sacco.

3. On 10th October 2017, parties recorded a Consent before Odunga J. (as he then was) and the same was adopted as an order of the court. The terms of the Consent were as follows:-

- i. THAT the Applicant's ex-parte Application dated 24th July 2017 and the Respondents dated 3rd August 2017 be and are hereby marked as withdrawn and settled.
- ii. THAT the order obtained on 24th July 2017 be and is hereby vacated. (being leave to apply for orders of mandamus and prohibition and stay of the Commissioner of Co-operatives recognizing Zakayo Sang, Paul Koskei, Benard Rono, Paul Too, Reuben Terer, Philip Bii, Daniel Mutai, Samuel Towett and Richard Langat as officials of Stegro Sacco Limited.)
- iii. THAT Joseph Mabwai, Joseah Korir, Robert K. Mutai, Paul Ruto, Joseph Chepkwony, Wilson Kaplelach, Joseph Cheruiyot, Sammy Langat, Joseph Koech, Samuel C. Mutai are the appointed officials of the 12th Respondent (Stegro Sacco Limited) in the interim pending

elections to be held in an Annual General Meeting.

- iv. THAT Zakayo Sang, Paul Koskei, Benard Rono, Paul Too, Reuben Terer, Philip Bii, Daniel Mutai, Samuel Towett and Richard Langat are the appointed officials of Stegro Sacco EPZ Factory Limited in the interim pending elections to be held in an Annual General Meeting.
- v. THAT the officials mentioned in (iii) and (iv) above are to run and manage the bank accounts of the respective entities they are managing for a period of 60 days from the date of signing this Consent.
- vi. THAT the Special Annual General Meeting be held within 60 days from the date of signing this Consent when the officials will be elected.

- vii. THAT prayers 1, 2, 3, 4, 5 of the Notice of Motion dated 24/7/2017 are hereby quashed.
 - viii. THAT the elected officials of the Sacco and Factory will streamline the by-laws of their respective entities to capture the new amendments.
 - ix. THAT the matter be mentioned on 10/10/2017 to adopt the Consent as an order of the court.
 - x. THAT costs be agreed by the parties. In default of any agreement the same be taxed as per scale at a later date when the monies are disbursed to the 12th Respondent, the Sacco.
4. Mengich & Co. Advocates acting for Stegro Sacco Limited and its interim officials filed a contempt Application dated 18th August 2021. It was their case that the contemnors i.e. Joseph Mabwai, Joseph Cheruiyot, Robert K. Mutai, Joseah Korir, Joseph Koech, Sammy Mutai, Mr. Chepkwony CEO

Stegro Sacco Limited and Mr. Muriuki Gideon, Managing Director Co-operative Bank of Kenya Limited had failed to comply with the terms contained in the Consent dated 10th October 2017 and wanted them to be committed to civil jail.

5. On 14th December 2021, parties informed the court that there was an ongoing matter in Bomet High Court Judicial Review Number 1 of 2020 and that the Application should be heard in Bomet. Ngaah J. transferred the matter to Bomet High Court for disposal.

Kericho Petition Number 7 of 2018 later transferred and renamed Bomet Petition Number 7 of 2020.

6. This case involved both Stegro Sacco Limited and Stegro EPZ Tea Factory. The Petitioner (Stegro

Sacco Limited), through the Petition dated 28th August 2018 sought injunctive orders against Paul Kibet Too, Samuel Kiplangat Towett, Richard Kiprotich Kirui, Benard Kipkoech Rono, Richard Cheruiyot Langat, Philip Kipngetich Bii, Daniel Kipkoech Mutai, Reuben Kimutai Terer, Zakayo Kipkemoi Sang and Paul Kimutai Koske from claiming to be directors of Stegro EPZ Tea Factory Limited and bar them from dealing with the affairs of the Tea Factory. The Petitioner also sought an order compelling the Registrar of Companies to rectify the Company Register removing the aforementioned persons as directors of Stegro EPZ Tea Factory and replacing them with directors that were appointed as per the elections conducted on 8th December 2017.

7. Joseph Mabwai stated that as per the elections conducted on 8th December 2017, he was elected

Chairman of Stegro EPZ Tea Factory. That as per the consent entered in Nairobi Judicial Review Number 463 of 2017, Stegro EPZ Tea Factory held its elections on 8th December 2017 in a Special General Meeting and it was resolved that Paul Kibet Too, Samuel Kiplangat Towett, Richard Kiprotich Kirui, Benard Kipkoech Rono, Richard Cheruiyot Langat, Philip Kipngetich Bii, Daniel Kipkoech Mutai, Reuben Kimutai Terer, Zakayo Kipkemoi Sang and Paul Kimutai Koske cease to be directors of Stegro EPZ Tea Factory and be replaced by Joseph Mabwai, Joseph Cheruiyot, Joseph Korir, Robert Mutai, Paul Ruto, Samuel Mutai, Wilson Kaplelach, Joseph Chepkwony, Kipyegon Koech and Sammy Langat.

8. In a Decree dated 21st November 2019, Dulu J, issued injunctive orders against Paul Kibet Too,

Samuel Kiplangat Towett, Richard Kiprotich Kirui, Benard Kipkoech Rono, Richard Cheruiyot Langat, Philip Kipngetich Bii, Daniel Kipkoech Mutai, Reuben Kimutai Terer, Zakayo Kipkemoi Sang and Paul Kimutai Koske from claiming to be directors of Stegro EPZ Tea Factory and from interfering with its affairs.

9. Paul Kibet Too, Samuel Kiplangat Towett, Richard Kiprotich Kirui, Benard Kipkoech Rono, Richard Cheruiyot Langat, Philip Kipngetich Bii, Daniel Kipkoech Mutai, Reuben Kimutai Terer, Zakayo Kipkemoi Sang and Paul Kimutai Koske through Mugumya & Co. Advocates filed a Notice of Motion Application dated 27th November 2019 seeking stay of the execution of the Decree by Dulu J. and review of the said Ruling. The same was opposed by the Petitioner's (Stegro Sacco Limited) through

a Preliminary Objection dated 11th December 2019 stating that the Application had failed to disclose any relevant information and was contrary to **sections 3A and 63(e) of the Civil Procedure Act.**

10. The Notice of Motion Application dated 27th November 2019 was dismissed by Ongeru J. on 24th July 2020.
11. Mengich & Co. Advocates for Stegro Sacco Ltd filed a Notice of Motion Application dated 29th September 2020. He sought among others that the court vary or stay the Decree dated 22nd November 2019 and that the suit be consolidated and heard together with Kericho Judicial Review Number 1 of 2020 formerly Nairobi Judicial Review Number 70 of 2020.

12. On 9th November 2020, Ongeru J. issued the following orders:-

- i. This court gave a Judgement in Petition Number 7 of 2018 which came for review in the Application dated 27th November 2019. The Application for review was disallowed.
- ii. The matter was listed for mention today for directions.
- iii. This court has been told that there were 10 cases before the parties entered into a Consent before Justice Odunga in Milimani JR Number 463 of 2017 which was consolidated with Kericho Petition Number 8 of 2017.
- iv. It appears that the directions given in the Consent filed in Milimani JR Number 463 of 2017 were violated and there was an up rise of law suits again.

- v. The Sacco (Stegro Sacco Limited) and the Limited Company (Stegro EPZ Tea Factory) are both situated in Bomet County and it is not clear why these matters are filed here in Kericho High Court.
- vi. Stegro Sacco Limited has by-laws which are supposed to govern its operations while Stegro EPZ Tea Factory Limited has Memorandum and Articles of Association which are supposed to govern its operations.
- vii. It appears that the Consent which was entered in Milimani JR Number 463 of 2017 resolved the matter.
- viii. In order for this court to give directions, I will require all the files to be consolidated so that this court is seized of all the issues for determination in the Sacco and the Limited Company.

- ix. I direct the DR of this court to call for Milimani JR Number 463 of 2017.
- x. It is also important that all the parties appear for directions.

13. On 8th December 2020, Ongeri J. directed that this matter and Kericho Judicial Review Number 1 of 2020 be transferred to this court.

Nairobi Judicial Review Number 70 of 2020 later transferred and renamed Kericho Judicial Review Number 1 of 2020 and now Bomet Judicial Review Number 1 of 2020.

14. This matter involved Stegro EPZ Tea Factory. The Applicants i.e. Sammy Kipyegon Langat, Kipyegon Koech, Joseph arap Chepkwony, Wilson Kaptetkwony, Kaplelach, Samuel Cheruiyot Mutai, Robert Kipkorir Mutai, Joseah Korir Kibet, Joseph Kipkorir Cheruiyot and Joseph Cheruiyot arap

Mabwai as directors of Stegro EPZ Tea Factory through a Petition dated 13th March 2020 sought for orders of Certiorari to quash the decision of the Registrar of Companies to revoke the CR 12 dated 7th January 2020 and issuing another in favour of the retired directors. Further, the Applicants wanted an order of mandamus to compel the Registrar of Companies to enforce the Decree dated 22nd November 2016.

15. On 7th June 2021, Ongeri J. ordered the parties to appear before this court. Parties informed this court that the two files (Kericho Petition Number 7 of 2018 and Kericho JR Number 1 of 2020) had been consolidated.

16. Mr. Mengich acting for Stegro Sacco Ltd informed this court that there was a pending Application in the former Kericho JR Number 1 of 2020.

17. What is before this court for determination is the Notice of Motion Application dated 28th September 2020 filed by the 1st to 10th Respondents i.e. Paul Kibet Too, Samuel Kiplangat Towett, Richard Kiprotich Kirui, Benard Kipkoech Rono, Richard Cheruiyot Langat, Philip Kipngetich Bii, Daniel Kipkoech Mutai, Reuben Kimutai Terer, Zakayo Kipkemoi Sang and Paul Kimutai Koske.

18. The Notice of Motion Application sought the following orders:-

I. Spent.

II. Spent.

III. **THAT** this Honourable Court be pleased to stay proceedings in KERICHO PETITION NO. 7 OF 2018 and Decree dated 22nd 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.

19. The Application was grounded on **sections 1A, 1B, 3A, 63 (e) of the Civil Procedure Act and Order 1 Rule 10, Order 45 Rules (1), (2), (3), Order 51 Rule (1), (2) and (4) of the Civil Procedure Rules, 2010**. The Application was further based on the Supporting Affidavit sworn by Samuel Kimutai Langat on 28th September 2020.

The Applicants' Case.

20. The Applicants stated that the ex-parte Applicants i.e. Sammy Kipyegon Langat, Kipyegon Koech,

Joseph arap Chepkwony, Wilson Kaptetkwony Kaplelach, Samuel Cheruiyot Mutai, Robert Kipkorir Mutai, Joseah Korir Kibet, Joseph Kipkorir Cheruiyot and Joseph arap Mabwai were not shareholders or directors of Stegro EPZ Tea Factory.

21. It was the Applicants' case that they held an Annual General Meeting on 7th December 2018 and Stegro EPZ Tea Factory filed returns with the Registrar of Companies and the CR12 that bore the names of the former directors was replaced with a new CR12 which took into consideration the retirement of two directors and the death of one director. That in the Annual General Meeting, Samuel Kimutai Langat, Richard Kiptoo Cheruiyot and Paul Kibet Towett replaced Reuben Terer (deceased), Zakayo Kipkemoi Sang and Paul Koske.

22. The Applicants stated that they have had long standing disputes with the ex-parte Applicants regarding the management of Stegro Sacco Limited leading to a plethora of court cases and a case before the Co-operative Tribunal. That in the case before the Co-operative Tribunal, it was resolved that the ex-parte Applicants would be in charge of Stegro Sacco Limited and the Applicants (1st-10th Respondents) would be in charge of Stegro EPZ Tea Factory and that all parties would withdraw the court cases facing Stegro Sacco Limited.
23. It was the Applicants' case that Stegro Sacco Limited was a minority shareholder of Stegro EPZ Tea Factory. That the ex-parte Applicants were not shareholders of Stegro Sacco Limited but were directors.

24. The Applicants stated that parties failed to implement the resolutions that were arrived at the Co-operatives Tribunal which led to filing of several court cases. That in the Kericho Petition Number 7 of 2018. Dulu J. restrained some directors from conducting the affairs of Stegro EPZ Tea Factory and there were further orders in Kericho ELC 65 of 2015 which restrained the Interested Parties from opening the factory.
25. It was the Applicants' case that in Nairobi JR 463 of 2017, Odunga J. (as he then was) adopted a Consent to wit that the ex-parte Applicants were appointed officials of Stegro Sacco Limited pending elections that were to be held in the Annual General Meeting. Further that the Applicants (1st to 10th Respondents) were appointed officials of Stegro EPZ Tea Factory pending elections at the

Annual General Meeting. That the said Consent remained unchallenged.

26. The Applicants stated that Stegro EPZ Tea Factory had not held an Annual General Meeting since December 2017 because of the meddling by the ex-parte Applicants and multiple suits filed in court. That the ex-parte Applicants were illegally holding office of both Stegro Sacco Limited and Stegro EPZ Tea Factory Limited.

27. It was the Applicants' case that the ex-parte Applicants were not shareholders of Stegro EPZ Tea Factory to be eligible for elections as directors and lacked capacity to institute any proceedings against it. That they did not resolve to institute proceedings in the name of Stegro EPZ Tea Factory. It was their further case that the ex-parte

Applicants were guilty of material non-disclosure and had come to court with unclean hands.

28. The Applicants stated that the multiplicity of suits had made the case before the Co-operative Tribunal (CTC Number 273 of 2016 consolidated with CTC Number 253 of 2016) be concluded and the ex-parte Applicants were seeking all avenues to be the directors of Stegro EPZ Tea Factory despite their ineligibility. That the ex-parte Applicants were forum shopping in several courts.

29. It was the Applicants' case that the ex-parte Applicants filed Kericho Petition Number 7 of 2018 without their participation. That before filing of the Kericho Petition Number 7 of 2018, the ex-parte Applicants had filed a similar Petition (Misc 171 of 2019) before the Commercial Division of the High

Court in Nairobi and the matter was settled by a Consent.

30. The Applicants stated that the ex-parte Applicants filed Kericho Petition Number 7 of 2018 and did not serve them. That the ex-parte Applicants were vexatious litigants and were intent on frustrating more than 500 fully paid up shareholders of Stegro EPZ Tea Factory and its bonafide directors.

31. It was the Applicants' case that it was fair that this matter be consolidated with Kericho Petition Number 7 of 2018. That the Applicants stood to suffer prejudice and humiliation if the matter proceeds without their participation and they were removed as directors. It was their further case that they would be deprived of their right to fair administrative action if the matter proceeded without their participation.

32. The Applicants stated the ex-parte Applicants had fraudulently removed their names as directors of Stegro EPZ Tea Factory. That the last CR12 bore the name of Fredrick Mungai Wainaina who was a stranger to the company. They further stated that the ex-parte Applicants sought to compel the Registrar of Companies to replace the entire Board of Directors of Stegro EPZ Tea Factory without following the law.
33. It was the Applicants' case that the ex-parte Applicants were seeking a second bite of the cherry after the High Court in Kericho Petition Number 7 of 2018 declined to issue orders against Stegro EPZ Tea Factory. That the Judgement in the said Petition did not direct the removal of the Applicants as directors of the company.

34. The Applicants stated that the present suit was ill advised and misplaced as the ex-parte Applicants were the directors of Stegro Sacco Limited and not Stegro EPZ Tea Factory.

Response.

35. The ex-parte Applicants i.e. Sammy Kipyegon Langat, Kipyegon Koech, Joseph arap Chepkwony, Wilson Kaptetkwony Kaplelach, Samuel Cheruiyot Mutai, Robert Kipkorir Mutai, Joseah Korir Kibet, Joseph Kipkorir Cheruiyot and Joseph Mabwai filed a Replying Affidavit sworn by Joseph Mabwai on 14th October 2020. They stated that the Applicants were not the bonafide shareholders of Stegro EPZ Tea Factory. They further stated that Stegro Sacco Limited was a majority shareholder of Stegro EPZ Tea Factory.

36. It was the ex-parte Applicants' case that the Applicants were voted out from being directors of the Company. That the Applicants failed to set aside the Judgement in Kericho Petition Number 7 of 2018. It was their further case that the ex-parte Applicants were elected into office by a Special Resolution.

37. The ex-parte Applicants stated that the case at the Co-operative Tribunal bore no fruit due to the meddling of the Company's affairs by the Applicants. That the Applicants had refused to leave office.

38. It was the ex-parte Applicants' case that the purported Consent in JR 463 of 2017 was obtained by false means as the advocates failed to seek their approval. It was their further case that the

filing of new cases was necessitated by their desire to protect the Company from interference by the Applicants.

39. The ex-parte Applicants stated in Petition Number 7 of 2018, the court restrained the Applicants from interfering with the affairs of Stegro EPZ Tea Factory but the Applicants disobeyed the Order. They further stated that there the Applicants were aware and participated in Petition Number 7 of 2018. That the firm of P. Sang & Co. Advocates were on record for the Applicants.

40. It was the ex-parte Applicants' case that they opposed the proposal to consolidate the matters as it would amount to re-litigation and waste of precious judicial time. That the court had already rendered its Judgement. It was their further case

that the proposal for consolidation was a ploy to further delay the operations of the Company.

41. The ex-parte Applicants stated that the changes at the Company Registry were in accordance to the court order. They denied the allegations of fraud. They further stated that the allegations that they were forum shopping were baseless and unfounded.

42. It was the ex-parte Applicants' case that they have suffered loss and prejudice because of the delay to kick start the factory.

The Applicants' Supplementary Affidavit

43. Through the Supplementary Affidavit dated 22nd July 2021 sworn by Samuel Kimutai Langat, the Applicants denied that they were forum shopping. That it was the ex-parte Applicants/Respondents

who filed several cases in different courts with the aim of removing the elected directors of Stegro EPZ Tea Factory. That in most cases they were not served or afforded an opportunity to be heard and were thus prejudiced.

44. The Applicants stated that the removal of their advocates (Mengich & Co. Advocates) and the purported appointment of the firm of Kandie Mutai Mudeizi & Co. Advocates in Kericho ELC Number 65 of 2015 was not sanctioned by any organ of the Company. That the court did not sanction the removal of any Interested Party from the Company Register as alleged.

45. It was the Applicants' case that the prayer for stay of proceedings was not a delay tactic. That the ex-

parte Applicants had no mandate and were neither elected to carry out the affairs of the Company.

46. The Applicants stated that the ex-parte Applicants as directors of Stegro Sacco held their elections on 8th December 2017, a day after Stegro EPZ Tea Factory held theirs. That there had been no Annual General Meetings or elections since then to vote out or replace the current directors of the Company.

47. It was the Applicants' case that they were granted temporary stay of proceedings on 23rd October 2020 pending the filing of the present Application. That this court gave directions that the present suit and Kericho Petition Number 7 of 2018 be consolidated.

48. The Applicants stated that Stegro Sacco was a minority shareholder of Stegro EPZ Tea Factory and not a majority shareholder as alluded by the ex-parte Applicants.

The ex-parte Applicant's/Respondents submissions.

49. The ex-parte Applicants submitted that the Applicants did not merit the prayer for grant of stay of proceedings. That they had not given sufficient reason why they failed to respond to the Petition Number 7 of 2018 yet they were represented by the firm of P. Sang & Co. Advocates. They relied on **Joseph Gachie t/a Joska Metal Works V Simon Ndeti Muemar [2012] KEHC 1687 (KLR).**

50. It was the ex-parte Applicants' submission that equity aided the vigilant and not the indolent. That this court should dismiss the Application with costs.

51. I have gone through and considered the Notice of Motion Application dated 28th September 2020 and the Supporting Affidavit sworn by Samuel Kimutai Langat on even date and the ex-parte Applicants' Replying Affidavit dated 14th October 2020 and their written submissions dated 12th October 2020. The only issue for my determination is whether the Applicants (1st to 10th Respondents) should be granted the order for stay of proceedings in Kericho Petition Number 7 of 2018.

52. In the case of **Turbo Highway Eldoret Ltd vs Muniu (Civil Appeal E040 of 2021) [2022]**

KEHC 10197 (KLR) (30 June 2022) (Ruling),

Ngugi J. (as he then was) held that:-

“All these factors must be considered, in a given case, in the spirit concisely expressed in Halsbury’s Laws of England, 4th Edition, Vol. 37 at p. 330:

The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue....This is a power which, it has been

emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.

In short, a stay of proceedings is a radical remedy which is only granted in very exceptional circumstances”.

53. In an application to stay proceedings, the court is required to exercise judicial discretion in the interest of justice. In the case of **Christopher Ndolo Mutuku & Another vs Cfc Stanbic Bank Limited (2015) ECLR** Gikonyo J. observed that:-

“What matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice”

54. Further in the persuasive case of **Port Florence Community Health Care vs Crown Health Care Limited (2022) eCLR**, Kamau J. held that:-

“The question of whether or not to grant an order for stay of proceedings is a discretionary one. This discretionary

power must be exercised judiciously. The court has to consider if it will be in the interests of justice to grant the same. The underlying interest ought to be that the appeal should not be rendered nugatory.”

55. Similarly in **Gidjoy Investments Limited v Zero Point Construction Company Ltd & 63 others [2024] KEELC 14156 (KLR)**, Mboya J. held:-

“Other than the cited decisions, the grave consequences attendant to the grant of an order of stay of proceedings were highlighted and espoused by the learned authors in Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, where it stated

as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or

to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

56. The Applicants bore the burden of convincing this court that they merited the grant of the order that would stay the proceedings in Kericho Petition Number 7 of 2018.

57. I have gone through the present Application and I have noted that the Applicants sought for stay of proceedings pending the determination of this Application. The prayer as drafted did not make

sense to this court. I assume the Applicants sought stay of proceedings in Kericho Petition Number 7 of 2018 pending hearing and determination of the whole suit being then JR Number 1 of 2020 - Kericho.

58. The court appreciates that this was an Application that was filed a long time ago and going by the several Applications filed thereafter, events took place that would make the present Application moot. I say this because on 9th November 2020, Ongeru J. while sitting at the High Court in Kericho ordered the files be consolidated. These files were the Kericho JR Number 1 of 2020, Kericho Petition Number 7 of 2018 and Milimani JR Number 463 of 2017. Kericho JR Number 1 of 2020 and Kericho Petition Number 7 of 2018 were consolidated and transferred to this court and became the present

suit i.e. Bomet JR Number 1 of 2020. In essence, Kericho Petition Number 7 of 2018 ceased to exist as an independent suit upon consolidation.

59. This therefore meant that the prayer for stay of proceedings had been overtaken by events and was incapable of being granted.

60. The other pending Application was the ex-parte Applicant's Application dated 6th August 2020 filed by Kandie, Mutai, Mudera & Co. Advocates. The Application sought the following prayers:-

- I. That an order of Certiorari be issued to remove into the High Court for purposes of being squashed and quashing the 1st Respondent's decision dated 7th January 2020 to revoke the CR 12 dated 18th December 2019 and issuing another CR 12 in favour of the already retired directors.

II. That an order of mandamus be issued to compel the 1st Respondent herein to enforce the court decree dated 22nd November 2016 and reinstate the legally elected directors of the company.

III. That a declaratory order be issued that the Registrar of Companies' decision in reinstating the retired directors is unlawful and tainted with illegality for contravening **sections 4(3) and (4) of the Fair Administrative Action Act** and **Articles 10,22, 23 (3), 47(1) and 50 (1) of the Constitution** of Kenya 2010 and is consequently null and void.

IV. That any other or further and consequential orders and/or directions be given.

61. In regards to the above Application, parties appeared before this court on 25th November 2020. Ms. Chepkoech Advocate for the Applicants

informed this court that they wished to withdraw the aforementioned Application. There being no objection on counsel's prayer to withdraw, I hereby mark the Notice of Motion Application dated 6th August 2020 as withdrawn.

62. Having dispensed with the two Applications, I now direct my attention to the consolidated suits in general. This court is of view that what ails the parties are leadership wrangles and governance issues in both the Society Stegro Sacco Ltd and the Company Stegro EPZ Tea Factory Ltd. Behind the multiple suits and legal technicalities however are countless members and shareholders whose sole interest is to see proper governance and stewardship of their investments including a functioning factory and a return on their investment.

63. The Law has granted the court power to direct a company to convene a general meeting. Section 280 of the Companies Act provides:-

(1) This section applies if for any reason it is impracticable—

(a) to convene a meeting of a company in any manner in which meetings of that company may be convened; or

(b) to conduct the meeting in the manner required by the articles of the company or this Act.

(2) The Court may, either on its own initiative, or on the application—

(a) of a director of the company; or

(b) of a member of the company who would be entitled to vote at the meeting, make an order requiring a

meeting to be convened, held and conducted in any manner the Court considers appropriate.

(3) If an order is made under subsection (2), the Court may give such ancillary or consequential directions as it considers appropriate.

(4) Directions given by the Court under subsection (3) may include a direction that one member of the company present at the meeting be regarded as constituting a quorum.

(5) A meeting convened, held and conducted in accordance with an order under this section is taken for all purposes to be a meeting of the company properly convened held and conducted.

64. In **Radio Frequency Systems (EA) Limited & Michael John Mwaura v Simon Horner, Administrator of the Estate of Samson Muiruri Mburu & Registrar of Companies [2020] KEHC 1913 (KLR)** Tuiyott J. (as he then was) held:-

“It would seem that the overarching purpose of section 280 is to provide an inexpensive and speedy procedural remedy to overcome technical difficulties in a company convening, holding or conducting a meeting. It aids in the proper management of a company in the face of technical obstacles.....”

65. Similarly, **Mabeya J. in Seruji Limited v Savannah Cement Limited; Savannah Heights Ltd (Interested Party) [2021] KEHC 26 (KLR)** held:-

“I do reiterate the foregoing here and add that, the provision was intended to enable company business which needs to be conducted at a general meeting of the company to be so conducted notwithstanding the impediment that might be there. The intention of the Legislature was that a company should be allowed to get on with managing its own affairs, and should not be frustrated by the impracticability of convening, calling and/or conducting a general meeting in the manner prescribed by the Articles or the Act.” (Underline mine)

66. I am persuaded by the above authorities to find that the panacea for the present suits lies in holding elections in both entities as they are intricately connected.

67. In the end, for the expeditious disposal of this matter, I make the following orders:-

- (i) Stegro EPZ Tea Factory shall hold its elections in accordance within its Memorandum, and in any case within 60 days of the date of this Ruling.
- (ii) Stegro Sacco Ltd shall hold its elections in accordance with its By-laws and in any case within 60 days of the date of this Ruling.
- (iii) For clarity, this ruling does not absolve any director, official or member of any alleged liability arising from any unlawful conduct or actions (with respect to the two entities) that they may have committed in the pendency of the multiple suits.
- (iv) Parties shall appear before the court within 14 days for further directions to give effect to this Ruling.
- (v) The prayer for stay of proceedings in the Respondents' Application dated 28th of

September 2020 had been overtaken by events and was incapable of being granted. It is denied.

(vi) The Ex-parte Applicants' Application dated 6th August, 2020 is duly marked withdrawn.

(vii) Parties shall bear their costs in the respective Applications.

Orders accordingly.

Ruling delivered, dated and signed at Chuka this 12th day of May, 2026.

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R. LAGAT-KORIR

JUDGE

Ruling, delivered in the presence of Mr. Mengich for the 1st to 9th Interested Parties; N/A for the Ex-parte Applicants and Respondents; Muriuki/Siele (Court Assistants)