

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

1. MAFUTA INVESTMENT HOLDING LIMITED

Plaintiff(s)

Vs

1. ADEOSUN ADEWALE FRANCIS
2. IQ EQ FUND SERVICES (MAURITIUS) LTD
3. PLANTATIONS ET HUILLERIES DU CONGO SA
4. THE FINANCIAL SERVICES COMMISSION
5. THE REGISTRAR OF COMPANIES
6. THE FINANCIAL INTELLIGENCE UNIT

**Defendant(s)/
Third Party/
Intervening
Party(s)**

and

1. KURAMO AFRICA OPPORTUNITY AGRIBUSINESS VEHICLE L.P
2. MAKU HOLDINGS LLC
3. GROWTH ALLIANCE PARTNERS
4. STRAIGHT KKM LIMITED
5. STRAIGHT KKM2 LIMITED

Co-defendant(s)

Cause Number : SC/COM/PWS/000928/2023

Third Party Case : No

Plaintiff(s) Attorney:

Name : MARDEMOOTOO SIVAKUMAREN

Address : 3rd Floor Les Jamalacs Bldg Vieux Conseil Street Port-Louis

No barrister associated

Defendant(s)/ Third Party/ Intervening Party(s) Contact Details:

1. ADEOSUN Adewale Francis residing at residing at 4 Beaver Pond Road, Loudonville, New York 12211, United States. , Port-Louis

2. IQ EQ FUND SERVICES (MAURITIUS) LTD having its registered office address at 33, Edith Cavell Street Port Louis, 11324, Mauritius. , Port-Louis

3. PLANTATIONS ET HUILLERIES DU CONGO SA having its registered office address at 185, Boulevard of June 30, Kinshasa, Gombe, Democratic Republic of Congo. , Port-Louis

4. THE FINANCIAL SERVICES COMMISSION service to be effected at its office, FSC House, 54 Cybercity Ebene, Mauritius. , Plaines Wilhems

5. THE REGISTRAR OF COMPANIES service to be effected at its office, One Cathedral Square, Jules Koenig St, Port Louis, Mauritius. , Port-Louis

6. THE FINANCIAL INTELLIGENCE UNIT service to be effected at its office, 10th Floor, SICOM Tower, Wall Street, Cybercity Ebene 72201, Mauritius. , Plaines Wilhems

Co-defendant(s) Contact Details:

- 1. KURAMO AFRICA OPPORTUNITY AGRIBUSINESS VEHICLE L.P** having its registered office address at c/o Intertrust Corporate Services (Cayman) Limited, 190, Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands. , Port-Louis
- 2. MAKU HOLDINGS LLC** having its registered office address at IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street Port-Louis, 11324, Mauritius, Port-Louis
- 3. GROWTH ALLIANCE PARTNERS** service to be effected at its registered office address at 2nd Floor, The Quadrant, Manglier Street, P.O. Box 1312, Victoria, Mahe, Republic of Seychelles. , Port-Louis
- 4. STRAIGHT KKM LIMITED** service to be effect upon its management company, IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street, Les Cascades Building, Port Louis 11324, Mauritius. , Port-Louis
- 5. STRAIGHT KKM2 LIMITED** service to be effect upon its management company, IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street, Les Cascades Building, Port Louis 11324, Mauritius., Port-Louis

NOTE:

IF YOU WISH TO RETAIN A LEGAL ADVISOR, PLEASE NOTE THAT THE RETURNABLE DATE IS 27/12/2023.

IF YOU DO NOT WISH TO RETAIN A LEGAL ADVISOR, YOU MUST ATTEND THE SERVICE BUREAU, SUPREME COURT TO GIVE YOUR STAND.

IF YOU FAIL TO RESPOND TO THE DOCUMENT/ WRIT SERVED UP ON YOU, JUDGMENT MAY BE TAKEN AGAINST YOU.

IN THE SUPREME COURT OF MAURITIUS
COMMERCIAL DIVISION



In the matter of:

MAFUTA INVESTMENT HOLDING LIMITED, C/o Adansonia Management Services Limited, Level 3, Office Block C, La Croisette, Grand Baie, Mauritius.

PLAINTIFF

v/s

1. **Mr. Adewale Francis ADEOSUN**, residing at 4 Beaver Pond Road, Loudonville, New York 12211, United States.
2. **IQ EQ FUND SERVICES (MAURITIUS) LTD**, having its registered office address at 33, Edith Cavell Street Port Louis, 11324, Mauritius.

DEFENDANTS

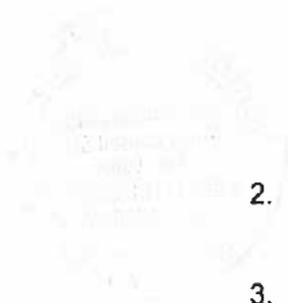
In the presence of:

1. **KURAMO AFRICA OPPORTUNITY AGRIBUSINESS VEHICLE L.P.**, having its registered office address at c/o Intertrust Corporate Services (Cayman) Limited, 190, Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
2. **MAKU HOLDINGS LLC**, having its registered office address at IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street Port-Louis, 11324, Mauritius.
3. **GROWTH ALLIANCE PARTNERS**, service to be effected at its registered office address at 2nd Floor, The Quadrant, Manglier Street, P.O. Box 1312, Victoria, Mahe, Republic of Seychelles.
4. **STRAIGHT KKM LIMITED**, service to be effect upon its management company, IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street, Les Cascades Building, Port Louis 11324, Mauritius.
5. **STRAIGHT KKM2 LIMITED**, service to be effect upon its management company, IQ EQ Fund Services (Mauritius) Ltd, 33 Edith Cavell Street, Les Cascades Building, Port Louis 11324, Mauritius.

CO-DEFENDANTS

And in the presence of:

1. **PLANTATIONS ET HUILERIES DU CONGO SA**, having its registered office address at 185, Boulevard of June 30, Kinshasa, Gombe, Democratic Republic of Congo.

- 
2. **THE FINANCIAL SERVICES COMMISSION**, service to be effected at its office, FSC House, 54 Cybercity Ebene, Mauritius.
 3. **THE REGISTRAR OF COMPANIES**, service to be effected at its office, One Cathedral Square, Jules Koenig St, Port Louis, Mauritius.
 4. **THE FINANCIAL INTELLIGENCE UNIT**, service to be effected at its office, 10th Floor, SICOM Tower, Wall Street, Cybercity Ebene 72201, Mauritius.

THIRD PARTIES

PLAINT WITH SUMMONS

THE PARTIES

1. The Plaintiff ("**Mafuta**") is a Global Business Company incorporated and registered under the laws of Mauritius on 22 August 2017.
2. The Defendant No.1 ("**Mr. Adeosun**") is a director and managing partner of Kuramo Africa Opportunity Agribusiness Vehicle L.P ("**Kuramo**"), the Co-Defendant No.1. Kuramo is a company incorporated in the Cayman Islands.
3. The Defendant No.2 ("**IQEQ**") is the management company of Co-Defendant No. 4 ("**SKKM**") and Co-Defendant No.5 ("**SKKM2**"), both of which hold Global Business Licenses. Mafuta and Kuramo are both shareholders of SKKM. SKKM is the sole shareholder and holding company of SKKM2.
4. The Co-Defendant No.2 ("**Maku**") is a private company incorporated under the laws of Mauritius holding a Global Business Licence, also administered by IQ EQ. Maku's shareholders include both Mafuta and Kuramo.
5. The Co-Defendant No.3 ("**GAP**") is a company registered under the laws of the Republic of Seychelles.
6. The Third Party No.1 ("**PHC**") is a palm oil production company based in Democratic Republic of Congo ("**DRC**"). PHC's majority shareholder is SKKM2; the other shareholder is the government of the DRC.
7. The Third Party No.2 is the Financial Services Commission ("**FSC**"), the integrated regulator for the non-bank financial services sector and global business in Mauritius.
8. The Third Party No.3 is the Registrar of Companies of Mauritius.
9. The Third Party No.4 is the Financial Intelligence Unit, the national central agency in Mauritius that is responsible for the request, receipt, analysis and dissemination of financial information regarding suspected proceeds of crime and alleged money

laundering offences as well as the financing of any activities or transactions related to terrorism to relevant authorities.

10. The relationship between the Plaintiff, Defendants, Co-Defendants and Third Party No.1 is morefully explained below.

THE CORPORATE STRUCTURE

SKKM

11. The shareholders of SKKM are as follows:
 - (i) Mafuta (15%), a company incorporated in Mauritius;
 - (ii) Kuramo (27.67%), a company incorporated in the Cayman Islands;
 - (iii) Nile Global Frontier Fund ("**Nile Global**") (28.14%), a company incorporated in Delaware; and
 - (iv) KN Agri LLC ("**KN Agri**") (29.19%), a company incorporated in Delaware.
12. Kuramo is the majority shareholder of Nile Global and KN Agri. As such, Kuramo holds, directly and indirectly, a majority stake in SKKM.
13. A shareholders' agreement dated 31 May 2019 ("**SKKM SHA**"), governed by the laws of Mauritius, was executed between the shareholders of SKKM. SKKM is also a party to the SKKM SHA. The SKKM SHA provides that any dispute in respect thereof would be subject to arbitration proceedings before the London Court of Arbitration ("**LCIA**"), with the juridical seat being in Mauritius.
14. SKKM is administered by IQEQ.

SKKM2

13. SKKM owns 100% of SKKM2. SKKM2 is also administered by IQEQ.
14. SKKM and SKKM2 are parties to a shareholder agreement dated 16 October 2017 ("**SKKM2 SHA**"), governed by the laws of Mauritius. The SKKM2 SHA also provides that any dispute in relation thereof would be resolved by way of arbitration before the LCIA, with Mauritius being the judicial seat.
15. SKKM2 holds the majority stake (76%) in PHC, with the other shareholder being the DRC government (24%).

MAKU

16. Mafuta, Kuramo and Kuramo Capital Management LLC ("**KCM**") are also shareholders of Maku.
17. A shareholders' agreement dated 7 February 2022 ("**Maku SHA**") was executed between the shareholders of Maku, to which Maku is also a party. Pursuant to clause 2.1 of the Maku SHA, Maku's business is to acquire the DFI debt, CDC loan, PHC shares and any other debt or equity interest in the PHC business with a view to controlling the business and PHC.

18. By way of a side letter dated 7 February 2022 ("**Side Letter**"), the shareholders of Maku agreed to give Kuramo and Mafuta the power to appoint:
 - (i) A nominee of KCM as the Chief Financial Officer ("**CFO**") of Maku;
 - (ii) A nominee of KCM as the CFO of PHC;
 - (iii) Two nominees of Kuramo as the directors of PHC;
 - (iv) Two nominees of Mafuta as the directors of PHC; and
 - (v) The Director General of PHC as a director of PHC.
 19. By way of the Side Letter, it was also agreed that PHC shall engage with GAP, for the provision of services to PHC for an amount of up to USD 600,000 annually.
 20. Both the Maku SHA and the Side Letter are governed by the laws of Mauritius and contain an arbitration clause in favour of the LCIA, with the juridical seat being London.
 21. Maku is also party to a management services agreement dated March 2022 ("**MSA**") with PHC, governed by Mauritian law, pursuant to which Maku has agreed to provide PHC with certain management services on a non-exclusive basis in respect of its operations in the DRC.
 22. A service level agreement ("**SLA**"), governed by the laws of DRC, had previously and independently of the Side Letter been executed between GAP and PHC on 1 April 2021 for the provision of recruitment and secondment services, as well as assistance on special projects, over a period of 5 years.
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23. The corporate structure and shareholding of the relevant companies is reproduced below:

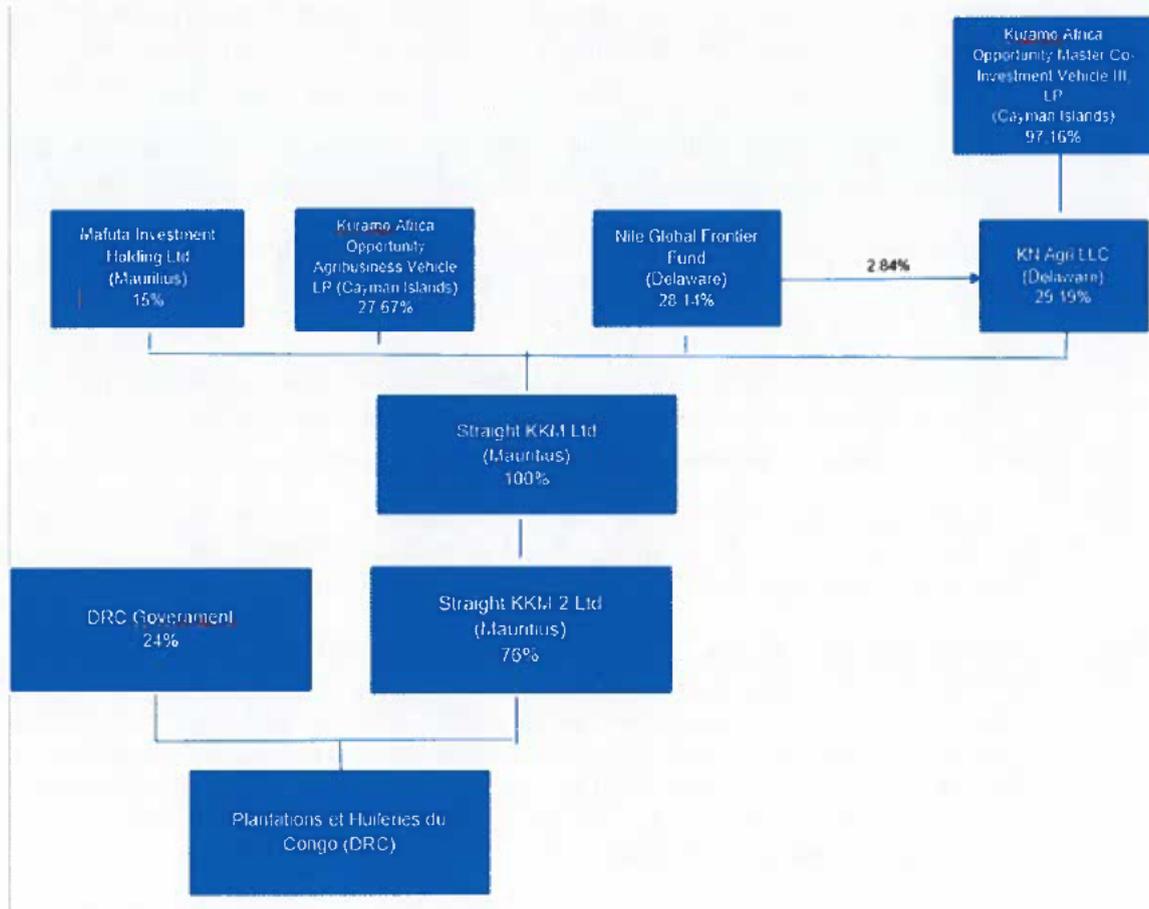


Figure I.

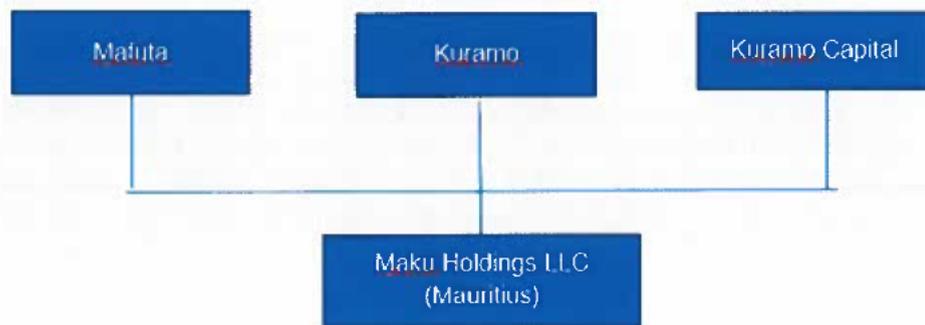


Figure II.

THE FACTS

24. Plaintiff avers that on the 12 December 2022, PHC held an annual general meeting of shareholders (the "**PHC Meeting**") in Kinshasa, in the Democratic Republic of Congo.
25. Plaintiff avers that Mr. Kalaa Mpinga ("**Mr. Mpinga**"), a director of Mafuta, SKKM and SKKM2, was present at the PHC Meeting in his capacity as a director of PHC.
26. Plaintiff avers that Mr. Adeosun, another director of SKKM and SKKM2, was also present at the PHC Meeting. When the PHC meeting started, the Chairman of PHC, Mr. Buse Falay, asked for proxies from the Government of the DRC and SKKM2. When Mr. Mpinga attempted to address the meeting as a director of PHC, he was prevented to do so by the Chairman of PHC and Mr. Adeosun stated that he was allegedly representing SKKM2, the controlling shareholder of PHC, by virtue of a proxy purportedly executed in his favour for and on behalf of SKKM2.
27. Plaintiff avers that Mr. Mpinga was not aware of, and had not approved, any resolution of the board of directors of SKKM2 appointing and authorizing Mr. Adeosun to represent SKKM2 during the PHC Meeting.
28. Plaintiff avers that by way of a letter dated 12 December 2022 issued by IQEQ (in its capacity as company secretary and Management Company of SKKM2) (the "**IQEQ Letter**"), it appeared that Mr. Adeosun (a) was purportedly authorized to execute documents for and on behalf of SKKM2 and (b) had the alleged power to take decisions for and on behalf of SKKM2 along with the board of directors of SKKM2; in effect, that IQEQ Letter allowed and facilitated the Defendant No.1 to pass off as the proxy for SKKM2.
29. Plaintiff avers that however, no meeting of the board of directors of SKKM2 was ever convened to discuss and resolve on this matter; and no resolution, written or otherwise, was ever passed providing a general authority to Mr. Adeosun to either (a) execute documents for and on behalf of SKKM2, (b) take decisions for and on behalf of SKKM2 or (c) attend and represent SKKM2 in board or shareholders' meetings of companies in which SKKM2 is a shareholder (including the PHC Meeting).
30. Plaintiff avers that the facts set out hereunder have drawn the Plaintiff to conclude that a scheme has been set up for a Cross Border Corporate Fraud that has been designed and implemented in order to defraud PHC directly and its shareholders indirectly for the benefit of a selected few individuals; that the said design, setting up and implementation of the Cross Border Corporate Fraud has required the assistance of IQ EQ, the Management Company of SKKM2, who, as a professional service provider, could not have ignored such wrongdoings and their legal consequences.

THE BREACHES COMMITTED MR. ADEOSUN/THE DEFENDANT NO.1

31. Plaintiff avers that Clause 21.2.1 of SKKM2's Constitution provides that "*the Board or any committee authorised by the Board may delegate or entrust to and confer on any Director holding executive office (including a Chief Executive or Managing Director) such of its powers, authorities and discretions (with power to sub-delegate) for such time, on such terms and subject to such conditions as it thinks fit.*"
32. Plaintiff avers that in relation to powers of attorney, Clause 22.1 of the SKKM2 Constitution specifically provides that "*The Board may, by power of attorney or otherwise, appoint any person or persons to be the agent of the Company and may delegate to any such person or persons any of its powers, authorities and discretions...*".
33. Plaintiff avers that Clause 5.1.7(a) of the SKKM2 SHA further provides that "*all authority and power to act for or on behalf of the Company [SKKM2] shall derive from the Board and may, to the extent permitted by the Act, be delegated, withheld or withdrawn by the Board in its sole discretion.*"
34. Plaintiff avers that the power to appoint any representative, proxy or attorney-in-fact rests solely with the board of directors of SKKM2. Plaintiff avers that in the absence of any resolution of the board of directors of SKKM2 appointing Mr. Adeosun as proxy and/or approving Mr. Adeosun's appointment as a proxy for the purposes of the PHC Meeting, the latter was not empowered to act as such and he therefore misrepresented his status as proxy of SKKM2 at the PHC Meeting. Plaintiff avers that Mr. Adeosun being himself a board member of SKKM2, he knew and, in any event, could not have ignored the fact that he had not been so appointed.
35. Plaintiff avers that the IQEQ Letter makes no reference to any authority being given to Mr. Adeosun to represent SKKM2 during the PHC Meeting. Plaintiff avers that in the absence of any resolution of the board of directors of SKKM2 appointing Mr. Adeosun or approving Mr. Adeosun's appointment as a proxy for the purposes of the PHC Meeting, Mr. Adeosun acted in breach of the law, of the provisions of the SKKM2 Constitution and SKKM2 SHA when he claimed to be the authorized representative of SKKM2 during the PHC Meeting.
36. Plaintiff avers that by acting on behalf of SKKM2 at the PHC Meeting without any authority, Mr. Adeosun has breached his statutory duties, according to which, *inter alia*, a director of a company:
- (i) shall exercise his powers in accordance with the Act and within the limits and restrictions imposed by the company's constitution;
 - (ii) shall exercise his powers honestly, in good faith, in the best interests of the company and for the purposes for which such powers are conferred; and
 - (iii) shall exercise the reasonable degree of care, diligence and skill as would be expected of a reasonably prudent and competent executive.
37. Plaintiff avers that it caused a Notice *Mise-en-Demeure* dated 3 April 2023 to be served upon Mr. Adeosun formally calling upon him to:

- (i) Rectify, forthwith, the laches and breaches committed by him in the performance of his duties as a director of SKKM2;
 - (ii) Address, forthwith, a letter to the board of SKKM2 providing explanations in respect of the IQEQ Letter purporting to appoint him as the proxy of SKKM2;
 - (iii) Inform, forthwith, the board of PHC of the absence of proper authorisation for him to act on behalf of SKKM2 during the PHC meeting and of the illegal nature of the IQEQ Letter and to cease, forthwith, to rely on the unlawful misrepresentations contained in the IQEQ Letter;
 - (iv) Refrain, forthwith, from preventing Mafuta from lawfully exercising its rights as the shareholder of SKKM;
 - (v) Refrain, forthwith, from preventing Mr. Mpinga from lawfully exercising his rights as the director of SKKM, SKKM2 and PHC; and
 - (vi) Comply, forthwith, with the provisions of the shareholders' agreement dated 31 May 2019 between Mafuta and Kuramo.
38. Plaintiff avers that Mr. Adeosun has so far failed and neglected to comply with the requirements and exigencies of the aforesaid Notice *Mise-en-Demeure*.
39. Plaintiff avers having provided all reasonable opportunities for the Defendants to produce the authority pursuant to which the proxy was allegedly made, in vain. Plaintiff avers that there is no such authority inasmuch as there has been no board meeting to discuss this matter and agree thereon. Neither has there been a written resolution of the board in lieu of a resolution voted at a board meeting. Plaintiff further avers that it was known to all relevant parties, including the Defendants, that the only proxy given by SKKM2 was one where Messrs. Mpinga and Adeosun were to act jointly, never alone.
40. Plaintiff avers that by way of letter dated 4 April 2023, it informed the Third Party No. 2, the FSC, of the above laches and breaches committed by Mr. Adeosun, including breach of the Financial Services Act 2007 and the FSC Guide to Fitness and Propriety and requested the FSC to take such measures as it may deem appropriate in the circumstances to protect the soundness and reputation of the financial system of Mauritius, including the removal of Mr. Adeosun as a director of its licensee, namely SKKM2.
41. Plaintiff further avers that a police complaint was lodged by Mr. Mpinga on behalf of Mafuta on 5 June 2023 at the Central Crime Investigation Department against Mr. Adeosun for having breached his director's duties and having intentionally misrepresented his capacity and powers in a material way. The investigation is still ongoing.
42. Plaintiff therefore avers that the Defendant No.1 is guilty of serious wrongdoing, fraud and has acted in breach of his statutory and fiduciary duties as a director,

such that he is no longer a fit and proper person to act as a director of Maku, SKKM and SKKM2, all of which are regulated by the FSC.

THE BREACHES COMMITTED BY IQ EQ/THE DEFENDANT NO.2

43. Plaintiff avers that, by way of a letter dated 16 December 2022, its director, Mr. Mpinga (who is also a director of SKKM2), requested IQ EQ to communicate the minutes of proceedings or written resolution of the board of directors authorizing Mr. Adeosun to act as the representative of SKKM2 at the PHC Meeting.
44. Plaintiff avers that IQ EQ replied by a letter dated 22 December 2022 stating that they are allegedly looking into it and that the matter had been referred to the Board of directors of SKKM2.
45. Plaintiff also avers that its director, Mr. Mpinga, caused a second letter dated 23 May 2023 to be sent to IQEQ asking for a satisfactory reply to its letter dated 16 December 2022 and reiterating its request for communication of the purported authority of Mr. Adeosun to act as proxy of SKKM2 at the PHC meeting of shareholders. However, no reply has been received from IQ EQ, which brought the Plaintiff to conclude that IQ EQ had no authority to issue the proxy to Mr. Adeosun and the latter had no authority to represent SKKM2 at the PHC Meeting.
46. Plaintiff therefore avers that IQ EQ has failed to discharge its duties in a lawful and regular manner by failing to give effect to clear provisions of the SKKM2 SHA in respect of the setting up of a proxy. In the alternative, the Plaintiff avers that IQ EQ has been grossly negligent, imprudent and reckless in the discharge of its duties as a professional and as the management company and/or company secretary of SKKM2; Plaintiff further avers that the Defendant No.1 could not have organized the fraudulent misrepresentation alone, without the wrongful and/or grossly negligent concurrence of the Defendant No.2. Plaintiff avers that the Defendant No.2 has failed and / or neglected to see and detect the fraudulent scheme organized by Mr. Adeosun; plaintiff avers that the Defendant No.2, as a reputable international service provider in the management and administration of companies, specially licenced to that effect, knew of the legal consequences of issuing a proxy and/or power of attorney and/or a letter of confirmation of authority to act as a proxy at the shareholders' meeting of PHC and could foresee the damages and prejudice that would ensue but nevertheless issued the same without any supporting authority.
47. Plaintiff also avers that IQ EQ could not have ignored that there could be no valid proxy constituted without a board resolution; yet, the Defendant No.2 proceeded to issue an invalid proxy, which allowed the Defendant No.1 to misrepresent everyone at the shareholders' meeting of PHC and crucially get strategic decisions to be made, allowing the fraud to operate.
48. Plaintiff further avers that as per the board pack of the Board Meeting of SKKM2 held on 19 September 2022, IQEQ still has a number of outstanding CDD process as regards Mr. Adeosun, Kuramo and its affiliates. The Board was also expected to receive an update on the status of the overdue audited financial statements for the year ended 31 December 2020 and 31 December 2021 of SKKM2. As of now, Plaintiff avers and regrets that IQEQ has failed to carry out its due diligence

exercise in line with the Financial Intelligence and Anti-Money Laundering Act 2002, as amended, and the Financial Intelligence and Anti-Money Laundering Regulations 2018.

THE BREACHES COMMITTED BY KURAMO/THE CO-DEFENDANT NO.1

49. Plaintiff avers that Mr. Adeosun was, at all material times and despite having personal knowledge of the wrongful and/or fraudulent nature of his acts and doing, acting on behalf of and/or with the authorisation of and/or as the director, authorised representative, agent and/or préposé of Kuramo, the Co-Defendant No.1.
50. Plaintiff further avers that Kuramo is itself guilty of several breaches of its obligations towards Mafuta, as is described hereunder. These Kuramo issues however fall within the purview of the arbitration clauses found in the SKKM SHA, the SKKM2 SHA, the Maku SHA and the Side Letter and will be taken up separately in another forum.

(A) Mafuta representatives being excluded from Maku operations

51. Plaintiff avers that pursuant to the MSA signed between PHC and Maku, the latter provides certain management services to the former, on a non-exclusive basis, in respect of the PHC operations in the DRC.
52. Plaintiff avers that Kuramo nominees sitting on the board of directors of PHC have prevented the Mafuta nominees, including Mr. Mpinga, from attending or participating in the weekly management calls and the weekly supervisory operating committee calls which are held between Maku and PHC in the context of the MSA.
53. Plaintiff avers that the wrongful acts and doings of Kuramo directors are intended to sideline Mafuta directors on PHC in order to facilitate the Cross Border Corporate Fraud.

54. Plaintiff avers that Mr. Adeosun personally saw to it that Mafuta representatives were excluded from Maku operations, although he knew that his acts and doings were wrongful and unlawful. Plaintiff avers that Mr. Adeosun acted with intent to commit harm to the Plaintiff for his own personal benefit and that of his related parties and/or connections.

(B) Mr. Kamal Pallan's appointment as Chief Financial Officer of PHC

55. Plaintiff avers that pursuant to the Side Letter, KCM is entitled to nominate the CFO of PHC. The Side Letter further provides that the designated CFO shall be notified to Mafuta, along with a resume, the proposed remuneration and any other proposed terms applicable, and Mafuta shall have a right, within 5 business days, to object in writing to such nomination. If the reasons for the objection raise valid legal, regulatory or reputational issues of concern in respect of the nomination that cannot be resolved through further engagement among the parties, then the nomination is deemed to be withdrawn.

56. Plaintiff avers that by way of letter dated 15 November 2022 and based on online searches, it came to its knowledge that Mr. Kamal Pallan had been appointed as the CFO of PHC, with effect from 15 November 2022.
57. Plaintiff avers that it was not notified of the appointment of Mr. Kamal Pallan as the CFO of PHC, in breach of the terms of the Side Letter and could therefore not exercise its right to object in writing the said appointment within 5 business days thereof.
58. Plaintiff avers that all persons involved in the appointment of Mr. Kamal Pallan as CFO of PHC and who were aware of the requirement under the Side Letter to notify Mafuta thereof and who therefore failed to verify that this notification had been effected in accordance with due process, have violated all applicable laws and acted fraudulently.
59. Plaintiff avers that the Defendant No.1 is the person who orchestrated the appointment of Mr. Pallan and who made use of the corporate structures he was operating in to design and implement his illegal objectives, which included the appoint of Mr. Pallan in order to have access to the finances of PHC.
60. Plaintiff avers that the Defendant No.1 was perfectly aware, in his own personal name and capacity, that Mr. Pallan could not be validly appointed without prior notification to the Plaintiff; yet, the Defendant No.1 personally saw to it that the Plaintiff was not notified, so that the Plaintiff could not object to the appointment.
61. Plaintiff avers that the Defendant No.1 did all of the above for his own personal benefit and that of his related parties and connections.

(C) Appointment of Dr. Mpoko Bokanga as the Chief Operating Officer of PHC

62. Plaintiff avers that according to Clause 1.1(k) of the Maku SHA, the appointment of any senior executive of PHC is considered as a "Reserved Matter".
63. Plaintiff avers that Clause 3.4 of the Maku SHA further provides that "*each Shareholder shall procure that the Company shall not, without the prior approval of the Shareholders by Unanimous Resolution, carry out any of the Reserved Matters*".
64. Plaintiff avers that by way of letter dated 16 November 2022, Mafuta became aware of the alleged appointment of Dr. Mpoko Bokanga ("**Dr. Bokanga**") as the Chief Operating Officer ("**COO**") of PHC, with effect from 15 November 2022.
65. Plaintiff avers that based on a reading of Clauses 1.1(k) and 3.4 of the Maku SHA, the appointment of Dr. Bokanga as the COO of PHC, amounts to the appointment of a senior executive of PHC and is therefore deemed to be a "Reserved Matter", which in terms of Clause 3.4 above necessitated a prior unanimous shareholders' resolution of Maku.

66. Plaintiff avers that the decision to appoint Dr. Bokanga, nominated by Kuramo, was never approved by way of unanimous shareholders' resolution, given that no such resolution has been approved by Mafuta, Kuramo and KCM, thus amounting to a breach of the Maku SHA.
67. Plaintiff avers that it is to its knowledge that Dr. Bokanga is a senior officer of GAP, which amounts to a flagrant conflict of interests, and which had not been disclosed to Mafuta.
68. Plaintiff avers that all persons involved in the appointment of Dr. Bokanga as COO of PHC and who were aware of the requirement under the Maku SHA to obtain the unanimous consent of all directors of Maku and who therefore failed to verify that this requirement had been complied with, in accordance with due process, have violated all applicable laws and acted fraudulently.
69. Plaintiff avers that the Defendant No.1 is the person who orchestrated the appointment of Dr. Bokanga and who made use of the corporate structures he was operating in to design and implement his illegal objectives, which included the appointment of Dr. Bokanga in order to have access to the operations of and management decision-making process within PHC.
70. Plaintiff avers that the Defendant No.1 was perfectly aware, in his own personal name and capacity, that Dr. Bokanga could not be validly appointed without unanimous approval of the Maku shareholders including the Plaintiff; yet, the Defendant No.1 personally saw to it that due process not be followed, so that the Plaintiff could not veto to the appointment.
71. Plaintiff avers that the Defendant No.1 did all of the above for his own personal benefit and that of his related parties and connections.

(D) Payments effected for services rendered by GAP

72. Plaintiff avers that the Side Letter provides for the engagement of GAP, as soon as practical, to provide agreed services to PHC up to the amount of US\$600,000 per annum. The decision by Maku to support the engagement of GAP by PHC for a fee in excess of US\$600,000 amounts to a Reserved Matter requiring the prior written consent of, *inter alia*, KCM and Mafuta.
73. Plaintiff avers that several invoices dated 4 April 2022, 4 July 2022 and 3 October 2022 were issued by GAP to PHC as follows:

Date	Reference	Description	Amount (USD)
4 April 2022	PCH/2022/MAR/30/C	Performance bonus on achieving Production and Revenue Targets for Q1 (Jan-March 2022)	1,506,030.10
4 July 2022	PCH/2022/JUNE/30/C	Performance bonus on achieving Production and Revenue Targets for Q1 (April - June 2022)	1,942,930.70
3 October 2022	PCH/2022/SEP/30/C	Performance bonus on achieving Production and Revenue Targets for Q1 (July to Sep 2022)	1,672,624.96
TOTAL			5,121,585.76

74. Plaintiff avers that in or about November 2022, following the impugned appointments of Dr. Bokanga and Mr. Pallan in PHC, a wire transfer of USD 5,121,585.76 was effected by PHC to GAP to settle the aforesaid invoices (the "Unlawful Transfer"), which according to the terms of the Side Letter, amounts to a Reserved Matter requiring a unanimous shareholders' resolution. Plaintiff avers that this is a fraud inasmuch as it represented payments which were made intentionally, on purpose, although knowing that they exceeded the threshold.
75. Plaintiff avers that no such resolution has been approved by Mafuta, Kuramo and KCM. As such, these transactions are in intentional breach of the Maku SHA and amount to a fraud.
76. Plaintiff further avers that Dr. Bokanga, who has been appointed as the COO of PHC, also works for GAP and has initiated and approved the Unlawful Transfer. Plaintiff avers that Dr. Bokanga has a clear conflict of interest and could not have acted independently and in the best interests of PHC and indirectly, of Mafuta by sanctioning payments made to GAP exceeding the capped amount of US\$600,000 provided by the Side Letter.
77. Plaintiff avers that all persons involved in the said payment to GAP and who were aware of the requirement under the Side Letter to have the same approved by unanimous consent of all shareholders and who therefore failed to verify that this requirement has been satisfied, in accordance with due process, have acted in breach of all applicable laws and fraudulently.

78. Plaintiff avers that the Defendant No.1 is the person who orchestrated the Unlawful Transfer and who made use of the corporate structures he was operating in to design and implement his illegal objectives, which included the Unlawful Transfer.
79. Plaintiff avers that the Defendant No.1 was perfectly aware, in his own personal name and capacity, that no such transfer payment could be effected without a unanimous resolution of the Maku shareholders; yet, the Defendant No.1 personally saw to it that Unlawful Transfer was effected without the Maku shareholders entitled to approve it having a say on it.
80. Plaintiff avers that the Defendant No.1 did the Unlawful Transfer for his own personal benefit and that of his related parties and connections.
81. Plaintiff avers that the Defendant No.2 is the Management Company of Maku and has representatives on its board of directors.
82. Plaintiff avers that the Defendant No.2 has been a witness to all these illegal activities and has done nothing to prevent or stop such illegalities. Plaintiff further avers that the Defendant No.2 has adopted a passive attitude, thereby allowing its structures and services to be used, effectively, for the purposes of illegal activities.
83. Plaintiff avers that such attitude and conduct on the part of the Defendant No.2 is unacceptable and is against standards and principles of governance expected of the Defendant No.2.

THE PREJUDICE

84. Plaintiff avers that:
 - (i) the use by Mr. Adeosun of an invalid proxy unlawfully and/or fraudulently obtained in order to represent SKKM2 at the PHC shareholders meeting;
 - (ii) the unlawful and arbitrary exclusion of the representatives of Mafuta from the PHC Meeting and the weekly management calls and the supervisory operating committee calls at the level of Maku;
 - (iii) the intentional and fraudulent misrepresentation by Mr. Adeosun to the effect that he was the lawful representative of SKKM2 at the said PHC shareholders meeting;
 - (iv) the use of a fraudulent proxy by Mr. Adeosun to exclude Mr. Mpinga from the board meeting of PHC; and
 - (v) the unfair and illegal appointments of Mr. Pallan and Dr. Bokanga on the board of directors of PHC and as CFO and COO of PHC respectively, in breach of the applicable constitutive documents;
 - (vi) the Unlawful Transfer effected

are in fact, a whole fraudulent and/or illegal scheme orchestrated and/or facilitated by Mr. Adeosun acting in his own individual name to siphon funds out of PHC to suit his own needs, the needs of his related parties, friends and family.

Plaintiff further avers that the Defendant No.2 allowed itself to play a crucial role in the execution of this fraudulent and/or illegal scheme of Mr. Adeosun. Plaintiff avers that had the Defendant No.2 carried out its operations in accordance with standards and principles of governance, none of the illegal acts and doings of Mr. Adeosun would have occurred.

Plaintiff avers that the Defendant No.2 was at all material times aware and had knowledge of the rules governing decision-making in Maku, SKKM and SKKM2 and of the importance of such rules. Plaintiff avers that by failing to ensure that rules be complied with, the Defendant No.2 consciously allowed the decision-making processes in place to be violated, causing the whole system set up by the investors, including the Plaintiff, to be frustrated and corrupted.

Plaintiff avers that the Defendant No.2 knew and in any event ought to have known the strategic importance it plays in the administration of investment companies such as Maku, SKKM and SKKM2, where foreign direct investors come in and invest based on strict rules and agreed-upon decision making processes. Plaintiff avers that it has relied on the reputation of the Defendant No.2 as a safeguard against potential corporate abuses; plaintiff avers that the Defendant No.2 has failed and neglected to stand up against illegal practices occurring in companies falling under its administration, care and control.

Plaintiff avers that none of the illegal transactions and unlawful practices set out above would have occurred had the Defendant No.2 adhered to the constitutive rules governing the operations of Maku, SKKM and SKKM2.

85. Plaintiff avers that Mr. Adeosun, has made and is making an abuse of his authority as a director of Kuramo, SKKM, SKKM2 and Maku by acting in blatant disregard of the SKKM Constitution, the SKKM2 SHA, the Side Letter and in violation of all applicable laws, rules, regulations and industry standards including, *inter alia* those of Mauritius, Democratic Republic of Congo and the United States of America on corporate governance.
86. Plaintiff further avers that Kuramo and Mr. Adeosun, are using SKKM and SKKM2 as vehicles to control the operations of PHC and defraud the latter, by appointing their own nominees and representatives on the board of directors of PHC and within the senior management of PHC, who in turn are approving excessive and illegal payments to GAP. Plaintiff avers that in so doing, it has been and is being deprived of its contractual and economic rights as a shareholder in SKKM, which has an indirect stake in PHC through SKKM2.
87. Plaintiff avers that as a result of the aforesaid wrongful and unlawful acts and doings of Mr. Adeosun, Mafuta has been deprived of the rights which accrue to it as the shareholder of SKKM, namely in respect of:
 - (i) the right to have an oversight and/or control over the operations and/or management of the entities it invests in;

- (ii) the right to have its interests properly represented and defended in board and shareholders' meetings; and
 - (iii) the right to receive distributions and/or dividends from the operations of the entities in which it invests.
88. Plaintiff avers that Mafuta's direct stake in Maku and indirect stake in PHC has been endangered by the fraudulent schemes of Mr. Adeosun for his own personal benefit and that of his related parties, and there is a complete breakdown in the relationship of trust which once existed between Mafuta, Mr. Adeosun, Kuramo, Maku and KCM.
89. Plaintiff avers that all payments effected pursuant to and following the wrongful appointments of the COO and CFO in PHC, as well as the Unlawful Transfer and which are predicate offenses under all applicable laws and part of the said Cross Border Corporate Fraud have become proceeds of crime under the laws of Mauritius and any use thereof is tantamount to money laundering.
90. Plaintiff avers that the Defendants and Co-Defendants are therefore intrinsically embroiled in a vast international money laundering scheme:
- i. When the Defendants allowed decision-making processes to be violated at the level of Maku, SKKM and SKKM2, they purported to authorize, under the cover of corporate process, the siphoning of funds, which have instantly become money obtained from illicit activities; and
 - ii. The corporate process provided by the Defendant No.2 was therefore used by the Defendant No.1 to introduce illicit funds into the financial system under the guise of 'clean money'.
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91. Plaintiff avers it is not the only victim of this vast money laundering scheme and that such victims also include institutional investors from the United States of America as well as the Government of the Democratic Republic of Congo.
92. Plaintiff avers that it has suffered damage and prejudice as a result of the Defendants' wrongful acts and doings set out above, which it estimates at USD 35,000,000/- and for which the Defendants are liable.
93. Plaintiff avers that the Defendants are responsible for the chaotic administration of Co-Defendants Nos.2, 4 and 5 as a result of their failure to honour, comply with and enforce the constitutive documents of these entities, which in turn has allowed the Defendant No.1 to carry out his fraudulent money laundering scheme to the prejudice of the Plaintiff and other investors.
94. Plaintiff avers that the wrongful acts and doings of the Defendants amount to a *faute*.

95. Plaintiff avers that as a result of the said *faute* of the Defendants, it has suffered considerable damage and prejudice which it estimates at USD 35,000,000, made up as follows:

- Damage caused by the Defendant No.1: USD 25 Million
- Damage caused by the Defendant No.2: USD 10 Million

THE PROPER FORUM

96. Plaintiff avers that it has several claims and disputes against the Co-Defendants Nos. 1, 2, 3, 4 and 5 arising out of the facts stated above but under different causes of action; that in light of the arbitration clauses found in the SKKM SHA, the SKKM2 SHA, the Maku SHA and the Side Letter, the breaches committed by the Co-Defendants Nos. 1, 2, 3, 4 and 5 and suffered by the Plaintiff, which are actionable and prejudicial separately and in addition to this Plaint, have to be referred to arbitration.

97. Plaintiff further avers that the wrongful acts and doings of the Defendants, who are not party to any agreements with the Plaintiff, are actionable in their own right and are also relevant and essential to substantiate and prove the breaches committed by the Co-Defendants, such that they are relevant parties to the arbitration proceedings against the Co-Defendants Nos.1, 2, 3, 4 and 5.

98. Plaintiff also avers that the presence of the Third Parties is also crucial in the said arbitration proceedings, insofar as the Third Parties Nos. 2, 3 and 4 act as the regulators of the Defendant No.2 and Co-Defendants. Further, the Third Party No.1, which is the direct subsidiary of SKKM2 and the indirect subsidiary of SKKM and affiliates of the Plaintiff and Kuramo, will be directly impacted by any ruling delivered in respect of these parties and need to be part of the arbitral proceedings.

99. Plaintiff avers that, although the juridical seat in the arbitration clause found in the Maku SHA (and consequently the Side Letter) is London, the proper forum and juridical seat should be in Mauritius in view of the close links and contacts of the parties, contracts, evidence and witnesses to the Mauritian jurisdiction and in view of the fact that all relevant agreements are governed by Mauritian law.

100. Plaintiff avers that it is therefore essential and in the best interests of justice that all parties be referred to arbitration before the LCIA, with the juridical seat being in Mauritius and the governing law being the laws of Mauritius in order for all disputes to be determined.

101. Plaintiff further avers that there is a complete breakdown in the relationship and communication between itself, Kuramo and/or any of the Kuramo-controlled entities, such that it is unable to agree on the appointment of an arbitrator. Plaintiff avers that the intervention of the court is necessary for the appointment of an arbitrator, and in view of the other relief being prayed for and the nature of the dispute, the Plaintiff avers that the Supreme Court, in its unlimited jurisdiction, is the proper jurisdiction to be seized for the appointment of an arbitrator.

LEAVE TO SERVE OUTSIDE JURISDICTION

102. Plaintiff avers that by virtue of a Judge's Order dated 27 November 2023, Plaintiff has been granted leave to file and/or serve all processes pertaining to the present matter upon the Defendant No.1, Co-Defendant No.1, Co-Defendant No.3 and Third Party No.1. The Honourable Judge also ordered that (i) service be effected out of Mauritius in the same way as the process in an action is required to be served in the country in which service is to be effected, and this at least one month before the returnable date; and (ii) the Defendant No.1, Co-Defendant No.1, Co-Defendant No.3 and Third Party No.1 to put in an appearance before the Master and Registrar, New Supreme Court Building, Port-Louis.

THE PRAYERS

103. Plaintiff therefore prays for a judgment from the above Honourable Court:

- a. Declaring that the Defendant No.1 has acted unlawfully and illegally;
- b. Condemning and ordering the Defendant No.1 to pay damage and prejudice of USD 25,000,000 to the Plaintiff;
- c. Declaring that the Defendant No.2 has acted illegally, unlawfully and/or negligently and/or imprudently and/or recklessly in the course of its professional activities as a Management Company;
- d. Condemning and ordering the Defendant No.2 to pay damage and prejudice of USD 10,000,000 to the Plaintiff;
- e. Declaring that the Plaintiff, Defendants, Co-Defendants and Third Parties in this matter are all proper, necessary and relevant parties to the disputes arising under the facts and for the reasons set out above and ordering them to arbitral proceedings in accordance with the agreements set out above, before the LCIA, with the juridical seat being Mauritius and the governing law being that of Mauritius; and appointing a Sole Arbitrator to determine all the disputes arising among them.

104. Plaintiff also prays for such other orders as the Court may deem necessary and reasonable in the circumstances.

With interest and costs.

NOW TAKE NOTICE You, the said Defendants, Co-Defendants and Third Parties, that you are hereby notified that the Plaintiff with Summons was lodged before the Supreme Court of Mauritius (Commercial Division) by electronic filing under the Courts (Electronic Filing of Documents) Rules 2012.

Should you be desirous to answer to the abovenamed Plaintiff or make an appearance in the matter or oppose or defend the said Plaintiff with Summons, you may do so by making the necessary representation by electronic filing either through a legal adviser of your

choice at the Public Service Bureau of the Supreme Court of Mauritius (Commercial Division) on or before the returnable date.

WARNING YOU, the said Defendants, Co-Defendants and Third Parties, that should you fail to make an appearance in the matter or oppose or defend the said Plaintiff with Summons as set out above, may result in judgment being entered or taken against you, the Defendant and Co-Defendants, in favour of the Plaintiff in terms of the Plaintiff with Summons.

TAKE FURTHER NOTICE YOU, the above named Defendants, Co-Defendants and Third Parties, that the Plaintiff in this cause proposes to adduce as evidence the documents hereunder specified and that the same may be inspected by you, your Attorney or agent at the office of the undersigned Attorney on any working days during office hours and that you are hereby required to assist that such document which is an original has been written, signed or executed as it purports to have been given all just exceptions as to the admissibility of the said documents as evidenced by this case.

Documents:

None for the time being.

Issued by the above-named Plaintiff with election of legal domicile in the office of the undersigned Attorney at Law situate at 3rd Floor, Les Jamalacs Building, Port Louis.

Under all legal reservations.

Dated at Port Louis, this 6th day of December 2023


Sivakumaran MARDEMOOTO
Dentons Mauritius LLP

Third Floor, Les Jamalacs Building, Vieux Conseil Street, Port Louis.

**ATTORNEY FOR THE PLAINTIFF INSTRUCTING PRISCILLA BALGOBIN-BHOYRUL
OF COUNSEL**

