IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY SERUMA, NILE CAPITAL MANAGEMENT, LLC, NILE GLOBAL FRONTIER FUND LLC and KN AGRI LLC, Defendants, Counter-Plaintiffs, Third-Party Plaintiffs-Below/Appellants, v. KURAMO CAPITAL MANAGEMENT, LLC, KURAMO AFRICA OPPORTUNITY MASTER FUND II, L.P., KURAMO AFRICA OPPORTUNITY MASTER CO-INVESTMENT VEHICLE III, LP and KURAMO AFRICA OPPORTUNITY AGRIBUSINESS VEHICLE, LP, Plaintiffs, Counter-Defendants-Below/ Appellees. v. KURAMO OPPORTUNITY OFFSHORE FUND II GP, LTD, Third-Party Defendants-Below/Appellees.	No. 87,2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2021-0323-KSJM

APPELLEES'/CROSS-APPELLANTS' ANSWERING BRIEF ON APPEAL
AND OPENING BRIEF ON CROSS-APPEAL

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NATURE OF PROCEEDINGS

In the summer of 2020, defendant Larry Seruma, an investment manager and the human controller of the Nile Funds, used his fiduciary authority to grant himself a majority ownership interest in the principal asset he was purportedly managing on Kuramo's behalf—the Congolese company PHC.[1] Heading into the events of 2020, Seruma had only a *de minimis*, indirect personal interest in the PHC investment. When he was done, Seruma purported to own between 60 and 100 percent of the investment personally. This "egregious," "brazen," and "unbelievable" conflict of interest is what led Kuramo—the plaintiff in this case—to bring this action, and it is at the heart of the Chancellor's fiduciary analysis below.[2]

Remarkably, in their 73-page corrected opening brief,[3] defendants do not so much as acknowledge, even once, the fact of Seruma's personal interest in the Challenged Transactions. Nor do defendants even once acknowledge any of the e-mails, texts and recorded (by Seruma) telephone calls in which Seruma "lied" directly to Kuramo's principals about how he was implementing these Transactions—record evidence that led Chancellor McCormick to find, as a matter

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1 Capitalized terms in this Section have the meanings ascribed to them below.

2 All quotes in this Section are from Chancellor McCormick's post-trial memorandum opinion (the "Opinion") (A768) or December 11, 2025 letter decision (the "Letter Decision" or "Dec.-Letter-Decision") (A881).

3 Trans. ID 79119748 ("Br.").

of fact, that "Seruma executed the Challenged Transactions unilaterally and told Kuramo that he had or was taking certain actions, while doing just the opposite," and that Seruma acted with subjective bad faith.

On appeal, defendants ask this Court to overturn the Chancellor's fiduciary analysis while withholding all the key facts on which that analysis was based. Indeed, defendants urge that this Court reconsider each and every fact-bound claim and defense in this case, and to do so based upon what can only be described as a fraudulent portrayal of the record below—a word we do not use lightly.

In five years of intensive proceedings below, defendants barely even tried to defend Seruma's conduct as an undisputed-until-this-appeal fiduciary on its own terms. Instead, defendants tried to change the subject, insisting that this case is really about who has the right to *control* PHC—not who *owns* it—or a half-dozen other matters of, at most, peripheral importance.

On this appeal, defendants have taken that tactic to its extreme. In their Brief, Kuramo's fiduciary duty claim—that Seruma misappropriated an asset that his own expert valued at $72.1-$135.5 million—is relegated to what amounts to an endnote. The result is almost farcical. Defendants devote over a dozen pages of their Brief to the immediate fallout of the parties' dispute (which they radically mischaracterize), without ever explaining what the dispute was about in the first place.

Defendants do not come close to meeting their burden on appeal. Fundamentally, defendants' arguments reduce to a wholesale disagreement with the Chancellor's findings of fact: that Seruma had a personal interest in the Challenged Transactions, that Seruma "lied" to Kuramo about the manner in which he was implementing the Transactions, that Seruma's implementation of the Transactions contravened a specific agreement he had reached with Kuramo only months earlier, that Seruma failed to prove a fair price, that Kuramo was closely involved in managing the PHC investment from its inception, and many others.

Defendants cannot overcome the deference that this Court's well-established precedents require be afforded to the Chancellor's factual findings, rendered meticulously from a record comprising the in-person testimony of each of the principal witnesses from both sides and over 2,000 trial exhibits, with stray documents misleadingly presented and Seruma's own demonstrably false testimony—all that defendants have on offer.

Indeed, defendants' appeal only reinforces the bad faith that has permeated both Seruma's underlying fiduciary misconduct and the manner in which he has attempted to avoid the consequences of his actions. Despite having ruled in Kuramo's favor on every claim and defense in the proceedings below, and finding that Seruma acted with subjective bad faith, the trial Court declined, in a footnote, to award Kuramo its attorneys' fees and costs. This Court should follow the logic of the 94 above-the-line pages of the Chancellor's Opinion and grant Kuramo's cross-appeal to the limited extent of awarding those fees and costs.

SUMMARY OF ARGUMENT

Responses to Appeal Points:

1. Denied. Defendants concede that the Court below applied the correct legal standard. In urging reversal of their principal counterclaim, defendants do not engage seriously with the standards governing appellate deference to findings of fact. Moreover, defendants' premise that Kuramo "participat[ed only] in discrete activities [related to PHC] at [Seruma's] invitation" is sanctionably false.

2. Denied. Seruma used his fiduciary authority to grant himself a personal benefit worth tens of millions of dollars. Entire fairness review plainly applies, and the Court below correctly found that defendants failed, as a matter of fact, to prove either fair price or fair dealing. Defendants conceded owing fiduciary duties in the proceedings below, and have waived any argument to the contrary. Even absent waiver, defendants fail to show error in the trial Court's analysis.

3. Denied. Once again, defendants do not take seriously their appellate burden with regard to the Chancellor's factual findings. Defendants' characterization of the handful of documents they cite is frivolous, and the Court below properly weighed these documents against the hundreds of contrary trial exhibits effaced from defendants' brief, as well as both sides' credibility, in concluding that Seruma breached his fiduciary duties in bad faith.

4. Denied. Defendants do not come close to meeting their burden of showing reversible error in the trial Court's factual finding that Kuramo's defensive actions—which, again, defendants misstate—were justified.

5. Denied. The trial Court providently exercised its equitable discretion to fashion remedies for fiduciary disloyalty by awarding Kuramo an in-kind redemption from the Nile Funds.

Cross-Appeal Point:

1. In the Opinion, Chancellor McCormick found that Seruma structured the Transaction so as to create an "egregious," "unbelievable" conflict of interest that he navigated in subjective bad faith, including by lying to his fiduciary principal Kuramo. To distract from that conflict, Seruma asserted counterclaims with no grounding in fact and law, and repeatedly changed his testimony to suit his needs. Under the circumstances, the Chancellor erred by failing to award Kuramo its attorneys' fees and costs.

COUNTERSTATEMENT OF FACTS

This Court's Rules require that an appellant "set forth the issues raised on appeal and…fairly present an argument in support of those issues."[4] In their Brief, however, defendants do little more than present Seruma's self-serving testimony as though it were the complete trial record—even when that testimony (often) elides key facts and (often) is contradicted by contemporaneous documents. The result is a superficially-plausible narrative that bears no relation to the record below—let alone to reality.

A true and complete version of the facts of this case, albeit necessarily abridged for appeal, follows below.[5]

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4 *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) (citing Rule 14(b)(vi)(A)(3)).

5 Most citations herein are to the Opinion, rather than to underlying trial exhibits. References to exhibits (other than agreements or sources of direct quotes) are illustrative only, and do not imply the absence of others.

I. BACKGROUND

A. The Parties.

Plaintiff Kuramo Capital Management, LLC ("KCM") is a private equity firm.[6] KCM, through a series of pooled investment vehicles (*i.e.*, "funds"), focuses on making environmentally and socially responsible commercial investments in companies in Africa.[7]

Defendant Larry Seruma is an investment manager based in New Jersey.[8] Since 2004, Seruma has managed certain funds, through defendant Nile Capital Management, LLC ("NCM"), under the "Nile" umbrella.[9] At one time, Seruma purports to have managed over $2 billion.[10] By 2017, however, Seruma had closed all but two of his funds: defendant Nile Global Frontier Fund ("NGFF"), holding less than $2 million in assets, and a non-party mutual fund that went on to close in 2019.[11] Seruma is the human controller of all the Nile funds.[12]

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6 Opinion-2.

7 *Id.*; n.2. KCM and its managed funds, including plaintiffs Kuramo Africa Opportunity Master Fund II ("Fund II"), Kuramo Africa Opportunity Master Co-Investment Vehicle III ("CIV-III"), and Kuramo Africa Opportunity Agribusiness Vehicle ("Agribusiness"), are referred to collectively as "Kuramo."

8 A106 ¶31.

9 A366/729:15-21(Seruma).

10 Opinion-6.

11 *Id.*

12 A106-07 ¶¶32-35.

Kuramo has been the supermajority owner of the Nile Funds since early 2017. In April that year, KCM and Seruma entered into an Amended and Restated Operating Agreement for NCM.[13] Under that agreement's terms, Kuramo committed to allocate at least $25 million to NGFF, to be managed by Seruma as a Kuramo fiduciary.[14] In return, Kuramo received a 49-percent non-managing membership interest in NCM.[15]

In 2017 and early 2018, Kuramo did allocate $25 million to NGFF, thereby becoming the fund's 95.2% owner.[16] Then, and at all other times, Seruma had only one other outside investor—the Segal Foundation ("Segal").[17] Seruma personally owned about 1% of NGFF, based on a $250,000 cash contribution he made in 2014—a proportional interest typical for the industry.[18]

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13 B520.

14 Opinion-6; n.30.

15 B549.

16 Opinion-8; n.43.

17 Opinion-9; n.44.

18 *Id.*-8-9.

B. Feronia and PHC.

At the heart of the parties' dispute is the Congolese company Plantations et Huileries du Congo ("PHC"). PHC is a palm oil production business headquartered in Kinshasa.[19]

PHC has at all relevant times been owned 23.84% by the Democratic Republic of the Congo ("DRC").[20] In 2009, a Canadian holding company called Feronia Inc. ("Feronia") acquired the remaining 76.16% of the company's shares (the "PHC Shares"), making Feronia the only vehicle for investing (indirectly) into PHC.[21]

Shortly after acquiring the PHC Shares, Feronia raised capital from a small group of development finance institutions ("DFIs"). Among these was CDC Group ("CDC") of the U.K. By 2017, CDC had become Feronia's majority shareholder.[22]

Other European DFIs became lenders to Feronia and PHC (collectively, the "DFI Lenders"). From 2015-17, the DFI Lenders loaned $43 million to PHC.[23] Feronia guaranteed that debt, pledging its PHC Shares as collateral.[24]

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19 Opinion-2.

20 Opinion-3

21 *Id.*

22 *Id.*

23 *Id.*, 4.

24 *Id.*

C. Kuramo and Mafuta Invest in PHC.

In 2016, Kuramo was approached by a non-party Congolese businessperson named Kalaa Mpinga about a potential investment in PHC.[25] At the time, Mpinga—through the entity "Mafuta"—had been negotiating with Feronia and CDC over a potential acquisition of Feronia shares and was looking for financial backing.[26] After carefully evaluating the opportunity, Kuramo decided to move forward.[27]

In early 2017, Kuramo and Mafuta formed a set of special purpose vehicles to carry out the investment: Straight KKM Limited ("KKM") and Straight KKM 2 Limited ("KKM2").[28] In September 2017, Kuramo and Mafuta executed a "Commitment Deed" with CDC pledging themselves to the investment.[29]

D. Nile Joins the PHC Investment.

When Kuramo and Mafuta signed the Commitment Deed, they had been pursuing the PHC investment, without any involvement by Seruma or Nile, for months.[30] For Kuramo, this was a direct investment opportunity—*i.e.*, an opportunity to invest directly from one or more of Kuramo's managed funds, as

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25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.* KKM2 is wholly-owned by KKM. *Id.*-4-5.

29 *Id.*-5.

30 Opinion-4-5, 10-11.

opposed to a fund-of-funds investment where Kuramo would make an allocation to a sub-advisor, which in turn would invest in the underlying portfolio company. In the end, Kuramo participated in the PHC investment directly, sending $10 million from its Agribusiness fund into PHC through Feronia and the KKM structure.[31]

Kuramo also participated in the PHC investment indirectly through Nile. After signing the Commitment Deed, Kuramo COO Kamal Pallan asked Seruma if he was interested in evaluating the PHC investment for Nile.[32] Seruma did review the opportunity, and decided to deploy $7.5 million, from Kuramo's $25 million allocation, to have NGFF join the investment alongside Kuramo and Mafuta.[33]

Between September 2017 and the transaction' January 2018 closing, NGFF was integrated into the KKM structure.[34] For its $7.5 million of beneficially-owned Kuramo money, NGFF (owned 95.2% by Kuramo) received a 43% interest in KKM.[35] Kuramo, for its $10 million direct investment, received a 42% interest.[36] Mafuta received a 15% "free carry" for its role sourcing the deal and in anticipation of Mpinga's future contributions.

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31 Opinion-11.

32 *Id.*, 10.

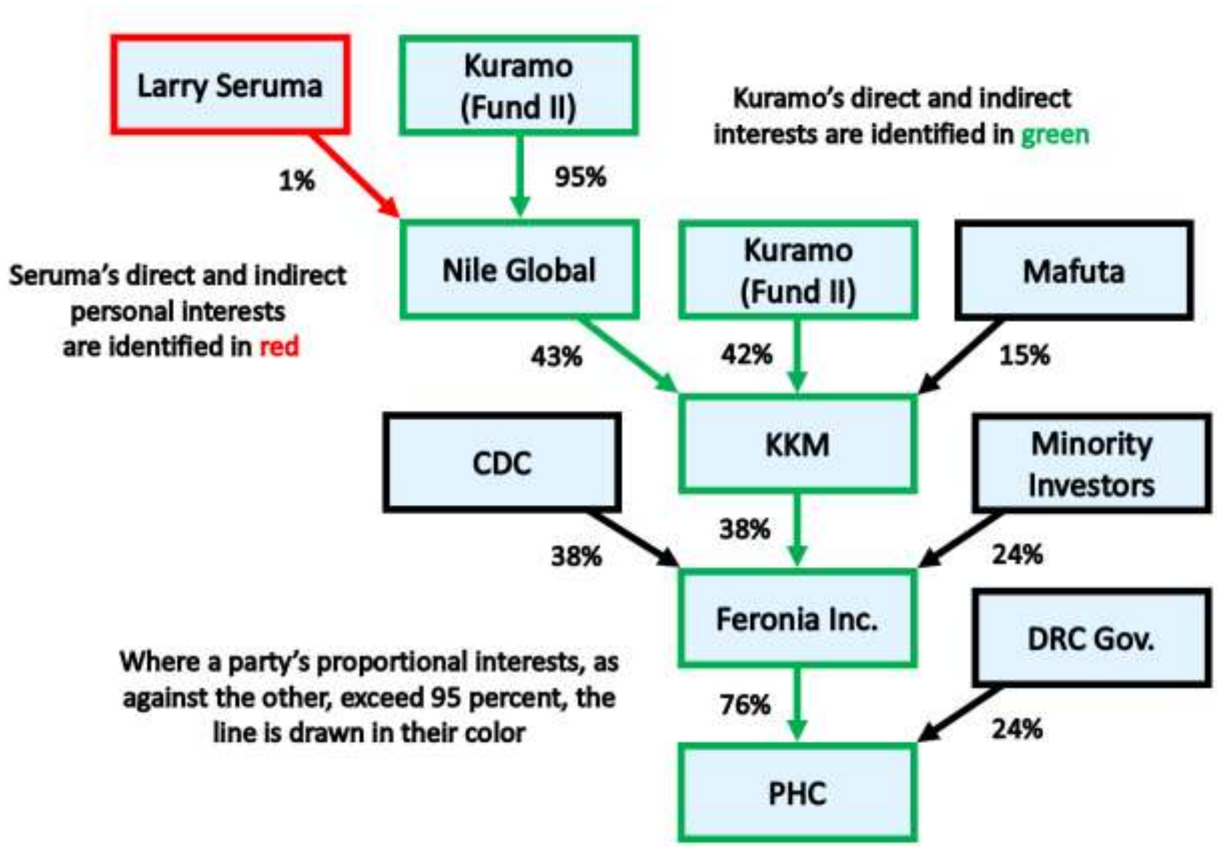
33 *Id.*

34 *Id.*-11.

35 *Id.*

36 *Id.*

Things stood thusly with the closing of the parties' initial PHC investment:[37]



37 *Id.*-13.

II. THE FIRST TWO YEARS OF THE PHC INVESTMENT.

A. Kuramo, Nile and Mafuta ("K-N-M") Jointly Manage the Investment.

K-N-M embarked on the PHC investment as a "Consortium"—a term regularly used by both sides contemporaneously and at trial.[38] From the outset, and thereafter continuously for the next three years, K-N-M managed the PHC investment collectively and with all parties' active participation.[39] Between 2017 and 2021, the principals of K-N-M met, e-mailed, texted or spoke by phone thousands of times regarding PHC.[40] As Seruma himself put it, the parties deliberated about the PHC investment "endless[ly]."[41]

In early 2017, Mpinga and Kuramo CEO Wale Adeosun had negotiated a contractual right for KKM to appoint three Feronia board members.[42] When Nile joined the Consortium, the parties agreed to allocate these seats equally among K-N-M.[43]

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38 *E.g.*, A380/787:21-24(Seruma); A424/840:20-841:05(Seruma).

39 *See* A138/42:03-17(Pallan); A192/258:02-15(Pallan); A/322552:09-554:03(Adeosun).

40 A140/52:12-17(Pallan).

41 A471/1030:02-09(Seruma).

42 Opinion-11 & n.60.

43 *Id.*; n.61.

In their Brief, defendants assert that "Adeosun and Pallan were never involved in managing PHC before" 2020, and in particular that "Adeosun never" joined Feronia's board of directors.[44] Defendants' only source for these statements is Seruma's trial testimony,[45] which was simply false. In fact, Adeosun sat directly alongside Seruma among KKM's first slate of Feronia directors in January 2018 (and was later replaced by Pallan).[46]

With regard to Kuramo supposedly "never [being] involved" in managing the PHC investment prior to 2020, Seruma's testimony is contradicted by literally hundreds of trial exhibits—all omitted from defendants' Brief. In the first months of the investment alone, Adeosun, Seruma and Mpinga traveled repeatedly to London for Feronia board meetings, Adeosun and Mpinga visited the PHC estates, and Adeosun negotiated directly with CDC on behalf of the Consortium.[47] Kuramo continued to play a leading role in the PHC investment (with Seruma's full knowledge and consent) throughout the events that follow.

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44 Br.-24.

45 *Id.* nn.85-88.

46 Opinion-11-12; *see also*, *e.g.*, B585; B594.

47 A139/45:18-46:03(Pallan); A321/550:22-551:14(Adeosun); B587-90; B593.

B. K-N-M Make a Second, Kuramo-Funded Round of PHC Investments

Prior to their initial PHC investment, K-N-M had been led to believe that their $17.5 million would be enough to both stabilize the company and fund key capital expenditures. Those representations, however, were quickly proven false. In May 2018, PHC management reported that the company was "running out of cash."[48]

K-N-M's principals approached the crisis at PHC by conferring intensively as a group.[49] By early October, they were agreed on the "way forward": a second tranche of PHC investments, on terms to be negotiated with CDC, conditioned on "significant changes to management, capital structure and business model."[50]

While those negotiations—led within the Consortium by Adeosun of Kuramo—played out, the Consortium agreed to support PHC's short-term operations through a bridge loan.[51] In December 2018, Seruma formed defendant KN Agri to serve as lender.[52]

With interim funding in place, the Consortium and CDC resumed their discussions about financing PHC long-term.[53] Those discussions culminated in a

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48 B591.

49 Opinion-15; n.74.

50 *Id.*; n.75.

51 *Id.*; nn.76-78.

52 *Id.*-16; n.84.

53 *Id.*-15; n.79.

May 2019 agreement for the Consortium and CDC to recapitalize PHC by acquiring additional Feronia shares in a private placement.[54] The Consortium and CDC each agreed to pay $9,155,753 for the shares.[55]

Within the Consortium, Kuramo directly and indirectly provided all the necessary funds. Between December 2018 and May 2019, Kuramo (CIV-III) contributed a total of $8,895,890.41 to KN Agri.[56] NGFF contributed the remaining $259,863.01.[57] All these latter funds derived from Kuramo's $25 million from 2017, NGFF having received no further investments in the interim.

With its $8,895,890.41 in capital contributions (out of $9,155,753 in total capitalization), Kuramo became the 97.16% direct owner of KN Agri—a fact that Seruma contemporaneously affirmed in writing.[58] NGFF, owned 95.2% by Kuramo, held the remaining 2.84%.[59] In connection with the private placement, KN Agri was admitted to KKM as a shareholder.[60]

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54 *Id.*-15-16; n.80.

55 *Id.*-16; n.81.

56 *Id.*; n.86.

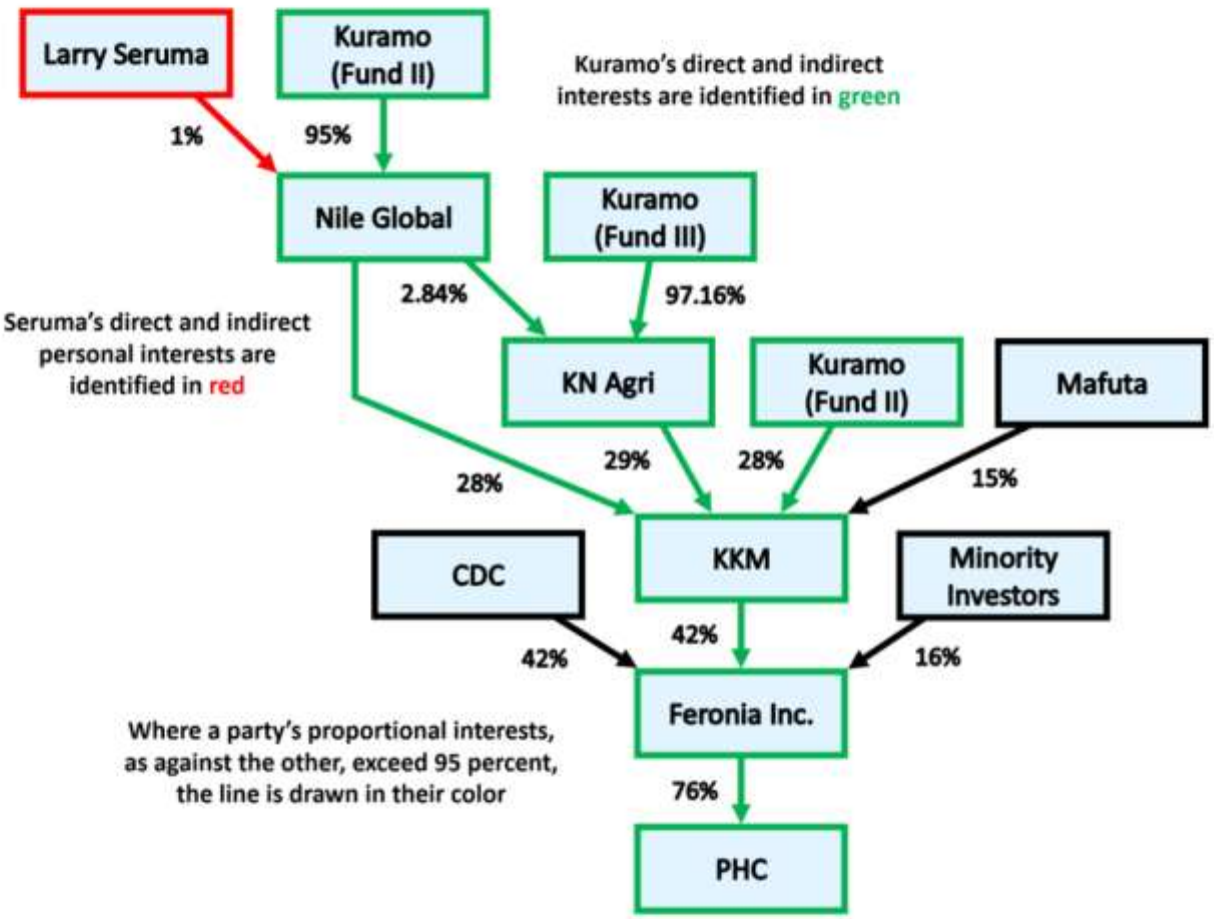
57 B599.

58 *Id.*-16-17; n.87.

59 *Id.*-17-18; n.91.

60 *Id.*-17; n.88.

As of May 31, 2019, the ownership structure of PHC looked as follows:[61]



C. The Consortium Prepares for a Third Round of PHC Investments.

Before the private placement closed, Feronia management had reported positive EBITDA for the first time in the company's history.[62] That representation, too, was quickly proven false. Just weeks later, on July 22, 2019, Feronia's

61 *Id.*-17.

62 *Id.*-17-18; n.91.

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Executive Chairperson Frank Braeken disclosed that the company was not in fact EBITDA positive—it was, again, nearly insolvent.[63]

Within the Consortium, Kuramo and Seruma disagreed about next steps. At the time, CDC was signaling its intention to dilute the Consortium's interests to insignificance if the group would not commit further capital.[64] Seruma, for his part, advocated that the Consortium cut its losses and walk away.[65] Kuramo disagreed, concluding that the investment could be salvaged if the Consortium was "in the driver's seat of restructuring the company."[66]

Seruma and Mpinga coalesced around Kuramo's view.[67] In fall 2019, Adeosun, on behalf of the Consortium, opened negotiations with CDC about a further recapitalization of PHC—this time conditioned on "fundamental changes" including a transition of authority from CDC to the Consortium.[68]

The negotiations between CDC and the Consortium, however, were superseded by intervening events. After being informed of the company's cash flow

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63 *Id.*; n.92.

64 *Id.*; n.95.

65 *Id.*; n.96.

66 *Id.*-18-19; nn.97-99.

67 *Id.*-19.

68 *Id.*; nn.100-01.

situation,[69] the DFI Lenders noticed a meeting at The Hague for February 2020 to discuss the future of the company.[70]

D. Mpala and The "Ring-Fence" Agreement

As the meeting at The Hague approached, Kuramo and Nile entered into discussions about the future of their own relationship.

For years, Seruma had been looking to launch a new fund—specifically, an agribusiness (or "food") fund—with Kuramo's support.[71] In the interim, Seruma's one remaining outside fund closed its doors.[72] Further, the performance of NGFF had cast serious doubt about that Fund's long-term prospects.[73]

With Braeken's July 2019 e-mail, a third round of PHC investments was now on the table.[74] On August 5, Seruma sent Adeosun a pitchbook proposing a "permanent vehicle" for making further agriculture investments, including in PHC.[75] A few weeks later, the parties agreed that KN Agri—which, as its name "K[uramo-

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69 B601.

70 Opinion-19; n.102.

71 *Id.*-32; n.178.

72 B595.

73 *Id.*

74 *Id.*

75 A906.

]N[ile] Agri[business]" suggests, was formed with this possibility in mind—would serve as that "permanent vehicle."[76]

Kuramo was prepared to support Seruma with regard to an agribusiness fund, and specifically to seed that fund with the parties' PHC investments.[77] There was, however, a problem. In addition to PHC, Seruma wanted to seed the fund with a purported personal asset of his called "Mpala," which he proposed to contribute to KN Agri in-kind at a $20 million valuation.[78]

The nature of this appeal precludes a full treatment of Mpala. In brief, Mpala was a holding company whose sole material asset consisted of thousands of acres of undeveloped scrubland in Uganda (Seruma's country of origin) that Seruma said he wanted to turn into an operating cattle ranch.[79]

In discovery in this case, numerous disturbing facts about Mpala emerged. For example, Seruma purports to have acquired Mpala using $7.5 million out of his alleged personal wealth.[80] But in private text messages, Seruma claimed to have "lost the paperwork" proving it—"nothing nefarious," though, he assured.[81]

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76 B600.

77 *Id.*

78 Opinion-32; n.180.

79 A906 (Masindi=Mpala). B638.

80 B1519/149:13-23(Seruma).

81 B651.

In discovery, Seruma produced only one document purportedly substantiating his claim of ownership: a one-page form, reciting consideration of a few thousand dollars, made out by an individual named Joven Serufusa.[82]

At his deposition, Seruma was asked, "who is Joven Serufusa?"

> A: I believe those are prior directors of Mpala.
>
> Q: It's more than one person or it's one person?
>
> A: It's one person I believe.[83]

Joven Serufusa is Seruma's brother, as document discovery later revealed.[84]

There is much more, from (i) Seruma secretly transferring hundreds of thousands of dollars at a time in investor money from NGFF to Mpala when Mpala was still a personal asset of his,[85] to (ii) Seruma secretly "negotiating" with his own nephew over a back-dated "investment agreement" for these transfers when Nile's administrator resigned over them,[86] to (iii) Seruma secretly guiding a valuation of

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[82] B950.

[83] B1540/170:05-11(Seruma).

[84] A534/1162:22-1164:06(Seruma).

[85] *Compare* B597 & B605-06 (reflecting April and September 2019 transfers of $600,000 each from NGFF to Mpala)], *with* B607-11 (Seruma contributed Mpala in October 2019).] Seruma effected these transfers personally when his one subordinate was OOO (B616) and without authorization from his then-administrator (B612), who resigned over them (*id.*).

[86] Two days after Nile's administrator resigned, Seruma texted a Ugandan lawyer, "I need to generate an investment agreement between Mpala and NGFF – I have sent you a draft…." B614. Seruma then forwarded the agreement to his nephew, Simon Lwanjo, who signed it minutes later. B621-22; A521/1110:12-

Mpala to reach a figure—$20 million—that he made clear at the outset, and again when his team initially valued the company at half that amount, he wanted to "enter into the accounts,"[87] to (iv) Seruma privately instructing his one subordinate not to "talk about Mpala" with Kuramo.[88]

To be clear, Kuramo knew none of this when, in August 2019, Seruma proposed that the parties pool Kuramo's PHC investments with Seruma's Mpala interest. All Kuramo knew was that Seruma said he valued Mpala at $20 million, but refused—not failed, but *refused*—to provide Kuramo with any documents to support that valuation.[89]

16(Seruma); B628. The next day, Seruma wired another $1,200,000 from NGFF to Mpala (*i.e.*, $2.4 million total). B630.

87 *Compare* B646 (March 2023 e-mail reflecting Seruma's desire to "enter [Mpala] into the accounts" at a "$20M USD" valuation), *with* B661 (April 13, 2020 preliminary valuation of 37b UGX—*i.e.*, ~$10m), *with* B689 (April 14 e-mail from Seruma: "the key element is valuation—per our earlier exchanges"), *with* B719 (April 16, 2020 updated valuation of 74b UGX—*i.e.*, $20.2m), *with* B779 (final Barfric valuation of 74b UGX).

88 B869. At the time, Seruma was telling Kuramo that an NGFF audit was delayed because of "COVID disruptions" that was purportedly prompting the auditors to resign." B868. He was lying. B865 (audit delayed because Seruma provided auditors neither "complete nor accurate information [on Mpala] that corroborate[d] [their] multiple discussions with [him]"); B863 (because "[we] do not have the whole Mpala/KN Agri capital structure resolved," and "the numbers [keep] changing," the "only option…is that we resign.").

89 Opinion-35 n.199. Because of the September 2019 "ring-fencing" agreement described below, Chancellor McCormick found it unnecessary to get too far into the weeds, simply describing Mpala's "background" as "suspect." *Id.*

Seruma's proposed contribution of his personal Mpala interest into KN Agri was, for Kuramo, an enormously consequential issue. Kuramo was, as noted above, the 97.16% direct owner of KN Agri, which had been established in December 2018 as a non-series, "pooled" vehicle.[90] To accede to Seruma's proposal would mean a substantial dilution in Kuramo's beneficial ownership of PHC—a dilution based not on cash but on a conflicted, in-kind contribution of Ugandan farmland of uncertain value.[91] Kuramo objected.[92]

On or about September 12, 2019, Kuramo and Seruma reached an agreement that allowed the parties to move forward on the food fund while ensuring that Kuramo would not be diluted by Mpala. To address Kuramo's "comments on [the] valuation" of Mpala, Seruma proposed reorganizing KN Agri "to create separate share classes"—one for the parties' investments in PHC, and another for Seruma's Mpala interest.[93] Kuramo agreed.[94]

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90 Opinion-34 n.193.

91 Opinion-34.

92 *Id.*; n.195.

93 B603; Opinion-34-35; n.196.

94 Opinion-35; n.197.

Reorganizing KN Agri as a series LLC was Seruma's idea.[95] What Kuramo cared about was not having its PHC interests in KN Agri diluted by Mpala.[96] Creating separate series—"ring-fencing" (as Seruma put it) Kuramo's PHC investments from Seruma's personal Mpala interest—represented the means Seruma selected for effectuating that agreed-upon outcome.[97]

In the proceedings below, every aspect of the parties' September 2019 agreement to "ring-fence" Kuramo's PHC interests from Seruma's personal Mpala interest was completely undisputed. On this appeal, however, defendants pretend that the agreement did not exist. They refer to it not even once.

In what can only be described as an attempt to defraud this Court, defendants write instead that "Nile and Kuramo agreed that they would…pool the Mpala and PHC investments in KN Agri."[98] The only source for this statement, obscured through deliberately vague citing, is an after-the-fact e-mail from Seruma's own lawyer, Ed Lamek, articulating Seruma's litigation position.[99] At trial, Lamek

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95 *Id.*-36; n.204.

96 *Id.*; n.205.

97 *Id.*; n.206.

98 Br.-17.

99 *See* A2501 (cited at Br.-18 n.51).

specifically disclaimed any personal knowledge of this supposed agreement—*i.e.*, he was simply saying what his client Seruma paid him to say.[100]

After the parties undisputedly agreed not to "pool the Mpala and PHC investments in KN Agri," but rather to segregate Kuramo's PHC investments from Seruma's Mpala interest in separate series of the fund, Seruma approached Kuramo with a smaller, Mpala-related request. In December 2019, Seruma asked Kuramo to consider a separate, direct investment into Mpala in the amount of $2.5 million.[101]

In January 2020, Kuramo repeatedly asked Seruma for basic documentation and information about Mpala for purposes of presenting the proposal to Kuramo's investment committee.[102] Seruma, once again, refused.[103] After a series of unilluminating exchanges, Pallan texted Seruma:

> We have been trying in vain to put together a document on [Mpala]. The only thing we have is that [Mpala] is valued at $20 million. No title, no financials, nothing. How are we supposed to fund a direct investment with no information? You have to help us out here otherwise we can't move forward in this way.[104]

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100 A575/1326:06-1327:08(Lamek); A575/1327:18-22(Lamek); A575/1328:19-24(Lamek); A576/1330:17-21(Lamek).

101 Opinion-35 n.199.

102 *Id.*

103 B638-40.

104 B641.

Seruma's response:

> We are comfortable with the valuation and believe the assets are undervalued. If this is a point you can't cross let us know….[105]

Seruma's refusal to substantiate his claimed $20 million Mpala valuation was in fact a "point [Kuramo couldn't] cross." Kuramo declined to make the proposed investment,[106] and then spent the following months negotiating the documentation necessary to "ring-fence" Kuramo's PHC investment away from Mpala.[107]

That documentation took the form of a supplement for Series B—the only KN Agri Series with any exposure to PHC and the only Series in which Kuramo had, and was ever offered, any interest.[108] It took until June 2020 for the parties to finalize the Series B supplement, identifying the DRC as the only country in which investments in this Series could be made.[109]

Ultimately, Seruma created three Series of KN Agri:

- In <u>Series A</u>, Seruma placed $2.4 million of "investments" by NGFF in Mpala.[110] Seruma disclosed these "investments" (though not the

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105 *Id.*; B643 ("You don't have to agree with me [on] valuation but we are not changing…the numbers.").

106 Opinion-35 n.199.

107 *Id.*-35-36.

108 A168/163:08-15(Pallan).

109 Opinion-36-37; n.203. The Supplements for the remaining Series did not permit DRC investments. *Id.*; nn.200-02.

110 Opinion-35; n.199; *see also supra* n.86.

circumstances behind them) to Kuramo in January 2020.[111] As this exposure was small, and did not dilute Kuramo in any way, Kuramo acquiesced to it.[112]

- In Series B, Seruma placed all KN Agri's existing PHC interests.[113]

- In Series C, Seruma placed his personal Mpala interest.[114] Despite having "lost the paperwork" establishing that he even owned Mpala in the first place, Seruma contributed this interest to Series C at his desired valuation of $20,155,027.[115] Kuramo had no reason to object, and did not. Seruma's contribution of Mpala into a Series of KN Agri in which Kuramo had no interest, at whatever price, had no impact on Kuramo—which, of course, was the entire point of the parties' September 2019 "ring-fence" agreement.

The reorganization of KN Agri as a series LLC, including the parties' negotiations over the Series B Supplement, took place amidst the parties' third and final round of PHC investments—the subject of the following Section III. Heading into those investments, all KN Agri's PHC interests were held in Series B (owned 97.16% by Kuramo and 2.84% by NGFF), while Series A (owned 100% by NGFF) and C (owned 100% by Seruma) held only Mpala:[116]

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111 A169/167:07-168:21(Pallan); B640.

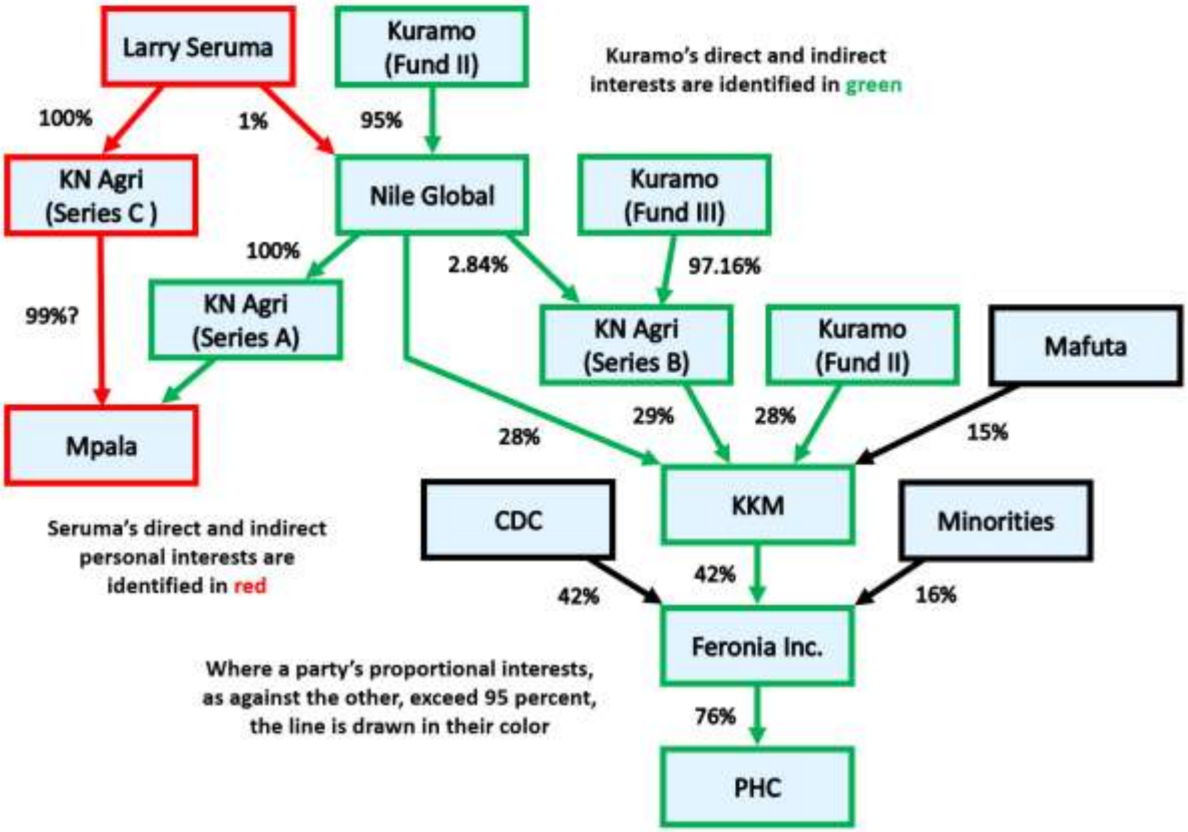
112 A169/168:17-21(Pallan).

113 Opinion-35.

114 *Id.*

115 *Id.*

116 B1.


Larry Seruma
Kuramo (Fund II)
Kuramo's direct and indirect interests are identified in green
100%
1%
95%
KN Agri (Series C)
Nile Global
Kuramo (Fund III)
100%
2.84%
97.16%
99%?
KN Agri (Series A)
KN Agri (Series B)
Kuramo (Fund II)
Mafuta
Mpala
28%
29%
28%
15%
KKM
CDC
Minorities
Seruma's direct and indirect personal interests are identified in red
42%
42%
16%
Feronia Inc.
Where a party's proportional interests, as against the other, exceed 95 percent, the line is drawn in their color
76%
PHC

III. SERUMA IMPLEMENTS A THIRD ROUND OF PHC INVESTMENTS TO EMERGE PURPORTEDLY OWNING THE INVESTMENT PERSONALLY.

Beginning in early 2020, the parties made a third and final round of PHC investments. This round, like the two preceding it, was funded exclusively by Kuramo. Unlike the prior two rounds, Seruma was entrusted to implement it. By the time the Challenged Transactions (as herein defined) closed in November 2020, Kuramo had invested over $36 million into PHC, to Seruma's $0. According to Seruma, the PHC investment now belonged to him.

A. The Hague

The genesis of this final round of PHC investments was the February 2020 meeting at The Hague previewed above—a meeting the DFI Lenders had called to discuss PHC's future after learning of the company's financial situation.[117] The K-N-M principals all attended in person.[118]

Prior to the meeting, the Consortium and CDC had been at odds over who bore responsibility for PHC's performance to date, and who should be entrusted to lead the company going forward. At the meeting, the DFI Lenders intervened decisively in favor of K-N-M. When CDC tried to strongarm the Lenders into writing off their debt as a condition to CDC providing any further funding, the

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117 *Supra*, 19.

118 Opinion-19.

Lenders countered by offering to do so if, and only if, CDC agreed to "hand over" its PHC interests to the Consortium for one dollar.[119]

The DFI Lenders' proposal was received in the moment as a bombshell.[120] CDC had been Feronia's controlling shareholder for years before the Consortium's initial investment, and had invested tens of millions of dollars into PHC. With the DFI Lenders' agreement in principle to write off most of their debt, CDC's interests now stood to become immensely more valuable—and the Consortium now had the opportunity to acquire them for cents on the dollar.

B. The Support Agreement

Over the next three months, the Consortium negotiated intensively with CDC and the DFI Lenders over the terms of the K-N-M "hand-over" proposed by the Lenders at The Hague. These negotiations were led within the Consortium by Adeosun of Kuramo, who spoke and e-mailed with CDC's CEO dozens of times.[121]

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119 Opinion-20. Seruma, who was present, testified to not remembering "at all" any "proposal that CDC should…hand over its interest to KKM." A460/984:05-985:06(Seruma). He was lying. *See* B644 (contemporaneous e-mail from Seruma referencing "proposal to hand over to KKM as discussed in the meeting").

120 Opinion-20.

121 A155/111:21-112:12(Pallan); A323/556:14-558:03(Adeosun); *see*, *e.g.*, B653; B686; B737; B746; B751; B760; B768. Defendants falsely assert that it was "Seruma's leadership" that generated the "extraordinary value" of the Support Agreement. Br.-17. In fact, Kuramo led the (successful) negotiations that resulted in this value—as evidenced by dozens of trial exhibits.

Adeosun succeeded in persuading CDC to relinquish not only its control over PHC and Feronia, but all its equity as well.[122]

The product of the Consortium's negotiations with CDC was a May 20, 2020 "Support Agreement."[123] The purpose of the Agreement, as CDC's CEO explained late in the negotiations, was to delineate "a process[—]receivership, stalking horse sale process, trustee in bankruptcy etc…[—through which] KKM will buy the interests of Feronia [in PHC]."[124] That is precisely what the final agreement, executed two weeks later, provided.

To-wit, in the Support Agreement, each of PHC's principal stakeholders agreed to pursue a meticulously-structured, multi-step "Transaction" (so-defined) through which Kuramo, Nile and Mafuta would acquire all of Feronia's PHC interests through a NewCo.[125] The parties pledged to implement this Transaction by executing nine discrete "Transaction Steps," all carefully negotiated.[126]

In <u>Step 1</u>, the Consortium would make available $5 million in immediate financing to support PHC's operations, together with another up-to-$10 million, as

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122 *Compare* B653, *with* B746.

123 A1081.

124 B761.

125 A1081.

126 A159-60/128:22-129:17(Pallan); A161/133:01-14(Pallan).

needed, over the following months.[127] This up-to-$15 million facility represented the principal economic consideration for the Consortium's PHC acquisition.

In Step 2, the Consortium would form a "NewCo" to acquire Feronia's interests in PHC.[128] As the point of the Support Agreement was to effectuate the CDC-Consortium "hand-over," the Agreement required that the NewCo be "wholly-owned" by the Consortium's existing entity KKM2.[129]

Steps 3 and 4 concerned a third-party sales process whereby Feronia agreed to market its PHC interests externally.[130]

In Step 5, the Consortium agreed to make a "stalking horse" bid on specified terms.[131]

Step 6 provided for K-N-M to acquire Feronia's PHC interests through a Canadian restructuring proceeding, the "exclusive purpose of" which was to "implement[] the Transaction on an expedited basis."[132]

Step 7 called upon the Consortium to reaffirm its commitment to provide the $10 million in financing outstanding after disbursal of the $5 million in Step 1.

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127 A1107-08; A170/169:20-170:09(Pallan).

128 A1081.

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

Step 8 concerns acceptance of the Consortium's offer by the disinterested members of the Feronia board, and subsequent execution of a purchase agreement to effectuate the transfer of Feronia's PHC interests to the K-N-M NewCo.[133]

Step 9 reflects the DFI Lenders' agreement in principle to write off a majority of their debt upon completion of the "hand-over" from CDC to KKM, on terms to be negotiated while the remaining Steps played out.[134]

C. Seruma Is Placed in Charge of Implementing the Transaction.

The Support Agreement represented the culmination of three years of investing in PHC. After months of intense negotiations led by Kuramo, the Consortium now had a clear path to both controlling and owning PHC—indeed, a PHC free of tens of millions of dollars in debt. All that remained was the blocking and tackling of implementing the nine Transaction Steps.[135] This represented a significant amount of administrative work.[136] Seruma volunteered to do it.[137]

Adeosun, having spent months negotiating the Support Agreement with CDC, consented.[138] On or about May 20, 2020, Seruma, by agreement with Kuramo,

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133 *Id.*

134 *Id.*

135 A175-76/192:22-193:09(Pallan).

136 A191-92/256:23-257:09(Pallan).

137 A170/171:24-172:15(Pallan); B745; A325/564:03-18(Adeosun).

138 A324/563:05-17(Adeosun); A334/600:04-601:12(Adeosun); B1240-41.

became Feronia's Executive Chairperson.[139] He immediately took the lead in implementing each of the nine Transaction Steps.[140]

In passing the baton to Seruma to implement the Transaction, Kuramo was placing its trust in a fiduciary who was managing tens of millions of dollars from Kuramo and essentially no outside money—the manager of two (and only two) funds that were both owned over-95% by Kuramo. Kuramo had no idea that Seruma was about to use his practical control to purportedly make himself at least the majority owner of the PHC investment, to Kuramo's alleged total or near-total exclusion.[141]

D. Seruma Secretly Implements the Transaction for His Own Benefit.

The Transaction that Seruma took charge of implementing on May 20, 2020 was to unlock tens of millions of dollars in equity value for the Nile Funds. Crucially, however, the Transaction had been structured to maintain the allocation of that value *within* the Nile Funds. And Seruma, who stood to earn many millions of dollars in fees and carry from his role as manager, held only a *de minimis* personal ownership interest in those Funds. He decided that it just wasn't enough.

Over the next six months, Seruma completed each of the nine Transaction Steps on behalf of the Consortium, from distributing the initial $5 million bridge

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139 Opinion-22; n.115.

140 *Id.*; n.116.

141 A175-78/192:22-202:03(Pallan), A191-92/256:06-258:01(Pallan), A324/560:11-562:19(Adeosun), A329/582:03-583:10(Adeosun).

loan (funded in full by Kuramo) to PHC,[142] to engaging a financial advisor and outside counsel to market Feronia's PHC interests externally,[143] to preparing and submitting the Consortium's "stalking horse" bid,[144] to overseeing the Canadian restructuring proceedings,[145] to entering into an equity support agreement,[146] and finally to negotiating with the DFI Lenders over the terms and conditions of the debt write-off to which they had agreed earlier in principle.[147]

Simultaneously, Seruma was secretly structuring the Transaction ***within*** the Nile Funds so as to come out the other side owning 60-100% of the PHC investment personally—compared to the 0.1% he had owned previously.

E. The Three Maneuvers

As Chancellor McCormick noted in the Opinion, "[t]racing Seruma's path from 1% to a [claimed] majority interest has proven extremely difficult."[148] That is an understatement. Even in the proceedings below, "Seruma refused to provide straight answers or take clear positions" on the extent of his claimed interests.[149] To

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142 Opinion-22-23; nn.118-23.

143 *Id.*-23-24; nn.126-28.

144 *Id.*-24 nn.129-31.

145 *Id.*, n.132.

146 *Id.*, n.133.

147 *Id.*-25; nn.135-38.

148 Opinion-30.

149 *Id.*-42.

the contrary, as the Chancellor documented at length, in the proceedings below Seruma changed his story half-a-dozen times.[150]

In the moment, Seruma said nothing to Kuramo about having *any* personal interests in the Transaction as he was bringing it about—a tactic he has now employed again on appeal. Rather, as set forth in the following subsection, Seruma repeatedly lied to Kuramo's principals about what he was doing.

Nonetheless, document discovery in this case revealed that Seruma purportedly granted himself a 60-100% interest using three basic steps:

(i) The NewCo Maneuver

As noted above, the second Transaction Step involved creation of a "NewCo" to purchase Feronia's PHC interests. Under the Support Agreement, this NewCo was to be "wholly-owned" by the Consortium's existing entity KKM2.[151] This was negotiated with CDC, and conveyed repeatedly to the DFI Lenders—including by Seruma personally.[152]

Had the acquisition been carried out through a NewCo "wholly-owned" by KKM2, as provided in the Support Agreement, then Kuramo undisputedly would have come out the other side owning—as between the parties (*i.e.*, Mafuta

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150 *Id.*-42-43; nn.225-32 (detailing at length Seruma's evasive and contradictory litigation positions).

151 A1081.

152 B803.

aside)[153]—over 99% of the PHC investment.[154] By virtue of its over-$26 million in capital contributions to that point (compared to Seruma's $0), Kuramo beneficially owned all of KKM, which under the Support Agreement would go from owning a minority of PHC through Feronia to owning all Feronia's PHC interests directly.[155]

In June 2020, Seruma formed the NewCo on behalf of the Consortium, which he named "Feronia KNM"—for Kuramo-Nile-Mafuta.[156] Instead of forming it as a subsidiary of KKM2, however, Seruma formed it as wholly-owned by KN Agri.

This, alone among the three steps, was disclosed to Kuramo at the time.[157] Kuramo, as the 97.16% direct owner of KN Agri (and the 99.9% direct and indirect owner), gave its consent.[158]

Seruma undisputedly did not tell Kuramo that the economic substance of the Transaction was changing in any way[159]—which it would not have if Seruma had placed Feronia KNM into Series B, as discussed immediately below. To the contrary,

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153 For simplicity, we omit further reference to Mafuta's KKM interests.

154 A177/200:07-20(Pallan).

155 A177-83/200:07-224:09(same).

156 Opinion-23; n.125.

157 *Id.*-31, 37.

158 *Id.*

159 A177-78/200:14-201:01(Pallan). Pallan specifically expressed to Seruma his understanding that the economics of the Transaction were unaffected by this choice; Seruma never said otherwise. *See*, *e.g.*, B967.

Seruma passed along this information, in the postscript of a June 9, 2020 e-mail to Pallan, "As an FYI."[160]

(ii) The Series Maneuver

As of early June 2020, the parties were still negotiating the documentation necessary to effectuate their September 2019 agreement to "ring-fence," within separate Series of KN Agri, Kuramo's PHC investments from Seruma's purported Mpala interest.[161] On the same day Seruma informed Kuramo that he was forming Feronia KNM as a subsidiary of KN Agri, the parties agreed on the Series B Supplement to govern Kuramo's interests in that KN Agri Series going forward.[162]

Seruma undisputedly told Pallan that he was placing Feronia KNM into Series B.[163] Pallan testified to that point at trial,[164] and Seruma did not deny it. Over the following months, Kuramo's principals repeatedly expressed to Seruma, both orally

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160 B831.

161 *See supra*, 24-25.

162 Opinion-38. At trial, defendants never even tried to explain why the parties spent months negotiating over the supplement for a Series that, in Seruma's after-the-fact telling, was never intended to play any further role.

163 Opinion-31.

164 A189-90/245:20-252:11(Pallan).

and in writing, their understanding that the acquisition was being carried out in Series B.[165] Seruma never responded that their understanding was incorrect.[166]

Had Seruma placed Feronia KNM into Series B, as he told Kuramo he was doing, then Kuramo undisputedly would continue to own, as between the parties, 99.9% of the PHC investment—as it had before the Transaction.[167] Instead, however, Seruma placed Feronia KNM into KN Agri Series A—a Series that Seruma had used to make NGFF "investments" into Mpala, and for no other reason, and whose Series Supplement did not even permit investments in the DRC.[168]

(iii) The Mpala Maneuver

With the NewCo Maneuver and the Series Maneuver, Seruma had purportedly rendered irrelevant all Kuramo's existing PHC interests. Kuramo, however, still owned 95.2% of NGFF—the sole owner of KN Agri Series A.[169] Seruma remained NGFF's 1% owner.

With the Mpala Maneuver (which, together with the Series Maneuver, the "Challenged Transactions"), Seruma purported to reverse those interests. In October

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165 *See infra*, 74.

166 Opinion-46; n.247.

167 A189/245:24-246:06(Pallan).

168 Opinion-36; nn.201-03.

169 *Supra*, 9.

2020, Seruma transferred his personal Mpala interest, which he had just "ring-fenced" in KN Agri Series C by agreement with Kuramo, into NGFF.[170]

Seruma did so at the same $20,155,027 valuation to which Kuramo had objected only months earlier—the exact valuation that led the parties to agree on the September 2019 "ring-fencing" agreement.[171] Indeed, as the Chancellor found, "much of what Seruma did [at this point] appears [to have been] geared to evade [this] Ring-Fence Agreement."[172] In so "evad[ing]" agreement, Seruma purports to have granted himself at least a majority ownership interest in PHC.

We say "at least" a majority PHC interest because at trial Seruma credited himself with only(!) a 50-60% interest.[173] In the two years leading up to trial, however, Seruma repeatedly asserted that he owned 100% of the PHC investment.[174]

This Seruma purported to achieve by assigning the PHC investment to a separate, "founders' class" of NGFF in which he, but not Kuramo, held interests.[175] Seruma then took the position that Kuramo, as the holder of "Class P" interests only,

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[170] Opinion-38-39; nn.214-19.

[171] *Supra*, 28.

[172] Opinion-31.

[173] A479/1062:10-1063:11(Seruma).

[174] Opinion-41; n.224.

[175] B1243-49.

had no interests of any kind in the founders' class or, indirectly, in PHC.[176] On that basis, Seruma then stated—over a year into the proceedings below—that NewCo was "wholly owned and controlled by Seruma" personally.[177]

* * *

When Seruma took control over implementing the Transaction, he held a 0.1% beneficial interest in the PHC investment. Through the above Maneuvers, Seruma purported to increase that personal interest by between 6,000 and 10,000 percent—a benefit that Seruma's trial expert calculated to be worth between $72.1 million and $135.5 million.[178] Regardless of whether Seruma implemented the Challenged Transactions so as to grant himself a 100% PHC interest (as he claimed for years), or merely a 50-60% interest (as he claimed at trial), Seruma used his fiduciary authority to divert tens of millions of dollars in value—value that would have otherwise flowed to Kuramo—to himself.

F. Seruma Repeatedly Lies to Kuramo.

Over the course of summer and fall 2020, as Seruma implemented each of the Transaction Steps, the principals of K-N-M conferred on a near-daily basis—as they

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[176] B1337 ("[N]one of the Kuramo entities have any membership interest in non-Series B investments, including PHC and Feronia KNM, all of which are not related to either the Series B interests (or the Series P interests for that matter).").

[177] B2281.

[178] A3172-73. The $135.5 million is based on extrapolating Seruma's "assumed" 53.2% interest to the 100% he has often claimed.

had for years.[179] Altogether, the principals of K-N-M met, e-mailed, texted and spoke by phone hundreds of times over these months.[180]

Not <u>once</u> did Seruma tell Kuramo that he was implementing the Transaction in such a way that he had <u>any</u> personal interest in it. Indeed, in the proceedings below, Seruma never even *claimed* to have made such a disclosure.

To the contrary, Seruma repeatedly represented to Kuramo that he was implementing the Transaction in such a way that Kuramo would remain the investment's overwhelming beneficial owner.[181]

For example, on September 16, 2020, Pallan and Seruma had a lengthy telephone call about the manner in which Seruma was implementing the Transaction within the Nile Funds.[182] On that call, which Seruma surreptitiously recorded,[183] Pallan asked Seruma to confirm that, under the Transaction as Seruma was implementing it, "[Kuramo] own[s]…97 percent of KN Agri, right?"

Seruma responded,

> Right. So whatever is – you own 90-whatever it is. You own 97 percent of whatever is Nile and whatever – this is

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179 *Supra*, 13-14.

180 A149/86:20-87:08(Pallan); A191-92/256:06-258:01(Pallan).

181 Opinion-44-46; nn.237-45.

182 A1983.

183 A180/212:15-21(Pallan).

> what I said to you. Whatever it is in Nile you own a majority of it, 97 percent….[184]

When Pallan followed up, "and the 97 percent is basically the 8.9 [(the $8,895,890.41 that Kuramo contributed into KN Agri in 2019)] divided by 9.2 something [(KN Agri's total PHC-related capitalization of $9,155,753)], right?", Seruma responded,

> No, it's really the entire fund because the entire fund is owned by you.[185]

On September 28, 2020, in another telephone call that Seruma secretly recorded, Pallan asked Seruma, "So I do see that it's an investment but ultimately we're the hundred percent beneficial owner, right?" Seruma responded,

> Yeah.[186]

The following day, Seruma told Adeosun, in trying to persuade Adeosun that he (Seruma) should be allowed to become PHC's new chief executive,

> as far as I'm concerned, my interest in this business and Kuramo are completely aligned because it's a financial investment. You know, whatever money I make falls into Kuramo or whatever it is falls into Kuramo.[187]

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[184] A2004/21:05-16.

[185] A2004/21:17-24.

[186] B1013/17:01-04.

[187] B1090/19:07-12.

When Adeosun pressed on that point, Seruma responded,

> Yeah, everything goes back to Kuramo. That's what I'm saying. Everything goes back to Kuramo.[188]

In December, when another operational disagreement among the parties had broken out, Pallan felt compelled to remind Seruma that Kuramo was "the 99% beneficial owner of this asset!"[189] By this point, the Transaction had closed, and, Seruma would later claim, Kuramo no longer had any remaining interest in PHC. Seruma responded, "no need to pull rank." "I act in the best interest of Kuramo."[190]

Seruma had literally hundreds of opportunities to tell Kuramo that he was implementing the Transaction such that he, rather than Kuramo, would own PHC. Instead he continued to circulate org charts identifying Kuramo as the investment's 99.9% owner.[191] Among these was a chart embedded in a November 2020 report prepared for and in fact sent (by Seruma) to the DFI Lenders, dealing specifically with the parties' post-Transaction ownership structure, on which Kuramo and Seruma collaborated closely.[192]

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188 B1100/29:18-22.

189 B1146.

190 *Id.*

191 Opinion-45; n.237.

192 B991; B1114; B1115; B1127.

As noted above, Kuramo repeatedly expressed to Seruma its understanding and expectation that the Transaction was being carried out within KN Agri Series B, including in repeated e-mails and during multiple in-person working sessions in which the parties diagrammed the Transaction structure on (contemporaneously photographed) whiteboards.[193] Not once did Seruma respond that Kuramo's understanding was incorrect.[194] Again, it cannot be overstated—in the proceedings below, Seruma never even claimed to have made such a disclosure.

To be clear, the above documents and recorded phone calls are just examples. At trial, Kuramo introduced dozens of other exhibits reflecting that Seruma led Kuramo's principals to (beyond-reasonably) understand that he was implementing the Transaction such that Kuramo would remain the 99.9% beneficial owner of the PHC investment.[195] On appeal, defendants simply pretend that none of these documents and communications exist.

Instead, defendants urge that, at some point in 2020, Kuramo and Seruma purportedly agreed that, upon the closing of the Transaction, Seruma would own

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193 Opinion-46; n.245; B987-90; A189-90/246:12-249:21(Pallan); B1126; A190-91/252:12-254:10(Pallan).

194 *Id.*

195 *See*, *e.g.*, B859 (Adeosun to Seruma: "We are getting 100% of the company for $15M and saving our $26M investment. You would do that deal all day.").

60% of the PHC investment personally.[196] Kuramo, despite entering the Transaction owning 99.9%, and funding the Transaction in full, supposedly agreed to accept a 40% interest—which Kuramo would only receive if it funded every dollar of the $15 million facility contemplated in Step 1 above, even though that facility had been structured to be callable only on demand (by Seruma) as needed.[197]

Defendants do not claim an actual written agreement between Kuramo and Seruma authorizing this remarkably self-interested outcome. No such agreement exists. Nor is there a term sheet or prospectus, or even an e-mail or text. As the Chancellor found, this supposed agreement was predicated on "interesting" and "fuzzy math," "intentional vague[ness]," and logical contradictions.[198] The Chancellor even found factually that the agreement was devised by Seruma after the fact[199]—a point confirmed by Seruma's contemporaneous e-mails.

Shortly after the dispute broke out, for example, Seruma tried workshopping, with an erstwhile supporter, a 60/40 agreement predicated upon a partial redemption of an investment called GenAfrica.[200] In that e-mail, Seruma made clear that he

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196 Opinion-32, 41.

197 *Id.*

198 Opinion-40-41.

199 *Id.*-40 ("to get to a position that [defendants] like, they had to take another narrative step").

200 B1322 ("ownership of FKNM was to be based on new money…[of] $15 million plus transaction costs estimated at $3 million," with Kuramo's 40% interest

might have to come up with something different "if the numbers [didn't] work."[201] Seruma evidently concluded that the "numbers" did not, in fact, "work," because at trial Seruma testified (for the first time) to an entirely distinct 60/40 agreement, with a different numerator and denominator, having nothing to do with GenAfrica.[202]

Chancellor McCormick weighed Seruma's testimony against the dozens of trial exhibits contradicting it—to say nothing of the contrary testimony of Pallan, whom the Chancellor found, unlike Seruma,[203] to be a credible witness[204]—and concluded, factually, that no 60/40 agreement existed. On appeal, defendants disingenuously present the supposed 60/40 agreement as fact, while omitting any reference to the e-mails, texts, recorded phone calls, whiteboards, trial testimony and other evidence that led the Chancellor to find it fiction.

($7.2m/**$18m**) based on its $15 million less an $8 million debit from a "sale" of NGFF's GenAfrica interest to CIV-III). Seruma conveyed this same supposed 60/40 agreement, predicated on an **$18m** denominator, to the DFIs in the days immediately after the dispute arose. B1252. They concluded he was making it all up. *Infra*, 61-62.

201 B1322.

202 Br.-20-21 ("The 60/40 (Nile Kuramo) split of KN Agri was premised on the ascribed value of Mpala (23/**38** = 60%) and Kuramo's conversion of the Bridge Loan to equity (15/**38** = 40%).") (emphasis added).

203 Opinion-87.

204 *Id.*

IV. SERUMA'S MISCONDUCT COMES TO LIGHT.

In summer and fall 2020, the principals of K-N-M were in near-daily contact about a variety of matters related to PHC, including what use to make of the direct control over the company that the Consortium was acquiring.

Within the Consortium, Kuramo negotiated with Mafuta on behalf of both itself and Nile. In their brief, defendants attempt to portray these negotiations as secret and untoward.[205] In fact, every aspect of the negotiations, including a "path to control" for Mpinga, took place with Seruma's full knowledge and consent.[206]

Kuramo's negotiations with Mafuta focused on two issues: governance and ownership. On governance, Mpinga sought Kuramo's consent in becoming PHC's chief executive, a position known in the DRC as "Director General" ("DG"). With regard to ownership, the principal question was whether the parties' historical investments would count towards the equity of Feronia KNM.

In their Brief, defendants correctly note that Mpinga, who sought to pay as little as possible to maintain his 15% interest, argued that "all historical funding is irrelevant and must be foregone."[207] Defendants then 100%-misstate Kuramo's

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205 Br.-33-35, 51-53.

206 *See*, *e.g.*, B851 (term sheet shared with Seruma reflecting Mafuta's "desire to acquire a controlling interest in NewCo"). This "path to control" for Mafuta had been a feature of K-N-M's arrangements since at least October 2017. B562. Defendants once again misrepresent the record by pretending otherwise.

207 Br.-23.

contemporaneous position, which was that the parties' historical PHC investments of $17.5 million from 2017-18, and $9.2 million from 2019, would count equally with the $15 million of new money (for a total of $41.7 million).[208]

Seruma was not only aware of Kuramo's position at the time,[209] he shared it completely: "[for purposes of determining equity interests in NewCo,] the new money is not all."[210] On appeal, defendants again simply pretend otherwise.

While Kuramo was negotiating governance and ownership with Mafuta, Kuramo was engaged in parallel negotiations with Seruma over governance. There was no ownership negotiation with Seruma,[211] who, again, entered the Transaction with only a *de minimis* personal interest and never disclosed that he was implementing the Transaction to change that.

Kuramo's governance discussions with Seruma, like those with Mpinga, centered on the position of DG—a role Seruma now sought for himself. Seruma—a Ugandan national based in New Jersey, with no experience running an operating business other than a U.S. investment fund, who neither spoke nor understood the language (French) and dialect (Lingala) in which the business of PHC was

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208 B1118 ("Accept basis of funding going forward will be $41.7m….THIS IS SETTLED AND AGREED").

209 B1158.

210 B828.

211 A329/582:03-19(Adeosun); A326/568:24-569:11(Adeosun).

principally conducted—was not an obvious fit for this role. Nevertheless, he spent much of fall 2020 trying to persuade Adeosun that he was right for it, including on several of the recorded calls discussed above in which Seruma assured Adeosun that he was working in Kuramo's interests.[212]

On January 22, 2021, Adeosun e-mailed Seruma a PHC governance structure reflecting Kuramo's considered views:

- Neither Seruma nor Mpinga would be PHC's DG. Instead there would be a search for a local, professional manager.
- Above the DG would be a separate CEO, with that role occupied by Mpinga.
- K-N-M each would be represented on Feronia KNM's board. Adeosun would be chair; Seruma, vice-chair.[213]

Seruma was furious. He wrote back that day to lay out his conditions for avoiding a "complete separation of Nile and Kuramo."[214] Although Adeosun urged Seruma to "sleep [the matter] over," Seruma remained unplacated.[215] At this point, Seruma was in the DRC, and Adeosun resolved to go meet him there.[216]

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212 *Supra*, 44-45.

213 A2151.

214 B1169.

215 B1176.

216 A194/268:04-16(Pallan); A330-31/587:23-588:08(Adeosun).

A. Seruma Attempts to Supersede the Parties' Discussions Through a Brazen Act of Dishonesty.

When Adeosun traveled to the DRC in early February 2021, Kuramo hoped to find a consensual path forward with Seruma.[217] In the event that proved impossible, however, Adeosun and Pallan were prepared to exercise Kuramo's contractual right to redeem from the Nile Funds.[218]

Adeosun and Seruma met in the DRC on February 4th and 5th. The meetings were tense, but seemingly constructive.[219] They agreed to meet again the next day.[220]

On February 6, Seruma told Adeosun that he was sick.[221] He said the same the following day.[222] Adeosun checked in on Seruma numerous times.[223] Seruma did not pick up the phone.[224]

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217 A195/270:06-13(Pallan).

218 B1178. Defendants term Kuramo's contemplated exercise of its contractual right to withdraw its interests, which Pallan understood included 97.5% of KN Agri and ~98% of NGFF (*id.*), "economic coercion." Br.-9-10.

219 A331/588:08-590:10(Adeosun); B1195.

220 A331/588:08-19(Adeosun).

221 B1195.

222 *Id.*; A331/588:20-590:07(Adeosun); B1238.

223 B1195; B1210.

224 *Id.*

On February 8, Adeosun and Mpinga left Kinshasa for a multi-day tour of the PHC estates, located hundreds of miles away.[225] As it turns out, Seruma was monitoring their movements. When their flight took off, Seruma acted.

At Seruma's urging, a PHC board meeting was called on one day's notice, for February 9.[226] The sole purpose of the meeting: to install Seruma as PHC's DG—the very subject Adeosun had traveled to the DRC to discuss with Seruma and on which Seruma had claimed to be too sick to meet.[227]

Mpinga, who was traveling with Adeosun, was a member of the PHC board and set to be notified. Seruma tried to pre-empt that notice by sending the board a purported Mpinga resignation letter,[228] but Mpinga was informed of the meeting shortly before midnight.[229]

Adeosun and Mpinga raced back to Kinshasa by plane. When they landed, they went straight to PHC's offices, where the meeting was being held.[230] At the

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225 A331/588:10-591:04(Adeosun).

226 At trial, Seruma falsely testified that the single-day notice was necessary for urgent "risk management" reasons. Opinion-27 & n.153. As the Chancellor correctly found, the purported urgency had been identified two weeks earlier. *Id.*

227 A359/702:08-15(Gieskes).

228 Opinion-27; nn.154-55.

229 *Id.*; n.156.

230 *Id.*-28.

meeting, Adeosun took Seruma aside and told him that if he persisted, Kuramo would terminate its relationship with the Nile Funds.[231] Seruma opted to proceed.[232]

Seruma's ill-considered attempt to supersede his discussions with Adeosun foundered immediately. At the board meeting, Seruma put forward his name for DG, but was voted down unanimously (excepting only himself).[233] Defendants write, "During the February 9 board meeting, Seruma was nominated to be the interim DG.[234] They omit that Seruma nominated himself, and every other board member voted against him. Instead the board chose Monique Gieskes, a Congolese resident and longtime independent member of the Feronia and PHC boards.[235] Although Seruma has tried repeatedly to undermine Gieskes,[236] she remains DG today.[237] She has done an exemplary job, and defendants do not claim otherwise.

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[231] *Id.*

[232] *Id.*

[233] A332/593:02-08(Adeosun).

[234] Br.-28.

[235] A332/593:02-20(Adeosun). Defendants falsely assert that Gieskes "herself nominated Seruma for DG at [the] meeting." Br.-49. Defendants' only source for that statement is trial testimony of Seruma's concerning a conversation that supposedly happened weeks before the board meeting. *Id.* (citing A438). This testimony elicited a remarkable series of questions from the Chancellor suggesting strongly she did not believe a word Seruma said. *Id.*

[236] *Infra*, 62-63.

[237] A355/686:11-687:06(Gieskes).

B. Kuramo Separates from Seruma.

On February 10, 2021, Kuramo terminated its relationship with Nile under the terms of the NCM Operating Agreement. In its termination notice, Kuramo demanded an immediate redemption of its assets.[238] In 2017, Kuramo had negotiated the right to redeem its assets before expiration of an otherwise-applicable lock-up period; it now chose to exercise that right.[239]

Seruma simply ignored Kuramo's redemption request. Over the next five years, instead of redeeming Kuramo, Seruma spent its money down on Seruma's personal defense in the proceedings below.

C. Kuramo Learns of Seruma's "Misappropriation."[240]

When Kuramo terminated its relationship with Nile, Kuramo had no idea that Seruma purported to own at least a majority of the PHC investment personally.[241] Kuramo had always understood—and uniformly communicated to Seruma,[242] to third parties,[243] and internally[244]—that Kuramo would emerge from the Transaction continuing to own essentially the entire investment.

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238 B1211-12.

239 B545-46.

240 Opinion-29.

241 A198/283:11-18(Pallan).

242 *E.g.*, B1051; B1146.

243 A177-78/200:21-203:17(Pallan); B875; B879; B995.

244 A182/217:20-219:05(Pallan); B968.

On or about February 10, Adeosun received a call from CDC's CEO, who warned "that [CDC] had different information from what we thought in terms of the ownership chart of PHC."[245] Adeosun had Pallan investigate the matter urgently.[246]

On February 11, Pallan and Kuramo's CFO reached out directly to Nile's then-administrator IQ-EQ.[247] IQ-EQ responded with a breakdown of "Kuramo's ownership percentages in NGFF and KN Agri."[248] According to the administrator, Kuramo had gone from owning 95.2% and 97.16% of these entities pre-2020 to now owning 53.27% and 26.93% respectively.[249]

Kuramo also received, from another IQ-EQ representative, a December 2019 KN Agri statement identifying Kuramo as the fund's 28.12% owner.[250] Kuramo had

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245 A333/596:17-597:05(Adeosun); A333/597:01-05(Adeosun); A334/601:13-602:06(Adeosun); A341-42/631:24-633:02(Adeosun).

246 A333/597:06-22(Adeosun).

247 B1161-62; B1165-67.

248 B1217.

249 *Id.*

250 B1216.

never seen this statement before,[251] and the administrator immediately tried recalling it.[252] She explained why: "Larry told me that I cannot give you any information."[253]

At this point, Pallan learned that a few weeks earlier, a junior Kuramo employee named Yves Mutanda had signed an org chart purportedly identifying Kuramo as the 40% owner of KN Agri, and NGFF as the fund's 60% owner.[254] Seruma had presented this chart to Pallan multiple times in 2020, and each time Pallan told Seruma it did not accurately identify Kuramo's interests.[255] Pallan told Seruma—repeatedly—that Kuramo owned over-95% of KN Agri and that the chart should be updated to reflect that.[256]

As it turns out, after Pallan sent those e-mails, Seruma privately e-mailed Mutanda (deliberately cutting out Pallan) with a copy of the Pallan-rejected 40/60

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251 A199/286:04-15(Pallan). Discovery below revealed why. In July 2020, Seruma caused the books and records of KN Agri to be adjusted to identify himself as the fund's majority owner. *Compare* B833-48, *with* B965. Seruma then directed the fund's administrator to scrub this information from a draft statement that the lenders proposed sending Kuramo. B969; B984-85. When the administrators failed to do so, Seruma suspended all ordinary-course reporting. B1160.

252 B1213.

253 *Id.*; A199/286:16-287:10(Pallan).

254 A230/293:12-294:02(Pallan). The chart did not contain any personal interest of Seruma's.

255 A2082-84; B1138-40; B1141; B1142; A230-31/294:03-297:08(Pallan).

256 B1141; B1145.

org chart.[257] Seruma told Mutanda that the chart "only refer[red] to the Kuramo vehicles above [Agribusiness]"—*i.e.*, he was asking Mutanda to verify Kuramo's internal arrangements, not the relationship between the parties.[258] Mutanda signed the chart and returned it to Seruma on that basis.[259]

On February 12, 2021, Pallan e-mailed CDC, copying Mutanda:

> The KYC you worked on with Yves is correct at the level of Kuramo. However, the 60/40 split is not correct at the KN AGRI level – that was a representation by Larry. We own 97.5% of the beneficial assets of KN AGRI – these are in the Series class directly related to Feronia.[260]

Up to this point, Kuramo had not been separately represented by outside counsel. Remarkably, defendants imply that Kuramo was being represented by the firm DLA Piper, who, according to defendants, "advised" that Kuramo purportedly lacked the authority to nominate PHC board members.[261] Defendants then go on to repeatedly quote the contents of advocative DLA e-mails from after the dispute

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257 B1148-50.

258 B1151; A231/298:20-299:09(Pallan).

259 B1153-55.

260 B1219. Defendants present this chart—which Seruma tricked an analyst-level Kuramo employee into signing—as though it were the hypothetical agreement he never even tried pitching to Kuramo's principals. Br.-21-22. In their Brief, defendants embed an image of the chart. They crop it so that the "Kuramo vehicles above [Agribusiness]"—*i.e.*, the "only" part Seruma asked Mutanda to verify—are excluded. *Compare* B1220, *with* Br.-22. A perfect encapsulation of this appeal.

261 Br.-30.

broke out as purported recitations of fact.[262] Nowhere do defendants note that DLA was, in fact, representing Seruma at the time, and went on to serve as defendants' litigation counsel in the proceedings below.[263]

In their Brief, defendants devote a dozen pages to what they claim were inaccuracies in some of Kuramo's communications from the days immediately after it became clear that Seruma had been secretly acting against Kuramo's interests. For example, defendants make much of the fact that, in a February 9, 2021 letter of protest, Kuramo described Seruma as an "employee" of Feronia KNM.[264]

Semantics aside, it is undisputed that Kuramo's communications from this time proceeded from the premise that Kuramo remained the 99% beneficial owner of the PHC investment, and retained the governance rights it had been exercising over the investment since its 2017 inception. Defendants call Kuramo's statements to that effect, "fraudulent misrepresentations."[265] As the Court below found, Kuramo believed them to be true—Seruma having failed to disclose his Maneuvers to purportedly render them false.[266]

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262 *Id.*-31. Defendants cite the testimony of Seruma's own lawyer (whose firm, again, served as litigation counsel below) over thirty times in their Brief.

263 DLA's services in no way encompassed the parties' internal arrangements—a matter as to which Lamek disclaimed any personal knowledge. *Supra*, 25-26.

264 Br.-3, 28.

265 *Id.*

266 Dec.-Letter-Decision-3.

Kuramo's claims of ownership and governance rights are the only statements by Kuramo with which defendants take issue. Defendants nonetheless collect a handful of intemperate text messages sent by people around Kuramo, suggesting principally that Seruma be criminally prosecuted in the DRC for what he had done, and falsely attribute those communications to Kuramo itself.[267] Defendants then further misstate the record by suggesting that those communications resulted in "physical violence" against Seruma[268]—though there was no such "violence" and Seruma never even claimed there was.

D. Seruma Lays His Cards on the Table.

At the time of the PHC board meeting in Kinshasa, Seruma still had not said a word to anyone at Kuramo about Kuramo owning anything less than the entire PHC investment. That changed when Seruma sent a revelatory "statement" to the DFI Lenders, copying Kuramo, on February 15, 2021.[269]

Seruma led his statement by taking the position that "the Kuramo investments in my funds, Nile GFF and KN Agri…have been written off…to zero."[270] As Seruma had no other material outside investors, Adeosun and Pallan construed this statement

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267 Br.-33-35.

268 *Id.*-48.

269 B1233.

270 B1236.

contemporaneously as Seruma claiming ownership of PHC for himself,[271] as Seruma in fact went on to claim for years of litigation.[272]

Over the following weeks, further information about what Seruma had done emerged through a series of bilateral discussions between the DFI Lenders, on the one hand, and Seruma and Kuramo, on the other. At the time, the DFI Lenders' agreement to write off 80% of their debt had been signed—however, because of inconsistencies in the KYC information Seruma had supplied them, the agreement had not yet become effective.[273]

The DFI Lenders spent the weeks after the dispute broke out hearing both sides out. In their discussions with Seruma, the DFI Lenders learned about the Mpala Maneuver[274]—which, months after-the-fact, is how Kuramo learned about

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271 A232/301:14-23(Pallan); B1238-39.

272 *Supra*, 42.

273 B1304 ("As soon as you provide a document or an information, new serious questions arise.… I now have documents showing three completely different current ownership structures in KN Agri….[I]f we don't get a satisfaction of our KYC check, we won't…declare the restructuring agreements effective.")]

274 *Id.* ("Please clearly explain what Mpala Limited is…and…why and how this was assigned by L…Seruma from KN Agri to NGFF. That's a complete riddle to me….").

it.[275] After a half-dozen lengthy exchanges,[276] the DFI Lenders concluded that Seruma was not being truthful with them, or with Kuramo, and cut ties with him.[277]

E. Seruma's Own Conduct Results in His Exclusion from PHC.

Since February 2021, PHC has been managed on the ground by Ms. Gieskes with Kuramo's support.[278] Seruma, for his part, spent months trying to sabotage the company unless it bowed to his demands, including by, among other ways, using his legacy control over PHC bank accounts[279] to halt ordinary-course payments necessary for the company to function,[280] threatening to withhold Ms. Gieskes's salary,[281] attempting to gain control over PHC's IT systems,[282] and causing a

[275] B1273-74; A235/314:01-316:14(Pallan).

[276] B1252; B1254; B1255; B1291-92; B1293-94; B1295; B1296-97; B1298; B1301-03; B1304; B1307; B1310-13; B1314; B1318-20.

[277] B1321 ("The currently frozen restructuring deal we worked out in 2020, will not get effective with you, Larry Seruma, as key man and UBO in the deal….[Our] idea was to make a deal with Kuramo….A total change of the partner we deal with…makes our internal approvals void.").

[278] A240/335:03-22(Pallan); A334/602:07-13(Adeosun); A359-62/703:17-712:21(Gieskes).

[279] B1152; B1253.

[280] B1250; B1323-24.

[281] B1329.

[282] B1330. The scheme was extremely foolish and failed. B1349; B1350; B1351; B1352.

disparaging banner to appear on PHC's website.[283] Seruma was ultimately excluded, by PHC, from any involvement in the company's activities.[284]

F. The Proceedings Below

The trial of this action took place on May 1-5, 2023. During those five trial days, Chancellor McCormick heard the in-person testimony of each of the principal witnesses from both sides, and received into evidence over 2,000 trial exhibits. At trial, Seruma perjured himself repeatedly about matters as to which his testimony was contradicted by contemporaneous documents.[285] As supporting witnesses, Seruma offered only his own paid lawyer from DLA Piper and his paid trial expert.

Heading into trial, Seruma had steadfastly refused to take a position as to whether he owed fiduciary duties to Kuramo. On the last day of trial, in trying to defend everything he had done as purportedly having been necessary to protect Segal,[286] Seruma finally conceded owing such fiduciary duties:

> Q [by Seruma's counsel]. What's your understanding of whether it would have been consistent with your fiduciary duties to all of the investors in your fund if you had

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283 B1354-57; B1369.

284 *See supra*, nn.273-74, 277.

285 *See*, *e.g.*, *supra*, 7, 14, 48.

286 *See supra*, 9.

> given… the exclusive benefit of the Feronia PHC investment to your largest investor?
>
> A. Again, that would not be the right way.[287]

Defendants had not thought of that explanation far enough in advance to include it in their pre-trial brief,[288] and the Court below rejected it factually. "Seruma acted to promote his personal benefit."[289]

G. The Opinion and Letter Decision

On April 30, 2024, the Court below issued its Opinion. Across its 94 pages, the Court below, applying legal standards that defendants do not dispute on appeal, ruled in favor of Kuramo, and against defendants, on every substantive claim and defense. Apart from certain ancillary contract claims that the Court dismissed as duplicative, the only claim on which the Chancellor did not affirmatively rule in Kuramo's favor was its fraud claim, as to which, after finding that Seruma lied to Kuramo about how he was implementing the Challenged Transactions, the Court declined to reach as unnecessary.[290]

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[287] A544/1204:02-08(Seruma).

[288] Opinion-37 & n.211.

[289] *Id.*-67.

[290] *Compare* Opinion-31 ("Contrary to his representations, and unbeknownst to Kuramo, Seruma then placed Feronia KNM in Series A instead of Series B."), 60 ("Seruma executed the Challenged Transactions unilaterally and told Kuramo that he had or was taking certain actions, while doing just the opposite."), Dec.-Letter-Decision-3 ("To execute his scheme, Seruma lied to Kuramo"), *with* Opinion-62

In the Opinion, the Court below gave the parties leave "to submit letters identifying any arguments or claims that they believe were fairly raised but that remained unaddressed.[291] On December 11, 2025, following extensive further briefing, the Court issued its Letter Decision granting Kuramo's pre-trial request for an in-kind redemption of the PHC and GenAfrica investments as an equitable remedy for Seruma's bad-faith fiduciary misconduct.[292]

("Because Kuramo prevailed on its claims for breach of fiduciary duty, the court need not reach the fraud claim.").

291 Opinion-93.

292 Dec.-Letter-Decision-4-9.

ARGUMENT

I. THE TRIAL COURT'S FINDING THAT SERUMA BREACHED HIS FIDUCIARY DUTY OF LOYALTY IN BAD FAITH SHOULD BE UPHELD.

A. Question Presented:

Have defendants met their burden of showing reversible error in the trial Court's ruling that Seruma breached his fiduciary duty of loyalty to Kuramo? No.

B. Scope of Review:

This Court's review of "the Court of Chancery's factual findings following a post-trial application of the entire fairness standard…is governed by *Levitt v. Bouvier*."[293] Under *Levitt*, this Court will accept the Chancery Court's factual findings if "sufficiently supported by the record and…the product of an orderly and logical deductive process," and will overturn them "only when the findings below are clearly wrong and the doing of justice [so] requires."[294] This Court's review of legal conclusions is plenary.[295]

C. Merits of Argument:

The trial Court's ruling that Seruma breached his fiduciary duties to Kuramo rests on three pillars: (i) Seruma owed Kuramo fiduciary duties; (ii) Seruma's conduct with regard to the Challenged Transactions was properly reviewed for

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293 *In re Tesla Motors, Inc. S'holder Litig.*, 298 A.3d 667, 698 (Del. 2023).

294 287 A.2d 671, 673 (Del. 1972).

295 *Tesla*, 298 A.3d at 699.

"entire fairness"; and (iii) Seruma failed to prove either fair price or fair dealing. The Chancellor's treatment of each of these issues was plainly correct.

(i) Seruma Concededly Owed Kuramo Fiduciary Duties.

As noted above, on the final day of trial, Seruma conceded owing Kuramo fiduciary duties.[296] That concession was forced by, among other things, the facts that (i) as the human controller of three Delaware LLCs (in each of which Kuramo was a non-managing member), Seruma owed fiduciary duties to Kuramo by default,[297] (ii) Seruma, as an investment adviser, owed Kuramo fiduciary duties statutorily,[298] (iii) Seruma acted as Kuramo's agent in the Transaction,[299] and (iv) Seruma contemporaneously represented that he was acting in Kuramo's "best interest."[300] Although in their Brief defendants omit any reference to having conceded owing fiduciary duties, that concession remains—and it is dispositive.[301]

Even if defendants had not affirmatively conceded the issue, the Court below correctly found that Seruma owed Kuramo fiduciary duties. As Chancellor

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296 *Supra*, 63-64.

297 Opinion-53; n.282 (citing authorities).

298 *See Young Women's Christian Assoc. of Rochester & Monroe Cnty. v. Hatteras Funds, LP*, -- A.3d --, 2026 WL 851163, at *24 n.110 (Del. Ch. Mar. 27, 2026) ("Section 206 [of the Investment Company Act] imposes a fiduciary duty on investment advisers....").

299 *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 854 (Del. Ch. 2022).

300 *Supra*, 45.

301 Opinion-6 n.30 (accepting it).

McCormick correctly noted, "managers or managing members of LLCs owe the fully panoply of fiduciary obligations unless the LLC agreement eliminates or modifies them."[302] To be effective, terms purporting to waive or modify these default obligations must be "clear and unambiguous," with any ambiguity resolved "in favor of preserving fiduciary duties."[303]

On appeal, defendants do not come close to meeting their "exacting" burden of proving a contractual waiver, and for several reasons:

First, defendants do not even try to argue that the fiduciary duties owed by investment advisers like Seruma can be waived. In the proceedings below, Kuramo repeatedly pointed out that Seruma's status as an investment adviser, standing alone, conferred upon him fiduciary duties.[304] Defendants conceded the point in the proceedings below by failing to respond to it, and ignore it once again on appeal. As an investment adviser, managing tens of millions of dollars on behalf of outside investors, Seruma plainly owed fiduciary duties that defendants do not even argue could have been, let alone were, waived.

Second, defendants have waived their contractual waiver argument—indeed, doubly so. Below, defendants held back their contractual waiver argument from

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302 *Supra*, n.298.

303 *Id.*

304 A729; B56.

their opening post-trial brief, instead purporting to "reserve the right" to brief on reply the threshold question of whether Seruma owed Kuramo fiduciary duties.[305] That choice alone effected waiver.[306]

Then, when defendants did belatedly address the issue on reply, they based their argument on entirely <u>different</u> provisions of the parties' agreements than the one on which they now rely. Specifically, in their post-trial reply brief, defendants argued that §13.3(c)(<u>ii</u>) of the NCM Operating Agreement "eliminates any fiduciary duties otherwise arising from that agreement."[307] Defendants did not explain how §13.3(c)(ii) purportedly did so, merely inviting the trial Court to "compar[e]" that Section with "the language at issue in" another case involving a different contractual framework, but they were clear that §13.3(c)(ii) was the provision on which their argument was based.[308]

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305 A4141-43.

306 *Lynch v. Gonzalez*, 2020 WL 4381604, at *39 n.448 (Del. Ch. July 31, 2020) (citing authority).

307 A4238.

308 *Id.*

Defendants now urge that §13.3(c)(i), rather than (c)(ii), purportedly "expressly eliminates fiduciary duties."[309] Defendants never once argued §13.3(c)(i) in the proceedings below, and, five years into this case, it is far too late now.[310]

Third, setting aside defendants having conceded owing fiduciary duties both at trial and contemporaneously, Seruma's undisputed fiduciary duties stemming from his role as an investment adviser, and defendants' multiple levels of waiver, defendants are wrong substantively.

Once again, to be effective, a "provision eliminating fiduciary duties must be 'plain and unambiguous.'"[311] Here, §13(c)(i)—which does not even refer to fiduciary duties, let alone "expressly eliminate[]" them as defendants disingenuously urge—does not come close to meeting that standard.

Rather, §13(c)(i) covers situations in which a person acting on behalf of NCM is given a grant of "discretion[ary] or…similar authority."[312] In such a situation, the NCM Operating Agreement permits the grantee to "consider only such interests and

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[309] Br.-59, 62.

[310] Del. Sup. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review.").

[311] *Cygnus Opportunity Fund, LLC v. Washington Prime Grp., LLC*, 302 A.3d 430, 445 (Del. Ch. 2023).

[312] B538.

factors as it desires."[313] That language does not purport to eliminate fiduciary duties—let alone Seruma's duty of loyalty.[314]

Indeed, there is a separate provision of §13.3—subsection (b)—that covers conflict situations.[315] That §13.3(b), which Seruma's proffered construction of §13.3(c) (unlimited discretion on every matter at all times) would render superfluous, requires that the manager resolve conflicts in a manner that is "fair and reasonable" to the company and its members[316]—a standard that the Court below correctly found is similar if not equivalent to entire fairness review.[317]

By its terms, §13 of the NCM Operating Agreement does not purport to waive fiduciary duties, let alone Seruma's duty of loyalty in managing two other Delaware LLCs (NGFF and KN Agri) with their own operating agreements and Series Supplements that undisputedly do not waive that duty, in acting as Kuramo's agent in the Transaction, or, again, in serving as an investment adviser.

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313 *Id.*

314 In *In re P3 Health Grp. Holdings, LLC*, 2022 WL 16631000 (Del. Ch. Nov. 2, 2022), the court found that a contractual term containing similar language, <u>and</u> expressly "eliminat[ing] any and all fiduciary duties," still did not waive the manager's obligation to act loyally.

315 B537-38.

316 *Id.*

317 Opinion-54 n.283 (citing authority); *see also Dieckman v. Regency GP LP*, 2021 WL 537325, at *26 (Del. Ch. Feb. 15, 2021) ("The fair and reasonable standard is 'something similar, if not equivalent to entire fairness review.'"), *judgment entered*, (Del. Ch. 2021), *aff'd*, 264 A.3d 641 (Del. 2021).

Finally, there is no dispute that neither the NCM Operating Agreement, nor any other agreement between the parties, purported to waive Seruma's obligation to act in good faith—which, as set forth below, the trial Court found, as a matter of fact, Seruma failed to do.

In short, for a host of reasons, not least of which that defendants conceded the issue, the Court below correctly found that Seruma owed Kuramo fiduciary duties.

(ii) Seruma's "Egregious" Conflict Required Entire Fairness Review.

Seruma used his fiduciary authority to grant himself at least a majority ownership interest in the principal asset he was purportedly managing on Kuramo's behalf—a benefit his trial expert calculated to be worth between $72.1 million and $135.5 million.[318] As Chancellor McCormick aptly put it, "This is a conflict. Indeed, it is a pretty egregious one."[319]

In their Brief, defendants disingenuously omit any reference to the hundred-million-dollar personal benefit that Seruma granted himself.[320] That, of course, does not make it disappear. Defendants' efforts to cast Kuramo's claim as being about the acquisition of Feronia's PHC interests (which Kuramo fully supported), as opposed

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318 *Supra*, n.41-42.

319 Opinion-56; *see also id.*-30 (describing conflict as "unbelievable").

320 Defendants attempted the same maneuver below. *See, e.g.*, B2315 (demonstrative prepared by defendants assigning percentage interests to every relationship but that between Seruma and NGFF).

to the manner in which Seruma allocated the benefits of that acquisition within the Nile Funds (which Seruma did behind Kuramo's back), is equally disingenuous.[321] Seruma, who as both controller and beneficiary stood on both sides of the Challenged Transactions, used these Transactions to grant himself a valuable benefit at Kuramo's expense.[322] Entire fairness review applies.[323]

(iii) The Trial Court Correctly Applied Entire Fairness.

As noted above, under this Court's well-established precedents, the trial Court's application of the entire fairness standard is subject to highly deferential appellate review.[324] Provided that the trial Court's findings are "sufficiently supported by the record and are the product of an orderly and logical deductive process," those findings "will be approved on appeal."[325] That is particularly true where, as here, the Court's analysis "turns on…question[s] of credibility and the acceptance or rejection of 'live' testimony."[326]

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321 *Compare* Br.-64, *with supra*, 59-60.

322 Opinion-56-57.

323 *Id.*; nn.286-89 (citing authorities).

324 *Supra*, 66.

325 *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1179 (Del. 1995).

326 *Id.*

There is no question that the Court below followed a "logical deductive process," and reached findings of fact that are "supported by the record." Over the course of her 94-page Opinion, Chancellor McCormick meticulously found that:

- Seruma never disclosed to Kuramo that he was implementing the Challenged Transactions so as to purportedly increase his personal ownership of the PHC investment, let alone by 6,000-10,000%;[327]

- Kuramo assented to the formation of Feronia KNM as wholly-owned by KN Agri (the only one of the three Maneuvers of which Seruma made Kuramo aware) based on an agreement between the parties that Feronia KNM was being placed into Series B—thereby maintaining Kuramo's 99.9% proportional interest;[328]

- Kuramo repeatedly expressed its understanding that the acquisition was being carried out in Series B, and Seruma never said otherwise;[329]

- to the contrary, Seruma repeatedly "lied" to Kuramo's principals about what he was doing;[330]

- there was "no evidence" to support Seruma's alternate theory that Kuramo, which was funding the Transaction in full, supposedly agreed to go from owning 99.9% of the PHC investment to owning 0-40%, compared to its investment manager Seruma's 60-100%; and[331]

- Seruma's implementation of the Transaction contravened a specific agreement he had reached with Kuramo only months earlier.[332]

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327 Opinion-44-46.

328 *Id.*-37-38.

329 *Id.*-46; n.245.

330 Dec.-Letter-Decision-3.

331 Opinion-59.

332 *Id.*-30-31, 59.

These and many other such conclusions rest on hundreds of individual findings of fact, which the Chancellor reached based upon her review of over 2,000 trial exhibits and her in-person assessment of the credibility of both sides' principals.

Rather than engage with these factual findings, or the overwhelming evidence supporting them, defendants' Brief simply pretends them out of existence. Omitted from their brief is any reference to Seruma's personal interest in the Transactions; the calls, texts, and e-mails in which Seruma repeatedly assured Kuramo that he was implementing the Transaction such that Kuramo would remain the PHC investment's overwhelming beneficial owner; the specific agreement Kuramo and Seruma reached in September 2019 to "ring-fence" Mpala and PHC within separate Series of KN Agri; and dozens of other facts on which the Court below rested its analysis. Instead, defendants attempt to pass off Seruma's trial testimony, together with a small handful of documents, as though it were the complete trial record.

This is not how appeals are supposed to work. On appeal, a party who has failed to persuade the trier of fact must demonstrate clearly why the court below drew the wrong conclusion from the evidence before it. That burden, heavy enough in the ordinary course, cannot be met by a party who refuses to engage with the evidence on which the trial court based its factual findings. By doing just that, defendants do not come within light-years of meeting their appellate burden of showing reversible error in the Chancellor's factual findings.

Unfortunately, defendants go beyond just omitting crucial facts—they repeatedly misrepresent the record below.[333]

For example, defendants claim that there was nothing "opportunistic," as the Court below found,[334] about Seruma transferring his personal Mpala interest from KN Agri Series C to NGFF in October 2020.[335] Defendants' argument that that finding was reversibly erroneous, however, is predicated on an entirely different transaction involving Mpala: Seruma's October 20<u>19</u> contribution of his personal Mpala interest into KN Agri Series C.[336]

Defendants then 100-percent misstate the nature of that October 2019 contribution, asserting that it was done "in furtherance of [a] longstanding plan" by the parties to "consolidat[e] PHC and Mpala."[337] But, in fact, Seruma undisputedly contributed his personal Mpala interest into KN Agri Series C "in furtherance" of the parties' September 2019 agreement to "ring-fence" Seruma's Mpala interest from Kuramo's PHC investments in separate Series of KN Agri.[338] Once again,

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333 *See*, *e.g.*, *supra*, 2, 49, 60.

334 Opinion-58-59.

335 Br.-65-66.

336 *Id.*

337 *Id.*-66.

338 *Supra*, 28.

defendants conceded every aspect of that September 2019 agreement,[339] but now mislead this Court by omitting any reference to the agreement from their Brief.

In the same vein, defendants urge that the trial Court reversibly erred in finding "no negotiation concerning the events that ultimately led Seruma to claim a 60/40 split" because, among other things, Pallan supposedly "admitted the proposed 60/40 allocation at trial."[340]

This one is almost hard to believe. At trial, Pallan did admit that, on several occasions, Seruma *sent* him org charts identifying NGFF as the 60% owner of KN Agri, and Kuramo as the 40% owner.[341] But, whenever Seruma did so, ***Pallan e-mailed back that these numbers were incorrect***:

> Hi Larry,
>
> …the beneficial [ownership] of Kuramo Agri into KN Agri is based on the Series B relative to NGFF, so that should be ~95% ownership.

B1141.

339 *Supra*, 25.

340 Br.-66; n.267 (citing A266/439).

341 *See* A266/439:16-19(Pallan).

> Larry,
>
> …the ownership % of Kuramo Agri into KN Agri would be based on the Series B in which Kuramo Agri would own ~95% or more of KN Agri Series B.

B1145.[342]

Those e-mails, and dozens more of equal or greater probative value, are effaced from defendants' Brief. Only thus can defendants claim an unblemished "record of negotiation and agreement" that is purportedly "fatal to the trial court's finding."[343] Simply put, Seruma "lied" to Kuramo in 2020, and is now attempting to defraud this Court in 2026.

One final example will illustrate the point. According to defendants, Pallan "acknowledged" that Seruma's implementation of the Transaction would result in "Nile's" "majority" ownership of KN Agri.[344] Defendants' sole source for that statement is one of the calls that Seruma surreptitiously recorded with Kuramo's principals in September 2020.[345]

On that call, Pallan said that, after a "partial redemption" of non-agricultural assets from NGFF, a "majority agri assets" would remain in the Fund—an offhand

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342 *See also* Tr.294:03-298:04(Pallan), Tr.439:20-442:05(Pallan).

343 Br.-67.

344 *Id.*-66.

345 *Id.* n.265.

statement made by Pallan (who, unlike Seruma, was unaware the call was being recorded) in discussing whether KN Agri would qualify as an "agri fund."[346]

Pallan was not saying that NGFF, let alone Seruma personally, would end up with a "majority" of KN Agri. We know this because, three minutes later, Pallan asked for confirmation that Seruma was implementing the Transaction such that Kuramo remained KN Agri's 97.16% owner.[347] Seruma's response:

> Right. So whatever is – you own 90-whatever it is. You own 97 percent of whatever is Nile and whatever – this is what I said to you. Whatever it is in Nile you own a majority of it, 97 percent….[I]t's really the entire fund because the entire fund is owned by you.[348]

Again, this portion of the call (which the Chancellor heard aloud at trial) is stricken from defendants' brief. So too the calls in which Seruma told Adeosun:

> [W]hatever money I make [on PHC] falls into Kuramo or whatever it is falls into Kuramo.

B1090.

> [E]verything goes back to Kuramo. That's what I'm saying. Everything goes back to Kuramo.

B1100.

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346 A1995.

347 A2004.

348 A1937.

We could devote an entire brief to factual misrepresentations in defendants' Brief. In their entire fairness section alone, defendants (i) falsely attack the trial Court's finding of "no independent structure or approval process" for the Challenged Transactions by pointing to "structure[s]" and "approval[s]" concerning a different Transaction;[349] (ii) omit the evidence that led the Chancellor to conclude that the third-party assessments Seruma commissioned were not reliable evidence of Mpala's value;[350] (iii) invent from whole cloth "multiple [(uncited and non-existent)] writings" in which the parties supposedly "agreed" that new-money contributions alone "would govern their respective equity interests in KN Agri";[351] and more.

* * *

Chancellor McCormick correctly found, through an orderly deductive process, that Seruma failed to prove either fair dealing or fair price. The

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349 *Compare* Br.-67, *with* Opinion-60.

350 Opinion-62; nn.313-17 (concluding that Seruma's proffered evidence of value was "unreliable" for reasons set forth at pages 32-37 of the Opinion, including as summarized above at nn.85-89). Although defendants point to four supposed valuations, one was not a valuation, but rather an audit that merely adopted the Barfric report discussed above at n.88. A954. The two other valuations likewise simply assumed that Mpala was worth the $20m that Seruma guided Barfric to reach, and extrapolated from there. A3071, A3085. In no sense did Seruma's conduct constitute "good-faith reliance on professionals for valuation." Br.-62. In any event, Mpala's value was beside the point because the parties reached a "negotiated solution" on Mpala (the September 2019 "ring-fencing" agreement) which Seruma "ignored." Opinion-59.

351 Again, defendants 100-percent misrepresent Seruma's contemporaneous position that the "new money is not all." *Compare* Br.-66, *with supra*, 50.

Chancellor's factual findings on this score are beyond-supported by the record. Defendants do not meet their heavy appellate burden of proving otherwise.[352]

[352] Even under a lesser standard of review, the Chancellor's finding that Seruma acted with subjective bad faith compels affirmance.

II. THE TRIAL COURT CORRECTLY FOUND A BREACH OF THE BRIDGE LOAN AGREEMENT.

A. Question Presented:

Have defendants met their burden of showing reversible error in the Court's finding that KN Agri breached the Bridge Loan Agreement (as herein defined)? No.

B. Scope of Review:

This Court reviews "a final, post-trial judgment of the Court of Chancery under well-settled standards. Questions of law…are reviewed *de novo*. [F]actual findings [are reviewed] for clear error and will not [be] disturb[ed]…if they are sufficiently supported by the record and…the product of an orderly and logical deductive process."[353]

C. Merits of Argument:

As noted above, the principal economic consideration for the Consortium's acquisition of Feronia's PHC interests was a $15 million financing facility.[354] Under the Support Agreement, $5 million of that financing was due immediately, and the remaining $10 million was to be payable on demand as needed by PHC.[355]

As had been the case for the $26.5 million in PHC investments to that point, Kuramo agreed to fund this $15 million facility in full. While Kuramo preferred to

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[353] *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 250 (Del. 2026) (cleaned up).

[354] *Supra*, 32.

[355] A1081.

loan the money directly to PHC,[356] at Seruma's request Kuramo agreed to a back-to-back loan structure in which Kuramo loaned the money first to KN Agri, and KN Agri then loaned it on to PHC.[357]

On May 22, 2020, Kuramo (CIV-III) entered into a bridge loan facility agreement (the "Bridge Loan Agreement") with KN Agri.[358] Under the Bridge Loan Agreement, Kuramo was obligated to make an "Initial Loan" of $5 million[359]—which it did.[360] After that, Seruma could "request that Subsequent Loans…be made…up to a maximum amount of $10,000,000."[361] Kuramo then had the right, "in its sole and absolute discretion, on whatever terms it [deemed] appropriate, [to] agree to accept (or not accept) the Borrowing Request."[362]

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356 B749 (Pallan: "we will fund directly via CIV III….That is our preferred path forward."); B771 (laying out Kuramo's conditions to funding through KN Agri).]

357 B748 (Seruma: "A direct funding from CIV III will just create issues for all parties IMHO").

358 A1863.

359 *Id.*

360 *Id.*; B785.

361 A1863.

362 *Id.*

Over the following months, Seruma, on behalf of KN Agri, requested an additional $4.5 million under the Bridge Loan Agreement, including one tranche of $4 million in November 2020.[363] Kuramo funded those amounts in full.[364]

Remarkably, throughout this case, defendants have taken the position that Seruma called the full balance of the loan in December 2020 and that Kuramo failed to honor that request.[365] The sole basis for that position was an e-mail Seruma sent to Kuramo on December 30, 2020, attaching the same November 2020 request that Kuramo had already fulfilled.[366]

At trial, Seruma testified that when he sent that e-mail, he spoke by phone with Pallan, who purportedly told him that Kuramo "didn't have the 4 million…he has 250. And I updated the request for funding for 250."[367] Defendants failed to conform Seruma's obvious perjury to an e-mail he sent the same day, subject line "Oops," attaching a "corrected" borrowing request, properly dated December 30, in the amount of $250,000.[368] Indeed, in the years of litigation, defendants have refused to acknowledge this e-mail even once.

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363 Opinion-23; n.122

364 *Id.*; n.123.

365 A4073&n.330.

366 *Id.*

367 A425/847:04-19.

368 B1156-57.

It is necessary to explain all this because, in their Brief, defendants efface every relevant fact about the Bridge Loan Agreement, including that Kuramo funded each request Seruma actually made on behalf of KN Agri (even though Kuramo was expressly authorized not to), and that KN Agri failed to repay the loan when Kuramo called it in full compliance with the Agreement's terms.[369]

Instead, defendants argue that the Court below erred in rejecting their argument that Kuramo should have been estopped from calling the loan, because KN Agri supposedly "agreed to the Bridge Loan only because the Kuramo Parties promised to fully fund and convert the loan to equity."[370] Defendants provide no support for this statement of putative fact, which is completely false.

Again, as a matter of documented fact, Kuramo preferred to fund the $15 million directly to PHC. When Seruma objected, Kuramo laid out its conditions to funding through KN Agri—conditions having nothing to do with any promise to "fully fund and convert the loan to equity"—and Seruma accepted them.[371]

While Kuramo always intended to convert its loan into equity—specifically in KN Agri Series B, as Kuramo repeatedly conveyed to Seruma at the time,[372]

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369 *Supra*, 16.

370 Br.-56.

371 *Supra*, 81-82; nn.356.

372 *Supra*, 39-40, 44.

thereby maintaining Kuramo's 99% ownership of the investment—it never "promised" to do so[373]—let alone "induce[d] reasonable reliance" on the part of Seruma by making such "promises" before the Agreement was signed.[374] And this is all on top of the fact that, as the Court below correctly found, the Bridge Loan Agreement was fully integrated in a manner that precludes defendants' estoppel argument as a matter of law.[375]

Again, this is not how appeals are supposed to work. A party who has failed to persuade the trier of fact based on a complete record cannot just present isolated proofs (such as they are) to the appellate court and expect to obtain a different result. Defendants do not come close to meeting their burden of proving reversible error in the Chancellor's finding that KN Agri breached the Bridge Loan Agreement and must now repay its loan with interest.

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373 None of the documents defendants cite comes close to reflecting such a "promise." All instead reflect simply Kuramo's undisputed intention to convert its loan into equity—specifically in Series B.

374 All the documents defendants cite are from after the Agreement's execution.

375 Opinion-65; n.329 (citing authority).

III. THE TRIAL COURT CORRECTLY DENIED DEFENDANTS' PRINCIPAL COUNTERCLAIMS ON THE FACTS.

A. Question Presented:

Have defendants shown reversible error in the trial Court's factual finding—that Seruma's years-long acquiescence in Kuramo's active participation in the PHC investment—fatally undermined defendants' principal counterclaims? No.

B. Scope of Review:

See Section II.B, *supra*.

C. Merits of Argument:

Rather than engage on Seruma's "egregious" conflict of interest at the heart of this case, defendants have taken the position that this case is really about who has the right to control the PHC investment—not who owns it. Defendants urge that the only person who has, and has ever had, the right to control the investment is Seruma.

According to defendants, the NGFF and KN Agri operating agreements vested exclusive managerial authority over the investment in Seruma, and prohibited Kuramo from playing any role in it. Defendants claim that Kuramo breached these agreements, and both tortiously interfered with and conspired with Mafuta to tortiously interfere with them, based upon Kuramo's active participation in the PHC investment since the parties' dispute arose.[376]

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[376] Br.-37-38.

The Court below correctly ruled in Kuramo's favor on each of these claims—rulings as to which defendants have not come close to showing reversible error for numerous reasons:

First, the agreements that defendants claim prohibited Kuramo from playing any role in managing the PHC investment were in place for years before the parties' dispute broke out—years in which Kuramo actively participated in managing the investment alongside Nile and Mafuta.[377] As Chancellor McCormick found, "[d]uring those years, Seruma never took the position that the parties' agreements barred Kuramo from playing its highly-active role (of which, of course, Seruma was fully aware)."[378] On that basis, the Court below found that Kuramo had met its "high evidentiary burden" of proving that the parties "intended, by their conduct, to modify the agreements to allow for Kuramo's involvement" in making management decisions with regard to the PHC investment.[379]

Defendants concede that the Court below applied the correct legal standard for modifications-by-conduct.[380] Accordingly, defendants' only issue is with the trial Court's extensive factual findings concerning Kuramo's involvement in the PHC

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377 *Supra*, 13-15.

378 Opinion-76-77.

379 *Id.*-77-79; nn.376-86.

380 *Compare* Br.-39, *with* Opinion-77; n.378.

investment over the years—from independently sourcing the PHC investment in 2016, to bringing Nile into the investment a year later, to first Adeosun and then Pallan joining the Feronia board, to the Consortium's "endless" internal deliberations, to Kuramo negotiating directly with CDC and the DFIs over the Consortium's acquisition of Feronia's PHC interests, to Seruma seeking Adeosun's consent in becoming PHC's DG, and much more.[381] On appeal, defendants once again try to meet their burden of showing reversible error by omitting any reference to these found facts, together with the hundreds of exhibits supporting them, and inventing new ones.

In that regard, here is <u>all</u> that defendants say in their Brief about Kuramo's involvement in the PHC investment from 2017 to 2020: "Adeosun and Pallan were never involved in managing PHC before the restructuring."[382] Defendants' only source for that statement is Seruma's own trial testimony.[383] He was lying.[384] If Seruma had simply told the truth about Kuramo's active involvement in PHC over the years leading up to 2020, and had not now attempted to perpetrate that fraud on this Court, then, among other things, this brief could have been fifty pages shorter.

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381 *Supra*, 10-19, 50.

382 Br.-24.

383 *Id.* n.85.

384 *Supra*, 14.

As it is, defendants have not shown reversible error in the trial Court's factual finding that the parties modified their agreements through a years'-long course of conduct beyond-supported by the record.

Second, defendants argue that, even if the parties did modify their agreements to permit Kuramo's active participation in the PHC investment, there is purportedly "zero evidentiary support for the proposition that" defendants agreed to "fully surrender" their right to manage that investment.[385] Defendants never made that argument below, and accordingly have waived it.

Even if they had not, defendants confuse Kuramo's participation in the PHC investment with Seruma's exclusion from it. In that regard, as the Court below found, Seruma was excluded from the PHC investment because the company's principal stakeholders, from the DFI Lenders to the PHC board, all concluded that he was a fraud and cut ties with him.[386] "Zero evidentiary support" for that may appear in defendants' Brief, but the trial Court found it nonetheless.

Third, defendants' tortious interference and civil conspiracy claims both are predicated solely on an alleged breach of the NGFF and KN Agri operating agreements. That was not the case in the proceedings below, where defendants claimed that Kuramo had tortiously interfered with their relationships with the DFI

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385 *Id.*-40.

386 *Supra*, 61-63.

Lenders and other third parties.[387] Having dropped those (baseless and unsuccessful) claims on appeal, defendants' remaining tortious interference and civil conspiracy claims are precluded not only by the absence of an underlying breach of the NGFF and KN Agri operating agreements, but by the well-established doctrine that a party cannot tortiously interfere with its own contracts.[388]

Fourth, defendants' tortious interference and civil conspiracy counterclaims both depend on proof that Kuramo acted "without justification"—meaning, in this context, that the alleged tortfeasor's "sole motive" was "improper interference."[389] The Court below, however, concluded factually that Kuramo's actions were justified for a half-dozen reasons, including that "Kuramo had just discovered that its purported fiduciary was working against its interests" and needed to "stop Seruma from running away with its investment."[390]

There is not enough space on this appeal to explain why defendants' accusations that Kuramo engaged in "physical violence," "misrepresentations," and other allegedly wrongful conduct are (egregiously) false. It is enough to note that the Court below considered all the evidence defendants now cite, together with the

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387 A4098-99.

388 *Mesirov v. Enbridge Energy Co.*, 2018 WL 4182204, *12 (Del. Ch. Aug. 29, 2018).

389 Opinion-69-70.

390 *Id.*-71.

much greater volume of evidence they omit, and rejected defendants' arguments on the facts. On top of everything else, defendants do not come close to showing reversible error in the Court's fact-finding on this issue.

IV. THE COURT CORRECTLY REJECTED DEFENDANTS' REMAINING COUNTERCLAIMS.

A. Question Presented:

Have defendants shown reversible error in the Court's dismissal of any of their remaining counterclaims? No.

B. Scope of Review:

See Section II.B, *supra*.

C. Merits of Argument:

Defendants could not make space in their Brief to note the fact of Seruma's personal interest in the Challenged Transactions, but devote two full Argument Sections—their ***second and third***—to Kuramo supposedly breaching (i) §§7.2 and 7.4 of the NCM Operating Agreement by (a) not allowing Seruma to manage a separate investment called "GenAfrica," and (b) supposedly "naming a different manager (Nabo…) to manage GenAfrica," and (ii) a January 2018 side letter (the "Side Letter"), in which Kuramo agreed to abide by Nile's "instructions" with regard to all "voting matters related to the business of KKM and KKM2," by not complying with Seruma's "instruction" not to sue him.[391]

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[391] Br.-41-46.

With regard to defendants' GenAfrica-related counterclaims, defendants do not even explain what GenAfrica is—let alone how the trial Court's findings that these counterclaims failed factually were purportedly incorrect:

- As the Court below found, defendants' counterclaim for breach of §7.4—which prohibited Kuramo from "own[ing] any business entity in competition with the activities or products of [NCM]"—failed because "the Nile Parties did not show that GenAfrica competed with Nile."[392] Defendants do not identify any evidence suggesting that that factual finding was false (and it was not).

- As for defendants' counterclaim that Kuramo breached §7.2(b) by supposedly permitting Nabo to manage GenAfrica, the Court below found that GenAfrica is not a "public markets investment,"[393] which is all that §7.2(b) covers. Defendants likewise do not dispute this factual finding on appeal.

We could explain in detail how, in addition to the foregoing, §7.4 expressly allowed Kuramo to "invest" in GenAfrica (all that Kuramo actually did) even if GenAfrica *was* in competition with NCM,[394] or how §7.2(b) only covers "future" allocations (whereas, under §7.2(c), Kuramo had an express right to continue using Nabo, an existing sub-advisor, to manage investments),[395] or how defendants once again misrepresent when they write, "Pallan acknowledged NCM's right to manage

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392 Opinion-84-85.

393 *Id.*-85

394 B531.

395 B530.

GenAfrica" in October 2020;[396] but, again, defendants did not even explain what GenAfrica is. They have not come close to showing reversible error in the Chancellor's denial of their GenAfrica counterclaims.

With regard to defendants' counterclaim that Kuramo breached the Side Letter, defendants point to three actions from immediately after the dispute arose—(i) Kuramo sending a protest letter to the PHC board chairperson on February 9, 2021, (ii) Kuramo and Mafuta authorizing a special committee of KKM to pursue litigation against Seruma in Canada, and (iii) the commencement of that litigation—as to which Kuramo purportedly "ignored" Seruma's "binding instructions" to stand down.[397] As the Court below correctly found, however, the Side Letter covers only "voting matters," and defendants never offered proof of any vote.[398] Although defendants write in their brief that, "[c]ontrary to the Opinion, these are all 'voting matters'"[399] (though one and three plainly are not), that is no substitute for defendants having failed to offer the requisite proofs at trial.

Again, we could explain in detail how defendants never issued any instructions around the February 9 letter, how the Side Letter did not even purport

[396] A2069, defendants' sole citation (at Br.-42 n.188), speaks for itself.

[397] Br.-45.

[398] Opinion-81.

[399] Br.-45.

to cover Kuramo's representatives on the KKM boards (who had their own fiduciary obligations to address Seruma's wrongdoing), or how perverse it would be for a Court of Equity to enforce the "instructions" of a bad-faith fiduciary—who even then was in the process of trying to misappropriate the principal asset he was purportedly managing—not to sue him; but, again, defendants fall so far short of proving reversible error that the words are better spent elsewhere.

V. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FASHIONING REMEDIES FOR SERUMA'S BAD-FAITH DISLOYALTY.

A. Question Presented:

Have defendants met their burden of showing reversible error in the Court's award of remedies? No.

B. Scope of Review:

The Chancery Court's "fashioning of remedies" for breaches of the duty of loyalty are reviewed for "abuse of discretion."[400]

C. Merits of Argument:

In the Opinion and Letter Decisions, the Court below awarded Kuramo four forms of relief: (i) rescission of the Challenged Transactions in order to bring Seruma's implementation of the broader Transaction into line with his fiduciary obligations; (ii) monetary damages for breach of the Bridge Loan Agreement; (iii) a declaration that, because of his bad-faith fiduciary misconduct, Seruma is not entitled to advancement, indemnification or compensation from the Nile Funds; and (iv) discretionary equitable relief in the form of an in-kind redemption from the Nile Funds. On appeal, defendants challenge only the latter two forms of relief.

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400 *Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 817 A.2d 160, 175 (Del. 2002).

With regard to (iii), the only purported error that defendants identify is the trial Court's factual finding that Seruma acted with subjective bad faith and to "promote his personal benefit."[401] Because that finding was entirely correct, the Court below properly ruled that Seruma—who advanced almost $6 million in client assets from NGFF to fund his personal defense below—is not entitled to indemnification or advancement from the Nile Funds.

The trial Court's equitable award of an in-kind redemption is concededly more complicated, but it, too, was plainly correct.

For context, what Kuramo sought through this request, and what the Chancellor granted, was an order compelling Seruma to release to Kuramo the two principal assets that remained in the Nile Funds, including most importantly the asset—PHC—that Seruma had spent the better part of 2020 trying to personally misappropriate.

Since 2020, Seruma has been acting adversely to Kuramo's interests, first in secret and for the past five years openly. Over those past five years, Seruma simply ignored Kuramo's demand to be redeemed from the Nile Funds, and instead liquidated all of the Funds' remaining investor assets to fund his personal defense

[401] Opinion-67.

below, implemented millions of dollars in further transfers to his personal asset Mpala, and withdrew over $1 million in cash for himself.[402]

In opposing Kuramo's request for an in-kind redemption, Seruma's only argument, both below and on appeal, is that Kuramo has no legal right to that relief. On that basis, Seruma insists that, even though he does not even purport to be acting in Kuramo's interests, he can retain Kuramo's investments indefinitely—ostensibly to conduct an open-ended, discretion-laden cash liquidation process.

In the proceedings below, however, Seruma never even committed to undertaking such a liquidation process, and kept coming up with (frivolous) reasons for why he purportedly should not have to.[403] It is undisputed that, even if Seruma did carry out a cash liquidation process in good faith (though there is no reason to believe he ever would), because of the impairments Seruma's own conduct has created, such a process would not return nearly as much value to Kuramo as an in-kind redemption of the assets themselves.[404]

Seruma, who to this day remains a legal fiduciary, never even tried to justify his opposition to an in-kind redemption through reference to Kuramo's interests—even though Kuramo now owns 100% of the Nile Funds. In late 2024, Seruma tried

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402 B106-09; B509-15.

403 B292-93; B297-302.

404 B109-13.

to argue that redeeming Kuramo in-kind would not be fair to Segal[405]—just as, at trial, Seruma falsely tried to justify his entirely self-interested actions from 2020 by invoking Segal.[406] To moot the issue, in September 2025 Kuramo acquired all of Segal's remaining interest in the Nile Funds.[407] Accordingly, Kuramo is now Seruma's sole fiduciary principal.

Under the circumstances, Seruma's ongoing fiduciary duties would probably require him to redeem Kuramo in-kind absent any prior fiduciary breach. That is the plain teaching of *Paige v. Lerner Fund*, in which then-Chancellor Strine found that a funder manager's self-interested refusal to "drop the gates," which the manager had discretionarily raised to prevent the fund's 99% outside investor from withdrawing, constituted a breach of the manager's fiduciary duties.[408] Here, as Chancellor McCormick found factually, "the one person who benefits from a sale, not an in-kind redemption, is Seruma."[409] Seruma's attempt to once again place his own interests ahead of Kuramo's represents an independent act of disloyalty.

This Court need not resolve that issue, however, because the question at hand is simply whether the Chancellor providently exercised her equitable discretion in

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405 B338-39.

406 *Supra*, 63-64.

407 B516.

408 2011 WL 3505355 (Del. Ch. Aug. 8, 2011).

409 Dec.-Letter-Decision-5 n.30.

awarding Kuramo an in-kind redemption as a remedy for Seruma's prior, bad-faith breach of his fiduciary duty of loyalty. The answer to that question is plainly, "yes."

As this Court has repeatedly made clear, in a case involving "a breach of the duty of loyalty," the Court of Chancery is authorized to grant "broad, discretionary, and equitable remedies."[410] So long as the governing agreements between the parties do not "explicitly" rule out other forms of relief through an enumeration of exclusive remedies, "the Court of Chancery's powers are complete to fashion any form of equitable and monetary relief as may be appropriate."[411]

Here, Chancellor McCormick presided over this case for five years. She saw Seruma testify in person. She listened to Seruma repeatedly lie to Kuramo's principals on Seruma's own surreptitiously-recorded tape. She considered almost a dozen submissions dealing specifically with the issue of redemption in-kind. She considered the parties' arguments at an hour-long oral argument in September 2025. Defendants do not come close to showing that, on the record before her (a record that defendants completely omit from their Brief), the Chancellor abused her discretion in finally separating Seruma from Kuramo's investments through an in-kind redemption as an equitable remedy for Seruma's bad-faith disloyalty.

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410 *Gotham*, 817 A.2d at 175.

411 *Id.*, at 176.

Defendants argue (correctly) that, under Delaware law, the default position is that members of an LLC have no right to demand, or receive, a redemption in-kind.[412] Setting aside questions of how that principle applies to LLCs owned by a single non-managing member,[413] where the manager already once unilaterally amended the operating agreement to permit an in-kind contribution (of his) that had previously been unavailable,[414] defendants' argument misses the point. In situations involving an adjudicated breach of the duty of loyalty, the Court of Chancery has the equitable authority to fashion remedies that go beyond the parties' baseline statutory and contractual rights.[415] As the parties' agreements undisputedly do not affirmatively prohibit in-kind redemptions, nor circumscribe the remedies available in the event of a loyalty breach, the Chancellor was well within her discretion in awarding this equitable relief.[416]

Although defendants offer up other arguments on appeal—including that there is supposedly no "proximate relat[ionship]" between Seruma trying to steal PHC and

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412 Br.-74-75.

413 *Supra*, 67.

414 Opinion-10 & nn.51-53.

415 *Supra*, 6.

416 The relevant provision of the NCM Operating Agreement (§15.6) specifically contemplates "redeemed assets." B545-46. The Series B supplement expressly permits redemptions in-kind. B1202.

the Court below separating Seruma from PHC through an in-kind redemption[417]—the only other legal argument they advance is that "[n]either Kuramo nor the trial court…cited even one case awarding an in-kind redemption as an equitable remedy," with "contractual authorization" or otherwise.[418] It is true that there are no such cases. But, as the Court below correctly observed, a "lack of precedent is not a bar to the exercise of this Court's equitable powers."[419] Moreover, as the Chancellor put it, "the lack of precedent is unsurprising, given the unusually brazen nature of Seruma's breaches."[420]

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417 Br.-78.

418 *Id.*-79.

419 Opinion-9; n.54.

420 *Id.*

VI. THE TRIAL COURT ERRED BY NOT AWARDING KURAMO ITS FEES AND COSTS.

A. Question Presented:

Did the Court below err by not awarding Kuramo its reasonable attorneys' fees and costs incurred in the proceedings below? Respectfully, yes.[421]

B. Scope of Review:

The Chancery Court's decision to grant or withhold an award of attorneys' fees as a matter of equity is reviewed for abuse of discretion.[422]

C. Merits of Argument:

Consider the following:

- You are Kuramo CEO Wale Adeosun. It is late in the evening of Monday, February 8, 2021, and you have just traveled deep into the interior of the DRC for a tour of PHC's operations.

- You had come to Kinshasa the week before to meet with your partner of the past three years, whose fund NGFF you saved through a $25 million allocation in 2017, and whose new fund KN Agri you have seeded with another almost $20 million. You are (you believe, as he has repeatedly told you) the 99% combined owner of these funds.

- In recent months, for reasons you still do not fully understand, your partner has fixed on the idea of becoming PHC's chief executive on the ground. On Thursday and Friday before you left Kinshasa, you met with your partner to once again talk this issue through. You were supposed to pick up your conversation on Saturday, but your partner told you he was too sick to meet. He said the same on Sunday.

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421 Preserved: B2466, B2469-70.

422 *Gatz Props., LLC v. Auriga Cap. Corp.*, 59 A.3d 1206, 1221-22 (Del. 2012).

- Now, shortly before midnight, you learn from your traveling companion that Seruma has called a PHC board meeting, with the sole agenda item of making himself DG, to be held in-person in Kinshasa the next day. So, not only was your partner feigning illness in order to procure your absence from the city, but he is trying to force through a decision to which he knows you object strongly.

- You race back to Kinshasa to confront him, but he decides to forge ahead. You terminate your relationship with him, and demand an immediate redemption of all your investments in the Nile funds.

- You receive a call from your counterpart at CDC, with whom you had negotiated the terms of your PHC acquisition nine months earlier. Something is off, you learn, about the org charts Seruma had submitted to CDC and the DFI Lenders (who you knew, for some reason, still had their KYC process open). You have your COO reach out to Nile's administrator. He is told that Kuramo's ownership of the Nile Funds is now a fraction of what it was a year earlier. The administrator immediately tries recalling its e-mail—on Seruma's instructions, you learn.

- Four days later, your partner, who a few months earlier repeatedly assured you that his "interest in this business and Kuramo['s] are completely aligned because it's a financial investment," and "whatever money I make falls into Kuramo or whatever it is falls into Kuramo"—"everything goes back to Kuramo. That's what I'm saying. Everything goes back to Kuramo"—now informs you that he has "written off" all Kuramo's interests in his funds.

- You hire outside litigation counsel, who bring suit in the Delaware Court of Chancery. In that proceeding, your partner, who despite refusing to relinquish control over your investments is now acting openly adversely to you, refuses to talk about how much of the PHC investment he purportedly owns. He finally comes out with it: 100 percent, even if he does try walking that back to merely 50-60%.

- Suddenly, your partner is now asserting counterclaims against you—counterclaims predicated on you being actively involved in managing the PHC investment. Your partner, his lawyers claim, is the only person who ever had any right to do so. Of course he never acquiesced to your involvement, because you and Pallan were "never involved in managing PHC before" 2020.

- You go to trial. You win on every claim and defense in the case—save only your fraud claim, which the Court, despite finding that your partner "lied" to you repeatedly, declines to reach as unnecessary. Doing so admittedly creates an ungainly record, but your adversary is willing to perjure himself about your prior involvement in the investment (among many other things); what choice do you have but to set the record straight?

- Still your partner refuses to relinquish control over your investments. He may have been found to have tried in bad faith to misappropriate those investments, but, he urges, he still has the discretionary authority to decide when and how—and, indeed, if—Kuramo will be redeemed. 'If you wanted the right to withdraw your assets in-kind after I tried stealing them, you should have negotiated that into our first contract in 2017,' he insists.

- You are forced to litigate that issue for another year, before the Chancellor rules in your favor on this, too. Only now, six years after the fact, having incurred untold expense and effort, are you where you would have been had Seruma not gone rogue in the first place.

Chancellor McCormick did a phenomenal job in the proceedings below to sort through the complicated facts and circumstances of this case. We respectfully submit that her only error was in not following the logic of the 94 above-the-line pages of her Opinion and, in a footnote on page 93, declining to award Kuramo its reasonable attorneys' fees and costs under the "bad-faith" exception to the American Rule governing the allocation of legal fees.[423]

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[423] Opinion-93 n.440.

This Court has held that fees should be shifted as a matter of law where, among other things, defendants (i) failed to act with even "minimal responsibility," (ii) "changed their testimony to suit their needs," and (iii) "made the litigation more expensive than it should have been" by advancing "multiple theories" with "minimal grounding in fact and law."[424] Here, the Chancellor found that:

- Seruma breached his fiduciary duty of loyalty by setting up an "egregious," "unbelievable" conflict of interest that he then navigated in subjective bad faith, including by "lying" to Kuramo's principals;[425]

- Seruma "refused to provide straight answers or take clear positions" "throughout" the proceedings below,[426] and retroactively tried to justify his conduct by claiming a fabricated agreement with his fiduciary principal Kuramo that rested on "fuzzy" and "interesting math" and "intentional[] vague[ness]";[427] and

- Seruma's myriad counterclaims all were groundless.

Given the overwhelming evidence of Seruma's bad faith, both in 2020 and in litigation since, the trial court "committed reversible error on the sole ground of "declining to award attorneys'…fees [and costs] in [Kuramo's] favor."[428]

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[424] *Montgomery Cellular Hldg. Co., Inc. v. Dobler*, 880 A.2d 206, 227-28 (Del. 2005).

[425] Opinion-30, 56

[426] *Id.*-42-44.

[427] *Id.*-40-41.

[428] *Dobler*, 880 A.2d at 229.

CONCLUSION

In the Opinion and Letter Decision, Chancellor McCormick found, based on an extensive documentary record, and with the benefit of both sides' live testimony, that Seruma breached his fiduciary duties in subjective bad faith, that Seruma should finally be separated from PHC through an in-kind redemption, and that all defendants' counterclaims were meritless. The Opinion and Letter Decision should be affirmed in full, except that Kuramo should be awarded its fees and costs incurred in addressing Seruma's "egregious," "brazen" and "unbelievable" misconduct.

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Dated: May 28, 2026

CERTIFICATE OF SERVICE

I, Bruce E. Jameson, hereby certify on this 28th day of May, 2026, that I caused a copy of the foregoing *Appellees'/Cross-Appellants' Answering Brief on Appeal and Opening Brief on Cross-Appeal* to be served by eFiling via File & ServeXpress upon the following counsel of record:

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