



**Galot v Galot; Galot Industries Limited & another (Affected Companies)  
 (Miscellaneous Application E825 of 2023) [2024] KEHC 14746 (KLR)  
 (Commercial and Tax) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14746 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
 COMMERCIAL AND TAX  
 MISCELLANEOUS APPLICATION E825 OF 2023**

**PM MULWA, J**

**NOVEMBER 26, 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO  
 INSTITUTE DERIVATIVE ACTION ON BEHALF OF GALOT  
 INDUSTRIES LIMITED AND KING WOOLEN MILL LIMITED**

**BETWEEN**

**NARENDRA GALOT ..... APPLICANT**

**AND**

**MOHAN GALOT ..... RESPONDENT**

**AND**

**GALOT INDUSTRIES LIMITED ..... AFFECTED COMPANY**

**KING WOOLEN MILLS LIMITED ..... AFFECTED COMPANY**

**RULING**

1. Before the court is an application dated 21<sup>st</sup> September 2023 brought under the provisions of Sections 238, 239 and 240 of the *Companies Act*, 2015, Order 40 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the *Civil Procedure Act*. The Applicant seeks two substantive prayers; firstly, leave to institute or continue a derivative claim seeking reliefs on behalf Galot Industries Limited and King Woolen Mills Limited, the affected companies; and secondly, a temporary injunction restraining the Respondent, his servants, agents and or employees from selling, alienating, disposing, transferring, charging, removing, converting the assets and monies of the affected companies.
2. The application is based on the grounds set out in the application itself, as well as the affidavit and further affidavit sworn by Narendra Galot, a co-administrator of the Estate of the late Lalchand



Pusharam Galot, a founding director and member of the affected companies. The Applicant also filed submissions dated 29th July 2024 in support of the application.

3. The Applicant submits that prior to the demise of Lalchand Pusharam Galot, he held 87 ordinary shares and 1 management share in Galot Industries Limited, the 1<sup>st</sup> affected company, which had four shareholders, all of whom were brothers. Of these brothers, three (3) are deceased, leaving the Respondent as the only surviving shareholder. The shares of the deceased directors are held in the names of their respective estates. The Applicant further states that by the confirmation of grant issued on 21<sup>st</sup> October 1999, the estate of Lalchand Pusharam Galot holds 25% of the shares in the 1<sup>st</sup> affected company. He avers that the shareholding of Lalchand is evidenced by the various CR12 forms from 1986.
4. The Applicant further avers that Lalchand Pusharam Galot held 1 share in King Woolen Mills Limited, as confirmed by the CR12 dated 19th January 1989, which is also corroborated by the confirmation of grant. Accordingly, the Applicant asserts that he brings these proceedings as a confirmed shareholder of the affected companies.
5. The Applicant claims that the Respondent has fraudulently deprived the affected companies of the decretal sum of Kshs. 225,097,143/- in HCCC No. 2054 of 1993, which was deposited in the bank accounts of Maumo & Co. Advocates. This amount was shared between the Respondent and his son, Avin Galot, who is neither a director nor a shareholder of the affected companies. The Applicant contends that the Respondent's actions are negligent and constitute a breach of his fiduciary duties as a director of the affected companies. He submits that the Respondent has maliciously interfered with the management and shareholding of the affected companies by unlawfully altering the directorship and shareholding structures.
6. The Applicant submits that the application for leave has been brought in the best interests of the companies, with the aim of protecting and preserving the assets of the affected companies.
7. The application was opposed by a Replying Affidavit sworn on 24th July 2024 by Mohan Galot, a founding director and shareholder of the 2<sup>nd</sup> affected company. He contends that the issue of the applicant's father's shareholding in the 1<sup>st</sup> affected company is in dispute and is pending in HCCC No. 298 of 2009, while the issue concerning the 2<sup>nd</sup> affected company is pending in HCCC No. 430 of 2012, in which neither the Applicant nor his father are parties. He further asserts that the Applicant has failed to prove his shareholding in the affected companies and, therefore, has no standing to seek leave to file a derivative suit.
8. The affected parties filed grounds of opposition dated 9th January 2024, asserting that the Applicant lacks locus standi to bring the suit in his personal capacity. They also contend that the Applicant is an imposter and stranger to the affected companies, in breach of Sections 238 to 241 of the [Companies Act](#).
9. I have carefully considered the pleadings, submissions, and evidence presented by both parties. The following two issues arise for determination:
  - a. Whether the court should grant the applicant leave to continue with the derivative suit.
  - b. Whether an injunction should be issued restraining the Respondent from dealing with the assets of the affected companies.
10. On the first issue, a derivative action is a legal action brought by a shareholder (or a member) of a company on behalf of the company itself, against the company's directors, officers or third parties. The action is brought when the company has been wronged but has failed or refused to take legal action to remedy the wrong. The purpose of a derivative suit is to protect the company's legal interest.



11. A derivative action is often seen as a way to enforce corporate governance, ensure accountability among directors, and safeguard shareholders' investments when those in charge of the company are not acting in its best interest.

12. In *Gbelani Metals Limited & 3 others v Elesh Gbelani Natwarlal & another* [2017] eKLR, the court explained:

“Derivative actions are the pillars of corporate litigation. As I understand it, a derivative action is a mechanism which allows shareholder(s) to litigate on behalf of the corporation often against an insider (whether a director, majority shareholder or other officer) or a third party, whose action has allegedly injured the corporation. The action is designed as a tool of accountability to ensure redress is obtained against all wrongdoers, in the form of a representative suit filed by a shareholder on behalf of the corporation: see *Wallersteiner v Moir* (No.2) [1975] 1 All ER 849. 38.

Until 2015, in Kenya, the common law guided derivative actions in Kenya. With the advent of the Act, the law fundamentally changed. The requirement to fall under the exceptions to the rule in *Foss v Harbottle* was replaced with judicial discretion to grant permission to continue a derivative action. Judicial approval of the action is what now counts and such approval is based on broad judicial discretion and sound judgment without limit but with statutory guidance.”

13. Section 238(1) of the *Companies Act* provides that a derivative suit is a proceeding initiated by a member of a company in respect of a cause of action vested in the company, with the objective of seeking relief on behalf of the company. The wording of Section 238(1) requires that the party bringing an application for a derivative suit must demonstrate that they are a member of the company, and that the reliefs sought are in the best interests of the company.

14. The test for granting permission to continue a claim for derivative action is set out in *Airey v Cordell and Others* (2007) EWHC as cited by Mativo, J. in *Nextgen Office Suites Ltd & another v Netcom Investments Ltd & another; Shah Minakshi Navinchandra (Interested Party)* [2021] Eklr as follows:

“a. The claimant must first establish a prima facie case that the company is entitled to the relief claimed and that the claim falls within one of the exceptions to the rule in *Foss v Harbottle*.

b. The court must then determine whether an independent and honest board of directors might reasonably have decided to bring the claim. If no reasonable board would have brought the proceedings, then the court should refuse permission to continue, otherwise it should grant permission. As long as the decision to litigate was within the reasonable range of decisions an independent board might make, the court should not go further and impose its own view of what such a board should have done.”

15. Before allowing an application for leave to continue with a derivative suit, the Court must first establish that a prima facie case exists regarding the cause of action, as outlined under Section 238(1) of the *Companies Act*. This means that the shareholder must present a clear, credible claim that the company has been harmed due to the wrongful conduct of directors, officers or third parties, and that the company's interests are at stake.



16. The Applicant alleges that the Respondent has fraudulently transferred the sum of Kshs 225,097,143/-, awarded to the affected companies by the decree of the court in HCCC No. 2054 of 1993 to his personal use. This has deprived the affected companies of enjoying the fruits of the judgment.
17. The Applicant also accuses the Respondent of converting the assets of the affected companies into his personal use and running the companies as though they were a sole proprietorship. This has had significant implications on the management and assets of the companies. Additionally, the Respondent is accused of interfering with the shareholding of the affected companies to the detriment of the other shareholders.
18. The Respondent has not controverted or denied these allegations. In my view, if these allegations are proven, they could lead to a finding against the Respondent and for the benefit of the affected companies. I am therefore of the opinion that these are prima facie issues that warrant further court consideration during trial. Consequently, leave is granted for the Applicant to continue with the derivative suit.
19. Secondly, an applicant must prove that they have the legal standing to bring the suit. This means they must be current members or shareholders of the company. The Respondent opposes the Applicant's standing as a member of the company, claiming that the Applicant lacks locus standi to bring the instant suit.
20. It is irrelevant whether the cause of action arose before or after the person seeking to bring the derivative suit became a member of the company. A member of the company can include someone whose shares in the company have been transferred by operation of law. In this case, the Applicant, who is the son of the late Lalchand Pusharam Galot, a co-founder and shareholder of the affected companies, asserts that the shares of the late Lalchand devolved to his estate by operation of law. The Applicant has provided a confirmed grant to demonstrate that the estate of the deceased is entitled to the shares in the affected companies. In these circumstances, I find that the Applicant qualifies as a member of the affected company, as the shares have devolved to them by operation of law.
21. The court will make due consideration on the strength of the application and if the same has been brought in the best interest of the company. From the evidence on record, the Applicant has demonstrated that the shareholders are unwilling and unable to address the issues. The Applicant has demonstrated that the Respondent is interfering with the operations of the company for their own gain.
22. I now turn to the second issue of whether the Court should grant an injunction restraining the Respondent from dealing with the assets of the affected companies. The conditions for granting an injunction are well established in the case of *Giella v Cassman Brown & Co. Ltd*, 1973 E.A. 360, and have been reiterated in *Mrao v First American Bank of Kenya Ltd and 2 others*, 2003 KLR 125. The Applicant must demonstrate: (i) a prima facie case, (ii) that irreparable loss will be suffered if the injunction is not granted, and (iii) that the loss cannot be adequately compensated by way of damages.
23. Herein aforementioned, I have considered the allegations raised in the supporting affidavit, which have not been controverted. I find them to be arguable, and therefore, it is my finding that the Applicant has established a prima facie case.
24. The Applicant alleges that the Respondent has persistently and maliciously interfered with the management and shareholding of the affected companies by unlawfully and illegally altering the directorship and shareholding structure. The Applicant submits that, unless an injunction is granted, the Respondent will persist in mismanaging and wasting the assets of the affected companies.



25. Regarding the balance of convenience, the Applicant has urged this Court to preserve the assets of the companies. Upon reviewing the record and pleadings, I am satisfied that the intended action pertains to the affairs of the company and is brought in the interest of the affected companies.
26. The applicant has demonstrated that the Respondent has squandered and mismanaged the assets of the affected companies. In light of this, I am of the view that an injunction is necessary to safeguard the affected companies from potential harm and prejudice resulting from the Respondent's actions.
27. In conclusion, I find the application dated 21<sup>st</sup> September 2023 is meritorious and I hereby allow the same. The costs of the application shall abide the outcome of the suit.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF NOVEMBER 2024.**

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

N/A for Applicant

Ms. Awiti h/b Mr. Tiego & Mr. George Gilbert for Respondent

Court Assistant: Carlos

