



Manchester Outfitters Suiting Division now Called King Woolen Mills Ltd & another v Standard Chartered Financial Service Limited & another (Civil Case 340 of 2006) [2023] KEHC 2272 (KLR) (Commercial and Tax) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2272 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 340 OF 2006
A MABEYA, J
MARCH 24, 2023
FORMERLY HIGH COURT CIVIL SUIT NO 5002 OF 1990**

BETWEEN

**MANCHESTER OUTFITTERS SUITING DIVISION NOW CALLED KING
WOOLEN MILLS LTD 1ST PLAINTIFF
GALOT INDUSTRIES LTD 2ND PLAINTIFF**

AND

**STANDARD CHARTERED FINANCIAL SERVICE LIMITED . 1ST DEFENDANT
A.O GREGORY C.D CAHILI 2ND DEFENDANT**

RULING

1. Before this court are two applications one dated 2/2/2023 and the second one dated 23/2/2023.

Application dated 2/2/2023

2. The first application dated 2/2/2023 was premised on Order 51 rule 1 and order 9 rule 9 of the *Civil Procedure Rules*, Section 1A, 1B and 3A of the *Civil Procedure Act*.
3. The orders sought in the application were to have the Law Firm of Kenyatta Odiwuor & Co Advocates come on record in this matter on behalf of the 1st plaintiff in place of the law firm of Meshark Odero & Co Advocates.
4. The Motion was supported by the affidavit sworn by Rajesh Galot on 2/2/2023. The applicant contended that the plaintiff was desirous of changing its advocates from Meshack Odero Advocates to



Kenyatta Odiwuor & Co Advocates. Further, that the board of directors of the 1st plaintiff had passed a resolution on 2/2/2023 and resolved that the firm of Kenyatta Odiwuor & Co advocates do represent the plaintiff.

5. The applicant filed a further affidavit dated 22/2/2023 by the same deponent. He stated that Mohan Galot had ceased to be a director of the 1st plaintiff after resigning on 14/9/1988. That the resignation was confirmed by the registrar of companies. That Mohan Galot could not invoke Article 10 of the Articles of Association since he was no longer a director of the company.
6. That the resolution to appoint the law firm of Kenyatta Odiwuor & Co advocates was an ordinary resolution and not a special resolution. That the firm of Meshark Odera & Co Advocates was with respect to the instructions given on 10/7/2012.
7. The application was opposed by Mohan Galot in a replying affidavit dated 13/2/2023. He contended that over the years the matter was in court, he had appointed advocates in accordance with Article 10 of the Articles of Association. He stated that he had been appointing advocates to represent the plaintiffs without protest by the applicant. That the issue of representation had been fully determined with finality. He further observed that he paid the legal fees from his resources without the involvement of the purported directors.

Application dated 23/2/2023

8. The second application was brought under order 51 rule 1 and Order 9 rule 9 of the [Civil Procedure Rules](#), Section 1A,1B and 3A of the [Civil Procedure Act](#).
9. The applicant sought leave to have the Law Firm of Odera Were Advocates to come on record for the 2nd plaintiff, Galot Industries Limited, in place of the firm of Meshack Odera & Company Advocates.
10. The Motion was supported by the affidavit sworn by Pravin Galot on 23/2/2023. It was premised on the grounds that the proprietor of the firm of Meshark Odera & Company advocates had passed on and the plaintiff was desirous to have the firm of Odera Were Advocates represent it after delivery of judgment.
11. The application was opposed by Mohan Galot in a replying affidavit dated 13/2/2023. He contended that over the 33 years the matter was in court, he had appointed advocates in accordance with Article 10 of the Articles of Association. He stated that he had been appointing advocates to represent the plaintiff without protest by the applicant. That the issue of representation had been fully determined with finality. He further observed that he paid the legal fees from his resources without the involvement of the purported directors.
12. In the replying affidavit dated 3/3/2023, he stated that he had been the director of the 1st and 2nd plaintiff for 33 years during which period he had signed documents in that capacity. That in those years, he had appointed advocates in the case and this authority was derived from Article 10 of the Articles of Association. That he had appointed the firm of Nyachoti & Co Advocates to represent the plaintiffs.
13. The two applications were further opposed by a replying affidavit dated 3/3/2023 sworn by Jophese Obonyo Yogo who is the Company Secretary for the Plaintiffs companies. He averred that the 1st plaintiffs Articles of association under Article 10 provided that Mohan Galot had the powers to appoint and remove directors and the company secretary as well.
14. That the company secretary had never participated in the appointment of the intended advocates on behalf of the plaintiffs. That Pravin Galot and Narendra had never been directors or members of



the plaintiff companies. It was further contended that the CR12 produced had listed nine people as directors whilst the Articles of Association provided for and limited the directors to seven.

15. I have considered the applications and the responses thereto and from the pleadings this court is called upon to determine the law firm that is properly on record for the Plaintiff Company.
16. In *Uhuru Highway Development Ltd & Others vs Central Bank of Kenya Ltd & Others* (2) [2002] 2 EA 654, the court was of the view that it is not the business of the courts to tell litigants which advocate should or should not act in a particular matter. This is so because each party to a litigation has the right to choose his or her own advocate, unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in the matter.
17. In the circumstances of this case, it is alleged that the Law Firm of Odera Were Advocates had been appointed *vide* an ordinary resolution passed on 2/2/2023 to come on record for the 2nd plaintiff. Similarly, the Law Firm of Kenyatta Odiwuor is alleged to have been appointed to represent the 1st plaintiff pursuant to a resolution passed on 2/2/2023.
18. However, Mohan Galot who opposed the applications stated that he was the one mandated with appointing advocates on behalf of the two plaintiffs. That for the 33 years that this case has been in the Courts, he was the one who has been appointing advocates. That he had already appointed the firm of Nyachoti & Co Advocates to represent the plaintiffs. This was supported by the Company Secretary.
19. In *George Pariken Ole Narok & another v Cabinet Secretary, Ministry of Industry, Trade & Cooperatives & another; Kenya Farmers Association Ltd (Interested Party)* [2021] eKLR the court observed thus

“ An advocate is an agent of the client they represent and can therefore only represent a party with the correct authority. It is trite that the donor of such authority to act must first have the authority, to properly donate the same to their agent”
20. I have perused the affidavit sworn by the Company Secretary who observed that the plaintiffs Articles of Association under Article 10 gave Mohan Galot the authority to appoint directors and make decisions for the companies. The Court was also referred to several decisions by both the Supreme Court of Kenya and the Court of Appeal where the issue of representation by these parties arose. It is apparent therefore that the issue of representation of the plaintiffs has been before the courts before and is not a new issue.
21. In Supreme Court Petition No. 6 of 2016, that Court held that the firm of Advocates, Havi & Co, which had been appointed by Mohan continue to represent the 2nd plaintiff until the High Court determines the issue of directorship of the Company. None of the advocates who made the applications before Court demonstrated that the High Court had resolved that issue.
22. From the ruling dated 2/8/2022 in HCOM No. 298 of 2009 Ganeshlal Pusharam Galot & Others Vs Mohan Galot & Others, the Court found that the directorship and shareholding of the 1st plaintiff herein was in dispute. That the same is yet to be determined. That it is the issue for determination in NBI HCCC No. 55 of 2012 Manchester Outfitters vs Pravin Galot & Others. None of the parties informed the Court that the said matter had been determined.
23. From the annexures produced, the Firm of Nyachoti & Company Advocates was appointed to act for the plaintiffs in C.A No. 88 of 2000 on 28/9/2020. There is a Notice of Change of Advocate to that effect. It is in the Judgment in that appeal that this Court was directed to assess damages. Mohan



says he is the one who appointed the firm of Nyachoti Company both in the Court of Appeal and in this Court.

24. The issue of directorship and shareholdings of the plaintiffs is yet to be determined. HCCC No. 55 of 2012 is yet to be concluded. The High Court is yet to determine the directorship of the said Companies as directed by the Supreme Court in Petition No. 6 of 2016. It is curious that the two law firms have only appeared in this matter after 33 years of its life. Only after the Court of Appeal has fully heard the Appeal and remitted back the case for assessment of damages.
25. This is a matter that has been in our Court corridors for 33 years now. This is unacceptable. The Court will not allow the gambling and disagreement about directorship in the plaintiffs to derail the determination of this long standing dispute. The Court refuses to be drawn into that procrastination. It would proceed with the firm appointed by Mr Mohan who has religiously done so both in the Court of Appeal and Supreme Court.
26. In the premises, I find no merit in the applications and they are both dismissed with costs. The matter be fixed for assessment of damages.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2023.

A. MABEYA, FCIArb

JUDGE

