



REPUBLIC OF KENYA



KENYA LAW
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**Galot & 3 others v Galot & 6 others (Commercial Case 298 of 2009)
[2023] KEHC 20070 (KLR) (Commercial and Tax) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 298 OF 2009
DO CHEPKWONY, J
JUNE 27, 2023**

BETWEEN

**GANESHLAL PUSHARAM GALOT 1ST PLAINTIFF
TARA GALOT & KEVIN GALOT (SUING ON BEHALF OF THE ESTATE OF
SOHANLAL PUSHARAM GALOT) 2ND PLAINTIFF
LALCHAND PUSHARAM GALOT 3RD PLAINTIFF
GALOT INDUSTRIES LIMITED 4TH PLAINTIFF**

AND

**MOHAN GALOT 1ST DEFENDANT
SANTOSH GALOT 2ND DEFENDANT
RITA GALOT 3RD DEFENDANT
NINA GALOT 4TH DEFENDANT
MOHAN MEAKIN KENYA LIMITED 5TH DEFENDANT
LONDON DISTILLERS KENYA LIMITED 6TH DEFENDANT
THE ATTORNEY GENERAL 7TH DEFENDANT**

RULING

1. Although there are other pending applications in this matter, this ruling determines the 1st plaintiff's notice of motion application dated September 30, 2022 brought under the provisions of order 42 rule



6 and order 51 rule 1 of the Civil Procedure Rule. In that application, the 1st Plaintiff seeks the following orders: -

- a) Spent;
 - b) Spent;
 - c) There be stay of proceedings herein pending the hearing and determination of the 1st Plaintiff's intended appeal to the court of Appeal against the ruling and orders of this court issued on 2nd August, 2022;
 - d) There be provision for costs.
2. The grounds adduced in support of the application both on its face and in the affidavit of Ganeshlal Pusharam Galot is that the issues raised in this suit especially the issue on shareholding and powers of governing director is substantially in issue in H.C.C.C No.55 of 2012 hence posing the danger of the two courts arriving at conflicting orders. It is averred that if the eventuality happens then there shall be a multiplicity of suits thus defeating the principle of finality to litigation.
 3. It is the Applicant's case that on August 2, 2022, this Court directed that the matter proceeds for hearing and determination on all substantive issues arising in the matter including the issue on shareholding and powers of the governing Director.
 4. Being aggrieved by those directions, the Applicant seeks to pursue an appeal before the Court of Appeal and alleges that if the orders for stay of proceedings are not granted, then he stands to suffer substantial loss in that he will be faced with a legal absurdity of potentially dealing with two conflicting orders issued by two courts of competent jurisdiction on the issue of the governing Director. According to the Applicant, he (the Applicant) is likely to be placed in a situation of unfair trial based on the potentially conflicting orders and certainly his right to appeal be defeated if the orders for stay of proceedings are not granted.
 5. The 1st, 5th and 6th Defendants filed a Replying Affidavit sworn on their behalf by Mohan Galot, the 1st Defendant herein. He termed the application as a delay tactic meant to scuttle the hearing and determination of the matter notwithstanding that the Plaintiffs have enjoyed interim injunctive orders for a period of fourteen (14) years. He was incessant that the application herein does not meet the threshold for stay of proceedings for among other reasons, it was filed after an inordinate delay of sixty three (63) days from the date when the impugned orders of the court were issued, that the intended appeal is not arguable since the reasons upon which the stay of proceedings is premised and sought, more specifically the allegation that the issue on the determination of the powers of governing director is a substantive issue in H.C.C.C No.55 of 2012 is misguided for the reason that the court in H.C.C.C No.55 of 2012 expressly stated that it would only address the issue of directorship and shareholding in Manchester Outfitters and not in any other related company including the fourth Plaintiff, and the 5th to 7th Defendants. As such, it cannot be said that there is a risk of court granting two conflicting orders when addressing the powers of the governing Director.
 6. The 2nd, 3rd and 4th Defendants responded vide the grounds of opposition dated 9th November, 2022 and the affidavit of Nina Galot, the 4th Defendant, sworn on 4th October 2022. In the Replying Affidavit, the 4th Defendant expresses that the application is a disguised challenge on the Defendants' case on merit since the same has scrutinized the Defendants' witness statements. She adds that the issue on powers of the governing Director has not been subject of these proceeding and neither can it be subject of the intended appeal nor is it an issue for determination in H.C.C.C No. 55 of 2012. That the major issue to be addressed in this suit is the shareholding and directorship in the 4th Plaintiff Company



for which the court has already issued directions on. Thus, unless the shareholding of the 4th Plaintiff is determined, there is no room for any party to mis-allege that the 4th Defendant is unrepresented.

7. On the other hand, in opposing the application, the 7th Defendant filed grounds of opposition dated 5th October, 2022. It raised the following grounds: that the application was filed after inordinate delay of about two (2) months since the delivery of the ruling sought to be appealed against, that the stay is being sought thirteen (13) years since the inception of the suit and it is more likely than not that its (the 7th Defendant) right to a fair hearing shall be prejudiced. Instead, the 7th Defendant has implored the parties to be minded of concluding the suit herein at the earliest opportune available.
8. Parties were then directed to file written submissions in support of the respective cases and as the record reflects, the first Plaintiff filed a set of submissions dated the 28th of October, 2022, the 1st, 5th and 6th filed submissions dated 6th November, 2022, whilst the 2nd, 3rd and 4th Defendants filed submissions dated 9th November, 2022. I do not wish to reproduce the said submission herein since they reiterate the summary in the affidavits as given above.

Analysis and Determination

9. This Court has carefully considered the application by reading through the affidavits and grounds adduced in support and rebuttal of the same, the application and the rival submissions by the parties as well as the authorities cited. Essentially, this being an application for stay of proceedings pending the hearing and determination of an intended appeal, the sole issue for determination is whether the 1st Plaintiff/Applicant has satisfied the conditions to warrant the exercise of this court's discretion in staying proceedings as sought.
10. Courts within our jurisdiction have widely discussed that whether or not to grant stay of proceedings on an order to be appealed from, is a matter of judicial discretion which ought to be exercised judiciously in the interest of justice. Given that the Kenyan *Civil Procedure Act* and its subsidiary Rules do not lay out with precision the principles guiding the grant of orders for stay of proceedings, over and above considering the pros and cons of granting and not granting the orders, Ringera J (as he then was) observed in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No.43 of 2000*, observed that; the court ought to stretch a notch higher to establish whether the Applicant has established: a prima facie arguable case/appeal, that the application was filed timeously, that there exist other sufficient cause to establish that it is solely in the interest of justice the orders for stay of proceedings are granted.
11. In other cases, the court has taken caution that stay of proceedings is such a serious, grave and fundamental interruption of a litigant's right to conduct the litigation to its determination on merits in an expeditious manner. Thus stay of proceedings should not be imposed unless beyond all reasonable doubt the same ought not to be allowed to continue. Such would be a case where the applicant establishes that the proceedings are frivolous, vexatious, and with no clear cause of action in law or in equity.
12. Now applying the above principles to the facts within the present application, the first hurdle to be surmounted is whether the application was filed timeously or after an inordinate delay. The uncontested fact is that the ruling sought to be appealed against was delivered on August 2, 2022 whereas the present application was filed fairly sixty (60) days thereafter. The 1st Plaintiff/Applicant has not bothered to explain the said delay of sixty days so as to result to the Respondents' contention that the application was a well calculated tactic to evade the confirmation of this suit for hearing as the same was filed a few days to the date set by the court for hearing. In this Court's view, based on the reasons advanced and the ultimate goal to equally doing justice for all the parties in a litigation,



an unexplained delay for even one day can be termed inordinate and can also on sufficient grounds be construed not to be inordinate delay. Consequently, in the circumstances presented, this Court opines that the unexplained delay of about sixty (60) days is inordinate and likely intended to defeat the directions and orders issued by this Court in its ruling of 2nd August, 2022.

13. As regards the issue of whether the intended appeal is arguable, a perusal of the grounds of appeal cited by the 1st Plaintiff/Applicant, it is not possible for the court to make any finding on the merits of the appeal at this interlocutory stage. On its face, the intended appeal does not entirely appear hopeless, and the court is prepared to find on the basis of the material placed before it that the appeal cannot be said to be a frivolous one. This Court finds so because an arguable appeal is not one that will necessarily succeed but one which raises triable issues. However, that alone cannot suffice to warrant the grant of the orders sought.
14. Lastly, on whether the Applicant has established other sufficient cause to convince the court that it would be in the interest of justice to allow the instant application, the Applicant has highly submitted that unless the issue of governing director is determined, parties will forever be moving in circles without progressing the matter forward. In his view, the same issue is pending before a three-judge bench in H.C.C.C No.55 of 2012 and by proceeding to determine the powers of the governing Director in this matter, the court poses the risk of there being two conflicting orders in the two different matters.
15. On the other hand, the Respondents have argued that there has never been any contestation over the 1st Defendant being the governing Director and that the key issue for determination is on shareholding and directorship of the 4th Defendant which is not an issue for consideration in H.C.C.C No.55 of 2012. According to the Respondents, given that the issue for consideration in H.C.C.C No.55 of 2012 is solely on directorship and shareholding in Manchester Outfitters and not the Company's part of this instant suit, there is no possibility of the court granting conflicting orders.
16. Having considered the submissions from both sides, this court is alive to the fact that the proceedings herein had previously been stayed for quite some time in the belief that the court in H.C.C.C No.55 of 2012 would address a clause common in the 4th Plaintiff's Articles of Association and Manchester Outfitters Ltd with regard to the powers of the governing Director. However, in the ruling dated August 2, 2022, the court allowed the suit to proceed after the court in H.C.C.C No. 55 of 2012 pronounced that it would only address the issue on shareholding and directorship in Manchester Outfitters Limited. It was then open for the court dealing with other related suits to dictate how the suits before them would proceed.
17. In the present application, the Applicant has not expressed any turn of events apart from reiterating facts which the court considered in its ruling dated August 2, 2022. For that reason and based on material placed before this Court in regard to the instant application, it is the court's finding that the 1st Plaintiff/Applicant has failed to demonstrate that if the court were to decline granting orders of stay of proceedings as sought, he will suffer prejudice which will expose him to injustice.
18. Accordingly, stay of proceedings in this case is not necessary, hence the application dated September 30, 2022 devoid of merits. This Court proceeds to dismiss the application. Costs of the application shall be in the cause of the suit.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JUNE, 2023.

D. O. CHEPKWONY



JUDGE

In the presence of:

Mr. Kaka counsel for 1st Plaintiff

Mr. Kenyatta counsel for 3rd Plaintiff

Mr. Amollo Enock holding brief for Mr. Genge gilbert for 1st and 6th Defendants

Mr. Were counsel for 4th Plaintiff

Mr. Tiego counsel for 2nd, 3rd and 4th Defendants

Court Assistant - Martin

