



**Galot v Manchester Outfitters Ltd; Galot & 2 others (Interested Parties) (Insolvency Petition E028 of 2019) [2023] KEHC 19971 (KLR) (Commercial and Tax) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E028 OF 2019  
DO CHEPKWONY, J  
JUNE 27, 2023**

**BETWEEN**

**MOHAN GALOT ..... PLAINTIFF**

**AND**

**MANCHESTER OUTFITTERS LTD ..... RESPONDENT**

**AND**

**PRAVIN GALOT ..... INTERESTED PARTY**

**RAJESH GALOT ..... INTERESTED PARTY**

**GANESH GALOT ..... INTERESTED PARTY**

**RULING**

1. The management and running of day to day activities of the Respondent Company has been a flagrant battle between the Petitioner/Applicant and the Interested Parties herein for fairly more than a decade, with each contesting the other's power and control over the assets of the Company. Nonetheless, a special bench was constituted in HCCC No 55 of 2012 to solve the puzzle on who among the Petitioner herein and the Interested Parties are the rightful directors and shareholders of the Respondent Company and the power which either of them may exercise in control of the affairs of the Company.
2. The Present Petition is one in a series of the strenuous battle between the Petitioner and the Interested Parties over the control and exercise of power on assets and activities in the Respondent Company. Precisely, vide this Petition, the Petitioner seeks an order appointing an administrator answerable to this Court to manage and preserve the assets of the Respondent Company since, in his view, the Interested Parties have embarked on swindling and carting away assets belonging to the Respondent Company



- and at the end of the day they might relocate the Respondent's business and leave the later as a mere shell with no assets.
3. However, in this ruling, the court will address and determine two applications dated 27<sup>th</sup> January, 2022 and 6<sup>th</sup> October, 2022 respectively and a Notice of Preliminary Objection dated 19<sup>th</sup> April, 2022 filed in response to the first application and in opposition to the entire Petition.
  4. The first application was filed by the Petitioner seeking among other prayers;
    - a. an injunctive relief restraining the Interested Parties from carting away the Respondent's goods and assets,
    - b. that the court reviews and sets aside its earlier order staying the proceedings herein upon which the court should fix a priority date for hearing of yet another application by the Petitioner dated 23<sup>rd</sup> December, 2019.
  5. The Second application was filed by the firm of M/S H. Kago & Company Advocates, on behalf of the Respondent Company seeking; the firm of Maumo & Company Advocates to be declared as not being lawfully in record for the Respondent Company and the documents filed herein by the said firm of advocates to be expunged from the record.
  6. The dispute in the second application entangles around who between the Petitioner and the Interested Parties has the power to appoint advocates to represent the Respondent Company, the firm of Maumo and Company Advocates having been instructed by the Petitioner, whilst the firm of H. Kago & Company Advocates having been instructed by the Interested Parties.
  7. This Court will address the two applications sequentially, starting with the 1<sup>st</sup> application filed by the Petitioner which the court shall address in contemporaneity with the Notice of Preliminary Objection and dependant on the outcome, the court shall thereafter address the application by the firm of H. Kago & Company, Advocates.
  8. The application dated 27<sup>th</sup> January, 2022 is brought under the Provisions of Section 1A, 1B, 3A of the Civil Procedure Rules, Sections 140, 142, 143, 771, 780 and 782 of the Companies Act seeking the following orders:
    - a. Spent;
    - b. Spent;
    - c. Spent;
    - d. That Pending the hearing and determination of this Petition, this Honourable Court be pleased to restrain the Interested Parties from removing or carting away the movable assets of the company including the furniture, fixtures, fittings, plant, and machinery of the Company from Manchester Outfitters building on LR No 209/8314 situated on Dunga Close within Industrial area in Nairobi.
    - e. That this Honourable Court be pleased to set aside the orders made on 26<sup>th</sup> November 2020 staying the further proceedings in this Petition pending the final determination of Nairobi HCCC No 55 of 2012 Manchester Outfitters Ltd v Pravin Galot & Others.



- f. That directions be given for the hearing and disposal of the application dated 23<sup>rd</sup> December, 2019 in priority and on an urgent basis.
  - g. That this Honourable Court be pleased to make such and or any other necessary orders that it may deem fit and just to grant.
  - h. Costs.
9. The grounds adduced in support of the application both on its face and in the affidavit sworn in support thereof by Mohan Galot, the Petitioner herein, is that the Petitioner learnt that the Interested Parties have been without consulting the him and without his authority taken active steps to remove and cart away the Respondents assets including its documents, fixtures, fittings, plant and machinery on LR No 209/8314 which is the Respondent's place of business to another location beyond the reach of the Petitioner in a bid to defraud the Petitioner of his interests, investments and proprietary rights on the said assets. In addition to that, he alleges that the Interested Parties have been filing false and fraudu) to possible execution and attachment by KRA.
10. The Petitioner has also added that sometimes on 26<sup>th</sup> November, 2020, he consented to these proceedings being stayed to pave way for his concentration on hearing and determination of HCCC No 55 of 2012. That he has already testified in the said suit and he is on stand calling the second witness and believes that his evidence is viable enough to confirm his claims on being the majority shareholder in the Respondent Company.
11. He further avers that the Interested Parties having seen the possibility of being defeated in HCCC No 55 of 2012, have now resorted to stealing a match by carting away the assets of the Respondent Company so that at the time a decision will be rendered in HCCC No 55 of 2012, the Respondent Company will merely be a shell with no assets. On that basis, the Petitioner has sought for the orders recorded staying the proceedings herein to be vacated to allow the Petitioner to preserve the assets of the Respondent and consequently, the Interested Parties be restrained accordingly.
12. In his further affidavit, the Petitioner deponed that the Interested Parties, vide a letter authored by their advocate admitted that they were shifting the Respondent's office to Mombasa Road hence admitting the fact that they were carting away the assets as alleged. He further dismisses the assertions that leave ought to be sought in filing any suit in stating that the court in HCCC No 430 of 2012 was exercising authority in a different High Court division which is not binding on the Constitutional Petition division. Further that, parties cannot proceed to seek leave before a Judge who has been promoted to the Court of Appeal for a High Court suit.
13. In response to the application, Rajesh Galot, the 2<sup>nd</sup> Interested Party filed an application under Certificate of Urgency supported by an affidavit he swore on 31<sup>st</sup> January, 2022. In summary, his case is that the application by the Petitioner is based on material non-disclosure and so are the interim orders barring the Interested Parties from carting and moving away assets from the Respondent's business premises which were issued by this Court at ex-parte stage. He seeks to have same discharged by court. According to him, the Petitioner failed to disclose the existence of HCCC No 430 of 2012 wherein the court gave orders on the 10<sup>th</sup> July, 2012 which were further extended by consent, directing inter-alia that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties do continue running the Respondents affairs pending the hearing of that matter, and that there would be no filing of further suits except with the leave of the court.
14. The 2<sup>nd</sup> Interested Party denied the allegation of removing the Respondent's assets and stated that what actually happened was that the Interested Parties were moving part of the office documents to a new place given the shrinking office space in the Respondent's business premises. He adds that in



the recent years, the Interested Parties have invested in and purchased new machines in expanding the Respondents business, hence occupying more space. In any case, he asserted that the decision to relocate the offices is a resolution passed in the management of the Company as mandated by the court orders. That besides the false allegation that the Interested Parties were moving assets of the Respondent it in the 2<sup>nd</sup> Interested Party's view that the Petitioner/Applicant has not adduced any evidence to show that the Interested Parties had indeed moved assets namely plant and machinery from the Respondent's business premises. And therefore, the court was misled on basis of the said falsehoods to grant orders which have a detrimental effect on the Respondent Company. He deponed that the Respondent Company has been unable to move its fitting machinery to clients end locations for purposes of effecting final fitting on uniforms for orders placed by its clients. As such the Respondent is eventually being exposed to potential legal actions for breach of agreements owing to court orders in place.

15. Lastly, the 2<sup>nd</sup> Interested Party contends that the Petitioner failed to disclose that the orders issued on 10<sup>th</sup> July, 2012 precluded the filing of subsequent suits unless with leave of the court, hence this Petition was filed without such leave and as it is, the same is contemptuous to the said orders. That this was the position adopted by court in JR Misc. Application No 275 of 2013 filed by the Petitioner but was dismissed for not having sought the leave of court.
16. The 2<sup>nd</sup> Interested Party reiterated the above averments in a Replying Affidavit he swore on 31<sup>st</sup> January, 2022 in further opposition to the Petitioner's application. I wish not reproduce the same here.
17. On his part, the 1<sup>st</sup> Interested Party, Pravin Galot, opposed the application vide a replying affidavit he swore on 7<sup>th</sup> February, 2022. Over and above reiterating the grounds adduced by the 2<sup>nd</sup> Interested Party, he deponed that the Petition violates this court's orders issued on 10<sup>th</sup> July, 2012 in HCCC No 430 of 2012 for having been filed without the leave of court, which leave cannot be sought ex-post-facto. The court in JR Misc. Application No 275 of 2013 having confirmed that no suit can be filed by parties herein without the leave of court, the issue is res judicata and facts in this suit should squarely fit in. That the assertions by the Petitioner that he is the undisputed governing Director and Chairman of the Respondent Company are unfounded and since they are subject for determination in HCCC No 55 of 2012, they cannot hold in challenging the manner in which the Interested Parties are managing the Respondent Company's affairs having been mandated to do so by court.
18. Mr. Pravin added that in further contravention of the orders issued by court in HCCC No 430 of 2012 the Petitioner appointed the firm of M/S Maumo & Company Advocates to act on behalf of the Respondents whereas the orders were sparkling clear that the affairs of the Respondent Company would be managed by the Interested Party. In that case, if this Court were to allow the Petition to continue then it will be allowing the Petitioner to sue himself since he purports to appoint an advocate for the Respondent and at the same time, the Petition would be contumacious of the orders issued by the court in HCCC No 430 of 2012.
19. The firm of M/S George Gilbert, Advocates which took over from the firm of M/S Maumo & Company, Advocates on instructions of the Petitioner filed a Notice of Support of the Application dated 27<sup>th</sup> January, 2022 alleging that the Interested Parties were proved to have been interfering with the assets of the Respondent Company.
20. The 2<sup>nd</sup> Interested Party also filed a Notice of Preliminary Objection dated 19<sup>th</sup> April, 2022 in further objection to the Petitioner's application, and raised the following grounds:-
  - a. That these proceedings were stayed by consent of all the parties on the 26<sup>th</sup> November, 2020 pending the hearing and determination of HCCC No 55 of 2012.



- b. That consequently this Honourable Court has no jurisdiction to hear or entertain any other proceedings in this matter, including the instant application, in view of the stay orders given on the 26<sup>th</sup> November, 2020.
  - c. This Court lacks the requisite jurisdiction to purport to entertain, hear and determine the Petition herein as it raises no statutory ground for the appointment of an administrator as expressly envisaged under the [Insolvency Act](#) as the Petitioner is not a creditor within the meaning of Section 522 as read together with Section 531, amongst others, of the [Insolvency Act](#) and the inability to pay debts by the Respondent has neither been raised nor evidence presented.
  - d. Based on the doctrine of subjudice, this Court is precluded from purporting to entertain, hear and determine this Petition as it is based on matters sub-judice that are pending determination before this court in HCCC No 55 of 2012 and HCCC No 430 of 2012.
  - e. Based on the Principle in *Foss v Harbottle*, this Petitioner lacks the requisite locus standi to bring this Petition and this Court consequently lacks the jurisdiction to purport to entertain, hear and determine the Petition herein.
  - f. The Petitioner's Notice of Motion application dated 27<sup>th</sup> January, 2022 and the Replying Affidavit sworn on 15<sup>th</sup> February, 2022 are premised on matters subjudice.
  - g. The Supporting Affidavit of the Petitioner sworn on the 27<sup>th</sup> January, 2022 at Paragraphs 15, 17 & 19 are sub judice and should be struck out.
  - h. The supporting affidavit of the Petitioner sworn on the 15<sup>th</sup> February, 2022 at Paragraphs 15, 17, 24, 25, 26, 28, 30, 34, 52, 61 & 62 are sub-judice and should be struck out.
  - i. The Petition is gross abuse of the process of this Court.
  - j. The Petitioner has a mere grievance before this court and no cause of action premised on inability of the Respondent to pay its debt which is the only statutory ground for appointment of an administrator.
21. The second application is a Notice of Motion dated 6<sup>th</sup> October, 2022 filed by the firm of M/S H. Kago & Company on behalf of the Respondent. It seeks the following prayers: -
- a. Spent;
  - b. Spent;
  - c. That this court to hear and determine the issue of representation of the Respondent Company.
  - d. That this Honourable Court to issue orders declaring the firm of Maumo & Company Advocates to cease purporting to act for the Respondent Company without a Board Resolution and in Contempt of orders in HCCC No 430 of 2012 dated 10<sup>th</sup> July, 2012.
  - e. That this Honourable Court do issue orders directing the firm of M/S Maumo & Company advocates to cease purporting to act for the Respondent Company without a board resolution and in contempt of orders in HCCC No 430 of 2012 dated 10<sup>th</sup> July, 2012.



- f. That this Honourable Court do grant leave to the firm of M/S H. Kago & Company, Advocates to withdraw any and all pleadings filed by the firm of M/S Maumo & Company, Advocates.
  - g. That this Honourable Court do issue any other or further orders that it may deem just and fit.
  - h. That the costs of this application be provided for.
22. The application was premised on among other grounds that the Respondent in a board resolution dated 22<sup>nd</sup> January, 2020 appointed the firm of H.Kago & Company, advocates to come on record for the Respondent Company. This was pursuant to the orders issued by the court in HCCC No 430 of 2012 authorizing the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties to continue running the affairs of the Respondent Company and precluding the filing of any other suit except with the leave of the court. Absurdly, the Petitioner filed this suit without the leave of the court and purportedly appointed an advocate for the Respondent which amounts to the Petitioner having sued himself. Therefore, the interests of the Respondent Company will not be protected if prosecuted by an advocate appointed by the Petitioner.
23. In response to that application, the Petitioner in his affidavit sworn on 14<sup>th</sup> October, 2022 averred that he is the undisputed founder, subscriber and chairman of the Respondent Company. He stated that since the filing of the Petition, the Interested Parties have always known that the firm of M/S Maumo & Company, Advocates was instructed by him to appear for the Respondent. He added that the Interested Parties were employees of the Respondent Company and being a Chairman in the same Company, he can dismiss them from the position of Directorship and does not need the approval of the Interested Parties when making a decision including that of appointing an advocate for the Respondent Company. Consequently, he contends that the Interested Parties have no capacity to appoint an advocate for the Respondent Company without his approval.
24. On whether it was mandatory for leave to be obtained before filing of the application and the entire Petition, the Petitioner averred that that position was overruled by this Court in a ruling dated 2<sup>nd</sup> August, 2022 which has not been overruled to date.
25. By consent, the parties canvassed all the applications and the Notice of Preliminary application by way of written submissions which has been read for consideration. The court has also considered the case law and previous decisions made in matters relating to similar issues as the parties have raised in the applications and submissions filed on their behalf. I will highlight both sets of submissions in the analysis of this case.

**Analysis and Determination of the Application dated 27<sup>th</sup> January, 2022 and the Notice of Preliminary Objection dated 19<sup>th</sup> April, 2022.**

26. Having highlighted each party's perspective on the Petitioner's Notice of Motion dated 27<sup>th</sup> January, 2022 and the Notice of Preliminary Objection filed in response thereof, the court is of the view that the common issues arising for determination are as follows: -
- a. Should the orders made on 26<sup>th</sup> November 2020 staying the further proceedings in this Petition pending the final determination of Nairobi HCCC No 55 of 2012, Manchester Outfitters Ltd v Pravin Galot & Others be set aside?



- b. Whether leave ought to be sought before filing the Petition herein in view of the orders made on 10<sup>th</sup> July 2012 in HCCC No 430 of 2012.
  - c. Whether the Instant application as well as the entire petition raises issues sub-judice to HCCC No,430 of 2012 and HCCC No 55 of 2012.
  - d. Whether pending the hearing and determination of the petition, the court can restrain the Interested Parties from removing or carting away the movable assets of the company including the furniture, fixtures, fittings, plant, and machinery of the Respondent Company from Manchester Outfitters building on LR No 209/8314 situated on Dunga close within Industrial area in Nairobi.
  - e. What other relevant orders can the court make in the circumstances.
27. However, the court will endeavor addressing all the above highlighted issues is dependent on the positive finding on issue (a) on whether the orders staying these proceedings can be set aside. Thus, if the court finds in favour of the Petitioner and proceeds to set aside those orders, then the other issues will be open for consideration, whereas should the court arrive at a conclusion that the orders staying these proceedings should subsist, then it would be moot in belaboring on the determination of the other pending issues. That having been said, it is a common ground that the orders for stay of proceedings was issued on consent of all the parties and parties acquiesced to the orders being extended pending the hearing and determination of HCCC No 430 of 2012 which has in itself been stayed pending the determination of the of HCCC No 55 of 2012.
28. Therefore, being a consent order, it is widely agreeable in our jurisprudence and decisions made as early as in the case of *Brooke Bond Liebig Ltd v Mallya* [1975] EA 266 at 269, that a court cannot interfere with a consent order except on such ground as would afford good ground for varying or rescinding a contract between the parties. Such would be a case where the Applicant shows that the consent order was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.
29. In this case, the Petitioner avers that he conceded to staying the proceedings in this suit to pave way for his concentration in the hearing and determination of HCCC No 55 of 2012. However, that notwithstanding, he learnt that the Interested Parties were siphoning the assets of the Respondent Company hence the need to setting aside the orders and address the concerns in the Petitioner lest the Respondent Company be left a mere shell with no assets as at the time this Petition of HCCC No 55 of 2012 is heard and determined.
30. In this Court's respectful view, there is no suggestion in the Petitioner's submissions that a matter occurred that would justify the setting aside or rectification of the orders made on 26<sup>th</sup> November, 2020 when looked at as a contract. It's not mentioned that the orders were obtained by fraud or collusion or by an agreement contrary to the policy of the court or that the Petitioner consented to staying the proceedings herein without sufficient material facts in the matters surrounding the litigation in these proceedings. Therefore, there is no reason which would compel the court to set aside the consent orders herein, so that, whether or not the Interested Parties are carting away the Respondent's assets cannot be elevated to such ground. In this Court's view, there being an order for preservation of the assets and records of the Respondent Company, either party herein can properly be cited for contempt of those orders if the court is properly moved.



31. Further to that, this Court is of the view that most of the issues raised in this petition, are substantially merged with the issues under consideration in HCCC No 55 of 2012 that it would be in good order and for certainty, to allow room for conclusion of HCCC No 55 of 2012 before embarking onto concerns raised about the Respondent Company vide this Petition. However, the court is hesitant to consider the preliminary issues taken in objection to the Petition herein, particularly on whether the same is sub-judice or being contumacious to orders made on 10<sup>th</sup> July, 2012 in HCCC No 430 of 2012. This is for the reason that shortly before the orders for stay of proceedings issued, the same trend in challenging the Petition was adopted by the Interested Parties in a Notice of Preliminary Objection filed then but was held in abeyance in view of the stay orders. Similarly, having seen no justifiable grounds for setting the orders staying these proceedings, the court is of the view that all issues pending in this matter can be addressed and dealt with upon the purpose for which these proceedings were stayed is realized.
32. As such, this court sustains part of the grounds in the Preliminary Objection in challenging the jurisdiction to address the grievances by the Petitioner in view of the consent order staying these proceeding. In the resultant, the Petitioner's application dated 27<sup>th</sup> January, 2020 fails and is hereby struck out with no orders as to costs whereas the application by the firm of M/S H. Kago and Company, Advocates shall await the resumption of the Petition herein upon the purpose for which it was stayed is realized.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27<sup>TH</sup> DAY of JUNE , 2023.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Tiego counsel for Petitioner

Mr. Musyoka appearing with Mr. Kago for Respondent Company under instruction of 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

Mr. Enock holding brief for Mr. George Gilbert for Respondent, Manchester Outfitters

Mr. Were counsel for 3<sup>rd</sup> Interested Party

Mr. Kaka counsel for 2<sup>nd</sup> Interested Party

Mr. Kenyatta counsel for 1<sup>st</sup> Interested Party

Court Assistant - Martin

