



**Galot (Suing on behalf of the estate of Sohanlal Pusharam Galot
& another v Galot & 6 others (Commercial Case 298 of 2009)
[2022] KEHC 16458 (KLR) (Commercial and Tax) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 16458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 298 OF 2009
DO CHEPKWONY, J
AUGUST 2, 2022**

BETWEEN

**GANESHLAL PUSHARAM GALOT TARA GALOT & KEVIN GALOT
(SUING ON BEHALF OF THE ESTATE OF SOHANLAL PUSHARAM
GALOT 1ST PLAINTIFF**

**LALITA DEVI LALCHAND GALOT (SUING ON BEHALF OF THE
ESTATE OF LALCHAND PUSHARAM GALOT GALOT INDUSTRIES
LIMITED 2ND PLAINTIFF**

AND

SANTOSH GALOT 1ST DEFENDANT

MOHAN 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. This ruling relates to the 1st defendant's notice of motion application dated January 26, 2022 which seeks the following



orders:-

- a) Spent;
 - b) That the applicant be granted leave to make this application;
 - c) That the consent order of stay of proceedings of this honourable court made on December 20, 2017 and or November 26, 2020 on any other day be pending the hearing and determination of Nairobi HCCC No 55 OF 2012 (formerly HCCC No 63 of 2009) *Manchester Outfitters v Pravin Galot & others* be recalled, set aside and vacated;
 - d) That this honourable court be pleased to set down this suit for hearing on a priority basis for the determination of the preliminary issue of directorship and shareholding of the 4th Plaintiff and the 5th defendant any other issue emanating from the said companies noting that the matter has been pending for over 12 years;
 - e) That the costs of the application be provided.
2. The application is premised on various grounds on its face which are explicated in the supporting affidavit of Mohan Galot, the 1st defendant herein. According to him on December 20, 2017, the advocates on record for the parties misled the court to enter into a consent order staying the proceedings in the present suit pending the hearing and determination of Nairobi HCCC No 55 of 2012 (formerly HCCC No 63 of 2009), *Manchester Outfitters v Pravin Galot & others* by submitting to the court that there were Stay Orders which had been issued on November 28, 2013 in the said HCCC No 55 of 2012 staying the present suit until the former suit was heard and determined. According to the 1st defendant/applicant, there were no such orders issued in the said HCCC No 55 of 2012. In any event, if the court had issued such orders, then the 1st defendant was not notified of the same and the consent was filed without his approval.
3. It is the applicant's case that the disputes in HCCC No 55 of 2012 and HCCC No 430 of 2012 purely revolved around shareholding and directorship of Manchester Outfitters Limited and not any other company, hence are unrelated and independent from the present case. Indeed, the Judges presiding over HCCC No 55 of 2012 clarified that they would only deal with directorship and shareholding of Manchester Outfitters only, In addition, some of the plaintiffs have sworn affidavits in both HCCC No 55 of 2012 and HCCC No 430 of 2012 reiterating that the dispute in those matters strictly involves directorship and shareholding of Manchester Outfitters and has no connection with the present case, thus it is misleading to stay the present case indefinitely on the alleged consent order.
4. The applicant also avers that he assumed the office of chairmanship for the 4th defendant pursuant to article 10 of the company's articles of association and that whereas the plaintiffs are not directors of the 4th plaintiff as they allege, have incessantly gone ahead to forge documents to authenticate their directorship. The applicant has further averred that the case has been looming in the court corridors for the last 13 years without any progress, yet the plaintiffs have obtained injunctions and stalled the 4th plaintiff's business venture by registering caveats on properties owned by the 4th plaintiff's company. Lastly, the applicant has averred that he rightfully appointed an advocate to act for the 4th plaintiff in exercise of the powers conferred to him as the chairman of the 4th plaintiff and no other person had the power for such appointment.



5. The application is opposed by the 1st plaintiff through his affidavit sworn on February 15, 2022 wherein he describes himself as a shareholder and director of the 4th plaintiff, wherein he has averred that whereas the 4th plaintiff's articles of association create the position of governing director, article 10 thereof stipulates the manner in which such position can be assumed. That article 10 is also replicated in the articles of association of Manchester Outfitters which is also subject to HCCC No 55 of 2012. He concedes that the only concern in HCCC No 55 of 2012 is the issue of directorship and shareholding of Manchester Outfitters Limited but avers that the court directed that the decision therein would apply to all other cases, this being one of them. He added that the issue of governing director is a common trend both in the case of the 4th plaintiff and Manchester Outfitters and the stay is on determination of the governing directorship which shall apply on both entities.
6. In the 1st plaintiff's view, the instant application is contemptuous to the orders issued in HCCC No 430 of 2012 precluding the alteration of the 4th plaintiff's records. Even on prior occasions, this court has in other cases including JR Misc App No 275 of 2013 held that without prior leave being obtained, any other proceedings undertaken would be in violation of the orders in HCCC No 430 of 2012. He craves for the court not to depart from that finding.
7. The 3rd plaintiff/respondent opposed the application through the affidavit she swore on February 22, 2022. she avers that by consent on December 20, 2012, the parties herein through their advocates agreed to stay the matter pending determination of hccc No 55 of 2012 and the applicant cannot blindly walk away from the said consent. That, whereas HCCC No 55 of 2012 involves a dispute on shareholding and directorship of Manchester Outfitters Limited, its articles of association is similar to that of the 4th plaintiff herein and the interpretation of article 10 of the articles of association shall also resolve the dispute in this case. She added that on July 10, 2012
8. Pravin Galot also opposed the application through the affidavit he swore on February 24, 2022 allegedly in his capacity as the 4th Defendant's Director. He avers that the present proceedings were initiated by the plaintiffs through the firm of M/S Majanja & Luseno Advocates, then the Firm of M/S H Kago & Co Advocates took over and now the Firm of M/S Odera Were advocates has taken over the matter on behalf of the 4th plaintiff. In his view, it would be unusual and an act of bad faith for the 1st defendant/applicant to purport that he has appointed an advocate for a party who has sued and obtained orders against him. He reiterates that there is a consent order staying the proceedings and the only way to progress with this matter starts with setting aside the orders in HCCC No 55 of 2012 and HCCC No 430 of 2012. He finally dismisses the affidavit by Nina Galot sworn in support of the application at hand and states the same has been sworn without authority whatsoever,
9. In his further affidavit sworn on March 3, 2022, the 1st defendant/applicant responded as follows; that as the chairman of the board of directors of the 4th plaintiff, he was not involved in meetings authorizing the filing of the present suit on behalf of the 4th respondent or the appointment of the advocates thereof. Therefore, the appointment of advocates on behalf of the 4th plaintiff is a nullity and is tainted with irregularity. he has reiterated that as the sole remaining director of the 4th plaintiff, he has to preside over the appointment of other directors and since that was not the case, all other persons purporting to be directors of the 4th plaintiff are doing so in collusion with the company's registrar official and by fraud.
10. In any event, he reiterates that the matter was filed under certificate of urgency in the year 2009 and interim orders obtained on October 27, 2009, and for the past fourteen (14) years, the matter has not proceeded for hearing. He added that the alleged consent order dated February 24, 2012 is not actually a consent order, but directions issued by consent and they do not state that they are extended



to the present suit. Mr. Mohan has maintained throughout his affidavit that the purported consent is incompetent for not having been ceded to by all the parties and further that the proceedings and parties in HCCC No 55 of 2012 and HCCC No 430 of 2012 have no connection or authority to bind the parties and proceedings in this case. He also points out that the justification for the purported stay consent orders as the respondents averred is to await interpretation of article 10 and adopt the interpretation to this suit and according to him that would be a perverse reason to stay the present matter for that long.

11. I have also read the other responses filed in support and rebuttal of the application at hand and since they reiterate the averments reproduced above, I do not wish to reiterate the same here save for stating that I have read through the affidavit of Nina Galot sworn on February 23, 2022 and that of Titus Tiego sworn on even date.
12. On February 25, 2022, this court directed the parties to canvass the application by way of written submissions and further to limit the issues for determination of three issued namely; whether leave to file the application was/is necessary in view of the court orders issued by Musinga J (as he then was) on the July 10, 2012; whether the said orders on stay of proceedings bind and/or are applicable to this case, and lastly, on the issue of representation of the 4th plaintiff.
13. Having read through the record, I do confirm that parties have complied with those directions and filed their respective submission. For the applicant, he has reiterated the grounds in his affidavits and further supported his disposition with excerpts from the case of *Abraham Lenauia Lenkeu v Charles Katekeyp Nkaru* [2016]eKLR, where the court observed that:-

“A court can only exercise jurisdiction in a matter litigated before it and such jurisdiction cannot be extended or conferred by parties”

In view of that, the applicant has submitted that the courts presiding over HCCC No 430 of 2012 could not have extended their jurisdiction to stay proceedings in this matter.
14. On further reliance on the Supreme Court case of *Geoffrey M Asanyo & 3 others v Attorney General* [2020]eKLR, the applicant submitted that a consent order is formally adopted as an order of the court once all the parties are involved and since all the parties in this case were not involved, the purported consent of November 28, 2013 cannot be termed as an order of the court hence a ground for setting aside the purported consent order.
15. As to whether leave to file the present application was necessary, the applicant reiterates that the orders in the other suits are not binding in the present case and whatever the case may be, the application at hand has a prayer seeking for leave.
16. Lastly, on the issue of representation of the 4th plaintiff, the applicant submits that the same is an issue that is intertwined with directorship and can only be determined amicably upon full hearing.
17. The 2nd, 3rd and 4th defendants filed submissions dated April 7, 2022 in which ideally they have reiterated the averments in Nina Galot’s affidavit sworn on their behalf on February 23, 2022. Their case is simply that the orders in HCCC No 55 of 2012 and No 430 of 2012 are not binding or in any way applicable in the present suit, hence no leave was needed at all. They support the governorship of the applicant and reiterate that the advocates appointed by the applicant are the rightful advocates on record.
18. On his part, the 3rd plaintiff filed submissions dated April 4, 2022.

The first issue submitted on is the issue of representation and according to the 3rd defendant, given that there are two different advocates, appointed by different directors on behalf of the 4th plaintiff, the



issue of representation can be resolved once the dispute on directorship is resolved. On whether leave was required, it was submitted that the orders for stay of proceedings in HCCC No 430 of 2012 were granted by consent and meant to apply in all cases involving the plaintiff companies and leave ought to be sought first before filing any application to avert duplicity of suits. It is further submitted that the applicant attempted to file another suit being HCCC No 275 of 2013 but the same was pronounced as an abuse of the court process in view of the orders granted on July 10, 2012. The court is urged to align itself with that decision and dismiss the present application.

19. The 1st plaintiff/respondent in their submissions dated March 24, 2022 reiterated that the orders granted in HCCC No 430 of 2012 are binding even to the present case and leave had to be sought before filing the present application. The court was directed to similar findings as in the Succession Cause No 1997 of 1995 and HCCC No 275 of 2013 where the court jealously guarded the need to seek prior leave of the court before filing any further case or application.

Analysis and Determination

20. I have considered the application at hand, the case put forward by each party in support and/or in rebuttal of the application and the chequered history of this case which can be traced as far back as 2009 when the same was filed. It is noteworthy, that thirteen (13) years down the line and case has neither been listed for hearing nor have the parties recorded any significant progress in resolving the dispute herein.
21. One of the precepts of justice which also touch on the right to fair trial is the need for expeditious disposal of suits since delay without explanation is a denial of justice and delay defeats equity. Parties herein are adamant to observe that old adage and have contentiously argued on whether proceedings in the present case were stayed to await the determination of HCCC No 55 of 2012 and if so whether the court can set aside such orders. However, as earlier pointed out somewhere in the ruling that this court had narrowed down the issues for determination and invited the parties to submit on the same, I wish to proceed in that confine and set out the issues (verbatim) for determination as:-
- a) Whether leave to file the present application was/is necessary in view of the court orders issued by Musinga J. (as he then was) on July 10, 2012.
 - b) Whether the said orders on stay of proceedings bind and/or are applicable to this case.
 - c) Which counsel is properly representing the 4th plaintiff.

a) Whether leave to file the present application was/is necessary in view of the court orders issued by Musinga J. (as he then was) on July 10, 2012.

22. Throughout their submissions, the plaintiffs have emphasized that on July 10, 2012, Justice Musinga J (as he then was) expressly ordered that there should be no filing of any other suit or application except with the leave of the court whereas the defendants are of the view that those orders are applicable in the case they were granted and cannot be extended to this case without proper consent by all the parties involved.
23. The orders by Musinga J (as he then was) were issued in HCCC No 430 of 2012 and for the same of discussion in this ruling, the honourable judge directed as follows:-
- a) That there shall be no alteration or variation of any record regarding any of the plaintiff companies pending the hearing scheduled for July 20, 2012.



- b) That all title documents relating to any of the properties owned by any of the plaintiff companies shall be preserved as they are today. There shall be no dealing in any of theM
 - c) That the operations of the 2nd plaintiff, Manchester Outfitters Limited should continue as usual. That includes procurement and signing of cheques to effect various official transactions. The 1st and 2nd defendants shall continue to run the said company.
 - d) There shall be no filing of any other suit or application except with the leave of the court.
24. The plaintiffs have submitted that the filing of the present application amounts to alteration of the 4th plaintiff's record contrary to the above orders wherein the 4th plaintiff herein is also the 3rd plaintiff in HCCC No 430 of 2012 where the orders were granted. They further submitted that the present application has been filed without leave contrary to the orders reproduced above. The plaintiffs have gone ahead to cite two cases including Succession Cause No 1997 of 1995 and HCCC No 275 of 2012 which were dismissed for having been filed without the leave of court and urged the court to treat the application at hand in the same manner.
25. Where parties contest to the binding nature and meaning in orders of a court, in interpreting the subject orders, the court ought to apply the strict construction rule to avoid drawing inferences unless such interpretation would result into an absurdity. In that sense, my interpretation of the orders granted on July 10, 2012 is as follows; Firstly, the court in precluding the alteration or variation of the record regarding the plaintiff companies meant the structuring records such as the articles and memorandum of associations, the composition of directors or any other thing constituting the structure of the subject companies. i am therefore unable to agree with the plaintiff that the application at hand constitutes a record of the 4th plaintiff company which the 1st defendant/applicant can be deemed to alter or vary by filing the application. In making that order, the court did not envisage court proceeding to be part of the plaintiff companies since what constitutes a record is a thing constituting a piece of evidence about the past. secondly, it is my view that the order was meant to bind the parties in HCCC No 430 of 2012 and their proxies or other person who can legally claim under them and such persons ought to seek leave before filing any suit or application. However, those orders just like any other court orders, for sake of legal certainty, are legitimately expected to have a prospective effect but not to overrule the management and hearing of the existing suits as at the time of the orders hence are not applicable or binding on the present case. Were the orders of July 10, 2012 to have a retrospective effect, then they would also be binding on the parties in HCCC No 55 of 2012 and enjoined the parties therein before filing any application to first seek leave before the three-Judge bench. That was not the case.
26. In the end, and for the reasons stated above, this court's conclusion on the first and second issued pointed out for determination is that the orders granted on July 10, 2012
27. Now considering the merit in the application dated January 26, 2022, seeking to set aside the orders staying the proceedings in this case pending determination of HCCC No 55 of 2012 and have this suit set down for hearing. According to the applicant, the court was misled into recording an impugned consent on stay of proceedings, and given that the suit was instituted thirteen (13) years ago, it is only prudent that the court sets it down for hearing. Further, the applicant has submitted that the court in HCCC No 55 of 2012 ruled that it would only determine the issue of shareholding and directorship of Manchester Outfitters Limited hence this suit should proceed for determination on the issue of



shareholding and directorship of the 4th plaintiff herein. Galot Industries Limited. On the other hand, the plaintiffs opposed the idea of setting aside the order staying the proceedings or even having the suit set down for hearing for the reason that the consent order staying the proceedings was entered into by consent and also that the dispute in the present case is intertwined with the dispute in HCCC No 55 of 2012. The plaintiffs further submitted that the interpretation of article 10 of the articles of association for Manchester Outfitters Limited in HCCC No 55 of 2012 also applies in the present suit since the 4th plaintiff's articles of association has a similar clause.

28. I have read through the court record in the present case and confirmed that on December 20, 2017, counsel holding brief for Mr Havi for the plaintiffs and Mr Ojijo, counsel holding brief for Mr Kaka for the 1st to 6th defendants were agreeable to the stay of proceedings in the present case pending the determination of HCCC No 55 of 2012. Both counsel confirmed that on November 25, 2013, the court in HCCC No 55 of 2012, stayed the proceedings in the present case. However, a perusal of the record shows that on November 28, 2013, Mr Anzala the then counsel for the plaintiff suggested and M/S Ng'ania the then counsel for the 1st to 6th defendants agreed for the stay of proceedings on ground that the three judge-bench would address the issue of governing director in HCCC No 55 of 2012. It is on the basis of that consent that the court stayed the proceedings herein to await the determination on the issue of directorship.
29. The plaintiffs on one side now submits that the consent is binding on all parties to date and cannot be wished away until a determination is made in HCCC No 55 of 2012 while the defendants on the other hand disown the consent and further submit that the same had no legal effect since the 7th defendant never consented to the stay of proceedings.
30. It is well settled in law that a consent order binds the parties thereto and can only be set aside on grounds of fraud or collusion, that there was no consensus between the parties, against public policy or for such reasons as would enable a court to set aside or rescind a contract. The record confirms that the then advocates for the plaintiffs and the 1st to 6th defendants considered to the stay of proceedings in the belief that the court in HCCC No 55 of 2012 would address the issue of governing director in the 4th plaintiff company. However, I have come across a ruling delivered in HCCC No 55 of 2012 on November 24, 2021 wherein, in addressing an objection on evidence relating to other companies to wit, Galot Limited, the court reiterated that the issue for determination in that suit is the directorship and shareholding of Manchester Outfitters Limited only. It cannot therefore be gain-said that the court in HCCC No 55 of 2012 will not address the issue of governing director in Galot Industries Limited, the 4th plaintiff herein or even the shareholding and directorship thereof and for that reason, i am of the view that the purpose for which the proceedings herein were stayed, seems to have lost the possibility of being actualized.
31. In addition, throughout the proceedings in HCCC No 55 of 2012, the court did not state anywhere that its interpretation of article 10 of the articles of association Galot Outfitters Limited would also apply to this case and it would be misleading to believe so. Whatever the case, the dispute in the present suit is not within the scope of shareholding and directorship of Manchester Outfitters Limited. I am satisfied that, that is a sufficient basis for setting aside the consent order staying the proceedings in the present case. That delay exhibited in the matter contrary to this court's mandate on expectations disposal of trials hence prompting the setting aside of the order staying the proceedings in this case.
32. That being the case, the application dated January 26, 2022 is allowed, and the consent recorded by counsel on November 28, 2013 and subsequently on December 20, 2017, staying the present proceedings is hereby set aside and substituted with an order directing the parties to proceed for pretrial/case management before the deputy registrar.



33. Lastly, I will delve into the issue of representation of the 4th plaintiff. It is a common ground that there are two advocates on record for the 4th plaintiff both purporting to have been properly instructed to come on record. In his affidavit, Pravin Galot has averred that the firm of M/S Odera Were, advocates was appointed by the 4th plaintiff through a resolution and he maintains that an advocate can only be appointed through a resolution but not at the wish of a director. He castigates the 1st defendant for purporting to appoint an advocate for the 4th plaintiff notwithstanding that the 4th plaintiff has sued and obtained orders against him. In his view the appointment of M/S Tiego & Co Advocates by the 1st defendant was done in bad faith. The 1st defendant/applicant on the other hand reiterates that he is the 4th plaintiff's chairman, and in that capacity, he has properly instructed M/S Tiego & Co Advocates on behalf of the 4th plaintiff. In his view any appointment of an advocate done without his approval is ultra vires and a nullity.
34. I am in agreement with the parties that the issue of representation of the 4th plaintiff is intertwined with the issue of directorship of the 4th plaintiff company. Therefore, a determination on who is authorized to appoint an advocate on behalf of the 4th plaintiff company can only be made upon full hearing and consideration of the evidence to be presented to court.
35. However, in the meantime and for purposes of hearing and determination of this suit on the issue of directorship of the 4th plaintiff company, this court directs as follows:-
- a) Pravin Galot and all other persons opposing the claim by Mohan Galot and seeking to establish their shareholding, be joined to the suit as plaintiffs while Mohan Galot and the other persons supporting his bid be joined as the defendants.
 - b) The two advocates on record for the 4th plaintiff to seek instructions on which individual parties they shall represent but not the 4th plaintiff company.
 - c) To avoid duplicity of documents, parties on either side may file joint bundle of documents within 45 days from the date hereof. Mention on October 6, 2022 before the deputy registrar for case management.

It is so ordered.

RULING DELIVERED VIRTUALLY. DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF AUGUST, 2022.

D. O. CHEPKWONY

JUDGE

