



REPUBLIC OF KENYA



KENYA LAW
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Galot v Galot & 2 others (Environment & Land Case 2247 of 2007 & Civil Suit 49 of 2009 (Consolidated)) [2023] KEELC 17569 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17569 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 2247 OF 2007
& CIVIL SUIT 49 OF 2009 (CONSOLIDATED)

LN MBUGUA, J

MAY 11, 2023

BETWEEN

MOHAN GALOT PLAINTIFF

AND

GANESHLAL PUSHARAM GALOT 1ST DEFENDANT

PRAVIN GALOT 2ND DEFENDANT

RAJESH GALOT 3RD DEFENDANT

AS CONSOLIDATED WITH
CIVIL SUIT 49 OF 2009

BETWEEN

MOHAN GALOT PLAINTIFF

AND

PRAVIN GALOT 1ST DEFENDANT

RAJESH GALOT 2ND DEFENDANT

GANESH GALOT 3RD DEFENDANT

KEVIN GALOT 4TH DEFENDANT

PRADEEP GALOT 5TH DEFENDANT

NARENDRA GALOT 6TH DEFENDANT



RULING

1. Before me is the Plaintiff's application dated December 10, 2021 where he seeks orders to set aside directions given by Hon Justice Eboso on July 28, 2021 and any other orders of stay in this suit. He also prays that parties be directed to comply with Order 11 and that the matter be fixed for hearing. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on December 10, 2021. He avers that on February 12, 2013, an injunctive order was made staying proceedings in these 2 suits and neither party has sought for extension of the same. He deposes that the matter is being stood over without cause. Thus his right to a fair trial as envisaged in Article 25 of the *Constitution* are curtailed by the continued adjournment of this matter.
2. The Plaintiff also filed further affidavits sworn on January 26, 2022 and on June 20, 2022 reiterating his averments in the affidavit in support of the application.
3. The application is opposed by the 1st Defendant vide the replying affidavit sworn on August 8, 2022. He deposes that this is a family dispute instituted by his brother against him and the other Defendants who are his sons and sons of their deceased brothers and who have all resided on the suit property for the last 48 years. He adds that the suit property is registered in Plaintiff's name in trust for the Galot Family.
4. He avers that the dispute in HCCC No 55 of 2012 concerns Manchester Outfitters Limited and it is being heard by a 3 judge bench. That on February 12, 2013, this Court stayed this matter pending determination of HCCC No 55 of 2012. He deposes that the Plaintiff has since made 5 attempts to vary the orders of February 12, 2013, thus the Application is made with ulterior motive.
5. The application is also opposed by the 2nd Defendant vide his replying affidavit sworn on May 13, 2022. He deposes that on February 12, 2013, Justice Mutungi directed that this matter be stayed pending hearing and determination of HCCC No 55 of 2012 thus the directions were not an injunction issued pursuant to Order 40 of the *Civil Procedure Rules*.
6. The application is also opposed by the 3rd Defendant vide his replying affidavit sworn on January 25, 2022. He deposes that the firm of EM Wageita & Co Advocates is not properly on record for the Plaintiff. He adds that the Plaintiff has made similar applications and that the Court has declined to vary the orders delivered on February 12, 2012 on the sole reason that the decision of the 3 - Judge bench in HCCC No 55 of 2012 be delivered first.
7. I have considered all the issues raised herein including the submissions of the parties. I find that on February 12, 2013, Mutungi J made an order of stay of the proceedings herein pending determination in HCCC No 55 of 2012. The records indicate that since then, the plaintiff has made several applications to set aside the said orders as manifested in his Application dated January 24, 2014 (ruling delivered on July 23, 2015) and the one dated August 14, 2017 (ruling delivered on October 18, 2018). In all these instances, the Court declined to review the orders of February 12, 2013. Instead, the court has consistently re-affirmed the said orders as per the proceedings of February 17, 2020, December 10, 2020 and July 28, 2021.
8. It is quite apparent that the court has pronounced itself not once, not twice, but severally on the issue of the orders of February 12, 2013. There is nothing to indicate that a decision has been rendered in the High court matter. If the Plaintiff is dissatisfied with the stand that this Court has continually taken, then it should challenge the said decisions in the proper forum at the appeal platform instead of filing various applications.



9. The application dated December 10, 2021 is hereby dismissed with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muhato for the Plaintiffs

Omondi holding brief for Kenyatta for 1st Defendant in 2247 of 2007

Kaka for 3rd Defendant

Mrs. Omondi holding brief for Were for 1st Defendant in 2247 of 2007

Court assistant: Eddel

