



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO.183 OF 2019

IN THE MATTER OF ARTICLES 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED THREATS TO AND CONTRAVENTION OF UNDER ARTICLES 24,25,27,28,29,31,40,47,48,49
AND 50 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF ARTICLES 73, 156(10) AND 245(4) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS ACT NO. 2 OF 2013

AND

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)
PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

MOHAN GALOT.....1ST PETITIONER

RAJEEV MODI.....2ND PETITIONER

PUSHPINDER SINGH MANN.....3RD PETITIONER

JOPHECE YOGO.....4TH PETITIONER

GALOT INDUSTRIES LIMITED.....5TH PETITIONER

MANCHESTER OUTFITTERS LIMITED.....6TH PETITIONER

KING WOOLLEN MILLS LIMITED.....7TH PETITIONER

MOHAN MEAKIN KENYA LIMITED *now*

LONDON DISTILLERS KENYA LIMITED.....8TH PETITIONER

AND

THE INSPECTOR-GENERAL OF

NATIONAL POLICE SERVICE.....1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

THE CHIEF MAGISTRATE'S COURT, NAIROBI.....4TH RESPONDENT

THE HON. ATTORNEY-GENERAL.....5TH RESPONDENT

AND

PRAVIN GALOT.....1ST PROPOSED INTERESTED PARTY

RAJESH GALOT.....2ND PROPOSED INTERESTED PARTY

NARENDRA GALOT.....3RD PROPOSED INTERESTED PARTY

GALOT LIMITED.....4TH PROPOSED INTERESTED PARTY

RULING

1. The Applicants through a Notice Motion dated 27th May 2019 seek the following orders:-

- a) That this Application be certified as urgent and heard *ex-parte* in the first instance.
- b) That this Application be heard in priority to the Petitioners' application dated 18th May, 2019.
- c) That this Honourable Court be pleased to enjoin the Applicants herein, Pravin Galot, Rajesh Galot and Narendra Galot, as Interested parties in these proceedings.
- d) That this Honourable Court be pleased to discharge, vary and or set aside its orders of stay issued in this matter on the 23rd May, 2019.
- e) That this Honourable Court be pleased to issue such further orders as it shall deem fit and just in the circumstances.
- f) That the cost of this application be provided for.

2. The application is based on several grounds on the face of the application being number 1 – 14 all inclusive. The applicants further rely on supporting affidavit by Pravin Galot, sworn on 23rd May 2019 and annexures **PG1 – PG-16**.

3. The Interested party/Applicants further rely on their further affidavit by Pravin Galot sworn on 9th September 2019 and to which the interested party have annexed documents marked **PG1-PG-11** and **KM3-KM4** and **PG-12 – PG-18**.

4. The petitioners filed grounds of opposition dated 10th June 2019 setting out the following grounds:-

- a) The application is incompetent and an abuse of the process of this Court and merely intended to delay the fair hearing of this matter.
- b) Within the context of and meaning of Sections 2, 9 and 13 of the Victims Protection Act, 2014 and the circumstances precipitating the present petition, the Applicants have no locus to present the application.
- c) The application is bad in law for seeking unknown remedies under the Criminal justice system and the Constitution of Kenya, 2010.
- d) The application is bad in law as the Applicants have failed to demonstrate why their joinder is material to this Petition and to allow prayer number 3 of the Petition will amount to breaching the Constitutional mandate of the 3rd Respondent, within the meaning and context of Article 157(10) of the Constitution of Kenya as read with Section 5(b) (i), 6 and 23 of the Office of the Director of Public Prosecutions Act, No. 2 of 2013.
- e) This Honourable Court does not have the jurisdiction to entertain, try and or determine prayer no.4 sought under the application dated 27/5/2019 and the Petitioner shall at the hearing hereof raise a preliminary objection in respect thereof.

5. The 4th and 5th Respondents filed their grounds of opposition to joinder of the Applicant's dated 30th May 2019 raising the following grounds:-

- a) The instant Application does not qualify or meet the principles for the joinder of a party as an interested party in the proceedings herein as was well articulated by the Supreme Court in the case of **Francis Kariuki Muruatetu & another vs Republic & 5 others [2016] eKLR**.
- b) The Applicant has not demonstrated any of the following:
 - i. That they are either director/shareholders of the company, the subject of the impugned ongoing criminal cases at the CM's Court;
 - ii. The records at the Registrar of Companies which are maintained at Attorney-General's Chambers do not indicate the proposed interested parties as either director/shareholders of the company in question. In any event, a detailed report concerning the companies in question has been filed by the Hon. Attorney-General in the pending case on the question of the directorship of the said companies;
 - iii. In any event, the issue as to the directorship of the disputed company, the subject of the impugned criminal proceedings, is pending hearing and determination by a court of competent jurisdiction, being Nairobi High Court Civil Case No. 55 of 2012 (formerly HCC No.63 of 2009) which is being heard by a three-judge bench.
- c) The proposed interested parties herein, being complainants in the impugned ongoing criminal cases at the CM's Court, have their interests represented or taken care of in the said cases by the DPP. As such, they will not suffer any prejudice if they are not enjoined in the instant proceedings.
- d) The issues raised in the instant Petitions can be well and competently determined by this honourable court without the assistance of the Applicant.

e) The orders referred to by the applicants in urging their prayers for joinder and setting aside of the orders of 23rd May, 2019 are from courts of competent and concurrent jurisdiction and the decisions therefrom are not binding upon this honourable court.

f) The prayer for setting aside and/or vacating the orders of 23rd May, 2019 has been prematurely made for the reasons that:

i. They were not obtained by fraud but after the court was convinced to issue the same in the presence of all the parties herein including the counsel for the proposed interested parties;

ii. The proposed interested parties are guilty of material non-disclosure to the court;

iii. The proposed interested parties are yet to be enjoined in the instant proceedings and as such, they are strangers to the proceedings and therefore are not capable of arguing or making a case for such a prayer.

g) The instant Application lacks merit, the same forms a classical description of an abuse of the due process of this honourable court.

Analysis and Determination

6. I have considered the rival pleadings herein and the issues arising for determination can be summed as follows:-

a) Whether the Applicants raise sufficient grounds to be enjoined as interested parties?

b) Whether the orders issued on 23rd May 2019 can be discharged, varied and/or set aside?

A) Whether the Applicants raise sufficient grounds to be enjoined as interested parties?

7. An interested party is defined as "a party who has a recognizable stake (and therefore standing) in the matter". Rule 2 of the Constitution of Kenya (*Protection of rights and Fundamental Freedoms*) Practice and Procedure Rules, 2013 defines an Interested party as follows:-

"Interested party" means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation."

8. The Applicants contended that they are complainants and victims in all the criminal cases stayed by this Honourable court on 23/5/2019 and as a result orders issued thereon will impact on their rights and interests as victims and complainants in the stayed matter; which led to the filing of this suit.

9. The 4th and 5th Respondents have filed grounds of opposition objecting to the Applicants application on the basis that the records at Registrar of Companies do not indicate the Applicants either as Directors/Shareholders of 5th to 8th Petitioners and points they lack the *locus standi* to be enjoined in the suit as interested parties or at all.

10. **Rule 7 of the Constitution of Kenya (*Protection of Rights and Fundamental Freedoms*) Practice and Procedure Rules, 2013** (herein of the Rule) provides:-

"(1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.

(2) A court may on its own motion join any interested party to the proceedings before it."

11. In the instant application the proposed interested parties are the complainants in all the criminal cases that the petitioners are seeking to stay and eventually terminate. As complainants and victims I find that the Applicants have a legitimate legal interest in these proceedings. The termination of these proceedings would impact on their rights to a fair hearing under Article 50(1) of the Constitution. I further find by joining the Applicants the petitioners would not be prejudiced in anyway as they would have opportunity to respond to the proposed applicants contention in these proceedings.

12. **Rule 7 of the Constitution of Kenya (*Protection of Rights and Fundamental Freedoms*) Practice and Procedure Rules, 2013** provides that a person may with leave of court, be enjoined as an interested party on an oral or written application and further court may on its own motion enjoin any interested to the proceedings before court. In this matter I am satisfied the proposed interested parties have demonstrated that they have an identifiable stake or legal interest or duty in the proceedings before this court but are not party to these proceedings. I am satisfied the proposed interested parties ought to be enjoined in these proceedings as interested parties.

B) Whether the orders issued on 23rd May 2019 can be discharged, varied and/or set aside?

13. The proposed Applicants pray that the orders issued on 23rd May 2019 be discharged, or be varied and/or set aside on several grounds on the face of the application.

14. On 23rd May 2019 in presence of all parties in this matter, save the proposed interested parties, this court granted orders sought to be discharged, varied and set aside in terms of prayers(b) and (c) of the Notice of Motion dated 18th May 2019 pending hearing and determination of the application *inter-partes*.

15. The proposed interested parties have not demonstrated that there are sufficient grounds to warrant discharging of the orders issued on 23rd May 2019. I find no basis to vary or set aside the orders of 23rd May 2019 as the application is yet to be heard *inter-parties* or determined on merits.

16. To the extent of my finding I proceed to make the following orders:-

- a) **The proposed interested parties application dated 27th May 2019 succeeds in so far as regards enjoining the Applicants here as interested parties in these proceedings.**
- b) **The Applicants Pravin Galot; Rajesh Galot and Navendra Galot are joined in these proceedings as interested parties.**
- c) **The Application to discharge, vary and or set aside this court's orders issued on 23rd May 2019 is dismissed.**
- d) **The interested parties to file and serve their responses to the petition within 14 days from the date of this ruling.**
- e) **Costs of the application be in the cause.**

Dated, signed and delivered at Nairobi this 27th day of February, 2020.

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J .A. MAKAU

JUDGE