



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 2247 of 2007 & 49 of 2009

MOHAN GALOTPLAINTIFF

-VERSUS-

GANESHLAL PUSHARAM GALOT1ST DEFENDANT

PAVIN GALOT2ND DEFENDANT

RAJESH GALOT.....3RD DEFENDANT

CONSOLIDATED WITH CIVIL SUIT NO. 49 OF 2009

MOHAN GALOT.....PLAINTIFF

-VERSUS-

PRAVIN GALOT.....1ST DEFENDANT

RAJESH GALOT.....2ND DEFENDANT

GANESH GALOT.....3RD DEFENDANT

KEVIN GALOT.....4TH DEFENDANT

PRADEEP GALOT.....5TH DEFENDANT

NARENDRA GALOT.....6TH DEFENDANT

DIRECTIONS

This matter came up before me for directions on 22nd November 2012 when Mr. Kibe Advocate appeared for the Plaintiff and Mr. Sagana Advocate appeared for the Defendants in this suit and Mr. Kaka advocate appeared for the Defendants in HCCC No. 49 of 2009 which has been consolidated with the instant suit.

The advocates were not agreed on the directions that the court should give. Mr. Kibe for the Plaintiff was insistent that the Defendants were delaying the hearing and determination of the suit as they had failed to comply with the directions of the court requiring them to comply with the provisions of Order 11 of the civil Procedure Rules to enable the suit to be set down for hearing and sought directions to compel the defendants to comply with order 11 and a further hearing date of the suit be fixed.

On their part Mr. Sagana and Mr. Kaka contended that intervening circumstances had arisen that militated against this suit being progressed to hearing. The said advocates stated that owing to the multiplicity of suits that had had been brought and filed by and between the parties had in the High Court Commercial Case No. 55 of 2012 entered a consent where the parties agreed to stay all the cases that related to them and would be affected by the decision of a 3 judge bench that had been constituted to consider and determine the issues relating to the share holding and directorship of Manchester outfitters Limited which it is claimed was the main investment vehicle that was used by The Galot Family. Mr. Kibe did not agree the purport of the consent order was to affect the instant case.

As it was apparent the parties would not agree on the directions that they sought, the court directed that the parties file affidavits in support of their respective positions to place material before the court to enable the court to review the affidavits and any annexures whereupon the court would give appropriate directions. The parties filed their affidavits and appeared before me on 19th December 2012 when the advocates highlighted the contents of their client's affidavits.

On his part Mr. Kibe urged the court to note that Manchester outfitters Ltd is not a party to this suit and that order 1 of the Civil Procedure Rules provides on who and how one can be a party to a suit and argued that there is no basis for Manchester outfitters Ltd to be dragged into this suit. Mr. Kibe further contended that the property the subject matter of the suit was purchased by the plaintiff in 1970 and by that time Manchester outfitters Ltd had not been incorporated.

He further contended that there was no express or implied trust and that his client was the sole owner of the suit property as per the documents of title (copies whereof annexed to affidavit).

On the Commercial Case No. 55 of 2012 Mr. Kibe argued that the 3 judge bench will only determine the shareholding, directorship and ownership of Manchester outfitters Ltd and will have nothing to do with the instant case.

Finally Mr. Kibe argued that the defendants were determined to delay the determination of the suit and that explains the failure to comply with the provisions of order 11 as directed by the court. Mr. Kibe emphasised that it is this court (ELC) that has jurisdiction to determine this suit and not the commercial court and it should therefore get on with it and give a hearing date for the suit.

On his part Mr. Sagana for the defendants contended that the shareholding and directorship of Manchester outfitters both before and after incorporation is critical as these were the investment vehicles that the Galot family used. He contended that Manchester outfitters was started as a business in 1954 when the plaintiff was hardly 7 years old and the Kiambu property the subject matter of the suit where the plaintiff was registered as the sole owner was purchased in 1970 when the plaintiff was only 25 years old. Mr. Sagana contends that all the 4 brothers were working in the family business fronted by Manchester Outfitters Limited and in acknowledgement of this fact the 4 brothers had the Kiambu property developed whereby each of the brothers had a residential house constructed for them through proceeds from the family businesses. The other brothers contend that the registration of the plaintiff as owner of the property was a trustee and that at the time the plaintiff was the only one who had acquired Kenyan citizenship and hence it's no surprise he was solely registered as owner.

Sagana took the position that the decision of the 3 judge bench in commercial case No. 55 of 2012 will shed light on the interrelationship amongst the Galot family and more so the role the plaintiff played vis-à-vis the other Galot brothers and the family business. He argued that the plaintiff would not have had the means to purchase the property let alone develop the same without the participation of the family companies. Further since the 3 judge bench case has been allocated hearing dates 29th – 31st January 2013 the present suit should be stayed to await the ruling and/or directions given in the 3 judge bench since it will affect the future conduct of all the pending cases and more particularly the cases that the parties included in their inventories filed in HCC No. 55 of 2012.

Mr. Kaka Advocate on his part associated himself with the submission of Mr. Sagana, Mr. Kaka pointed out that it is indeed not the defendants who are responsible for the delay in the conclusion of the instant case citing 4 cases that the plaintiff has himself instituted touching on the suit property. There are 2 cases in Kiambu Law Courts and further the plaintiff has applied for revocation of grant in a succession matter where one of the brothers was indicated to be entitled to a 25% share of the suit property and there are conservatory orders in that matter restraining any dealings with the suit property.

The inventories submitted to the court in HCC 55 of 2012 of the cases that were likely to be affected by the decision in 3 bench matter included the instant case and it is unclear why the plaintiff would want the case fast tracked when the defendants have indicated it is one of the cases that would be affected by the decision in the 3 bench case. The plaintiff did not protest the inclusion of the instant suit in the inventory of the defendants.

The court has reviewed the affidavits sworn by Mohan Galot the Plaintiff herein and by Pravin Galot the first defendant herein and has considered the submissions made by the counsels of the respective parties and indeed agrees there are various outstanding cases that are intrinsically interwoven by reason of the parties being common and further by reason of the parties being close family relatives who have had a long history of working together in family businesses either as co-owners or employees. In the present suit the plaintiff claims he is the sole owner of the suit property whereas the defendants counter that the Plaintiff holds the property on trust for himself and the defendants. As I understand it, the Defendants are contending that the property was purchased using the proceeds from family businesses of which the defendants had an interest. This is how Manchester Outfitters as a business and subsequently as an incorporated company gets dragged into the mix.

Hon. Justice Waweru and later Hon. Justice Musinga must have been persuaded that there would be value in attempting to have the issue of ownership, shareholding and directorship of Manchester outfitters Ltd investigated and determined finally. Also it was not lost to Hon. Justice Musinga that apart from HCCC No. 55 of 2012 that was before him there were other cases between the parties that stood to be affected by the decision to be reached in case No. 55 of 2012 and in that regard the judge requested each of the parties to submit their inventory of cases and the parties dutifully submitted the inventories marked as

Annexure page 4, in the affidavit of Pravin Galot. The plaintiff in his inventory included 2 cases filed in Kiambu namely Kbu CMC No. 339 of 2009 and kbu CMC No. 200 of 2007 where the plaintiff is the plaintiff and the 1st defendant herein the defendant and both cases relate to the subject suit property.

The defendants for their part included this suit in their inventory, included also in the defendants inventory is HCCC Succession Cause No. 1997 of 1995 where as earlier observed a beneficiary had indicated that they were entitled to 25% of the suit property and a grant was issued which the plaintiff seeks to have revoked.

In the cases referred to there are various orders including restraining orders which definitely would be disturbed if the instant case were to be proceeded with. In my view there is need to take stock of all the various orders in the various suits and have the same amortised to facilitate the resolution of the instant suit. I suppose this is what the consent order in 55 of 2012 sought to achieve so that at the end of the day whatever decision that is reached in each case will not be in conflict with a decision in another case involving the same subject matter.

Whereas this court is invested with the exclusive jurisdiction to hear and determine disputes relating to ownership, land use and title to land in a matter such as this one where the issues are cross cutting, a division of the High Court hearing a commercial aspect of the matter would equally have jurisdiction to determine how the proceeds generated from the commercial venture may have been applied. The parties to this dispute are no means strangers and their association either as family members or business associates is a relevant factor in trying to resolve the resultant disputes between them.

Article 159 of the constitution behoves the courts of law to administer substantial justice having regard to all the circumstances without undue regard to technicalities.

It is the court's view that substantial justice in this matter will only be served if all the relevant material is availed and placed before the court. The consent order and the setting up of the 3 judge bench in HCCC No. 55 of 2012 should be seen in this light as the parties have placed their faith in the decision to emanate from the 3 judge bench when they state and acknowledge that the decision will affect and/or will have a bearing on the cases that they each set out in their inventories.

Depending on the decision that will emanate from HCCC No. 55 of 2012 the parties in the instant suit and in the HCC ELC No. 49 of 2009 may elect to amend their pleadings and I therefore do not consider it would be appropriate to direct the instant suit to proceed to trial before a ruling is delivered in the 3 judge bench case and consequently I direct that the hearing of the present suit be stayed to await the decision in HCCC No. 55 of 2012.

In the meantime however, and in order to facilitate the hearing of the suit after a decision is rendered in HCCC No. 55 of 2012 the Defendants are hereby directed to complete their compliance with order 11 of the Civil Procedure Rules within the next 30 days of the date hereof.

Directions issued this 12th day of February 2013.

J. M. MUTUNGI
JUDGE