



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 1115 OF 2007

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI, PROHIBITION AND MANDAMUS**

AND

**IN THE MATTER OF THE REGISTRATION OF MANCHESTER OUTFITTERS (E.A.)
LIMITED UNDER THE COMPANIES ACT CAP 486 LAWS OF KENYA
IN THE MATTER OF AN APPLICATION AND DEMAND FOR CANCELLATION OF
REGISTRATION OF MANCHESTER OUTFITTERS (E.A.) LIMITED BY MANCHESTER
OUTFITTERS LIMITED**

BETWEEN

REPUBLICAPPLICANT

AND

**THE REGISTRAR OF COMPANIESRESPONDENT
EX PARTE: MANCHESTER OUTFITTERS LIMITED
MANCHESTER OUTFITTERS (E.A.) LIMITED.....1ST INTERESTED PARTY
PRAVIN GALOT2ND INTERESTED PARTY
RAJESH GALOT3RD INTERESTED PARTY
GANESHLAL GALOT4TH INTERESTED PARTY**

RULING

The respondent's application dated 16th February, 2011 seeks an order to have **Mr. Mohan Galot** appear

before this court for cross-examination on the contents of his replying affidavit sworn on 25th January, 2011. The application was made on the grounds that the said Mr. Mohan Galot had suppressed important, material, crucial, and relevant information from this court that needs to be established by way of cross-examination. It was also alleged that Mr. Galot had denied the true directorship of the company known as **Manchester Outfitters (E.A.) Limited**, hereinafter referred to as “**the company**”. He had purported to arrogate and constitute himself as the Board of Directors of the company. Further, it was alleged that he had deponed to highly contested matters and the truth thereof can only be obtained through cross-examination.

The application was supported by an affidavit sworn by **Polyn Wanja**, an Assistant Registrar of Companies. The affidavit basically sets out the various issues which the respondent desires to cross-examine Mr. Galot on.

The application was opposed and Mr. Mohan swore a replying affidavit. In his view, his affidavit sworn on 25th January, 2011 contains depositions that are true and accurate and does not raise any issue that require his cross-examination. He stated that he had made full disclosure of the relevant facts within his knowledge as regards the matter in dispute. He added that the respondent had filed a replying affidavit to his affidavit and urged the court to determine the matter on the basis of the affidavits on record.

In his brief submissions, Mr. Adera for the respondent stated that the court has power to allow cross-examination of a deponent provided a proper basis is made. In support of that submission he cited **KIBAKI vs MOI & ANOTHER (2008) 2 KLR (EP) 301**. Mr. Adera further pointed out the various issues that he wanted to cross-examine Mr. Galot on and reiterated that those issues can only be fully resolved through cross-examination. In particular, it is important that the court determines who the Directors of the company are, he stated. Mr. Adera added that Mr. Galot had given information regarding directorship of the company which is contrary to the records held by the Registrar of Companies, the respondent. He further stated that there are several matters before this court relating to the affairs of the company which had not been resolved and it may not be possible to do so unless Mr. Galot is cross-examined as prayed.

Mr. Kaka for the 1st interested party supported the submissions made by the respondent’s advocate.

Mr. Kibe Mungai for the ex parte applicant submitted that the respondent’s application is an attempt to muddle up issues and to deprive the ex parte applicant of an opportunity for a fair hearing. In his view, the issues raised in Mr. Galot’s affidavit and the respondent’s affidavit can be resolved by this court without any viva voce evidence. Counsel pointed out that there is another suit requiring ascertainment of Directors of the company and there was therefore no need of dealing with that issue in this matter.

Counsel cited **COMET PRODUCTS (UK) LIMITED vs HAWKEX PLASTICS LIMITED [1971] 1 ALL ER 1141**, where it was held that the power to allow or refuse cross-examination is a matter for the discretion of the court and where the cross-examination is likely to have little relevance to the issues to be decided it is not necessary.

I have perused the affidavits sworn by Mr. Mohan Galot and the replying affidavit by Polyn Wanja. I agree that some of the factual depositions in the two affidavits are completely at variance. In the substantive motion the ex parte applicant seeks the following orders:

1. An order of certiorari to remove into this court for purposes of being quashed the Certificate of

Incorporation Number C122038 in respect of Manchester Outfitters (E.A.) Limited issued by the respondent.

2. An order of prohibition to restrain Manchester Outfitters (E.A.) Limited or any other person from using or operating under that company name or any other name that resembles the said name.

3. An order of mandamus to compel the respondent to strike out the registration of Manchester Outfitters (E.A.) Limited pursuant to its letter dated 26th November, 2006.

The information given by the ex parte applicant regarding the registration and directorship of the company is at some variance in material aspects with the information given by the Registrar of Companies. In my view, it may not be possible for the court to reach a just determination of the ex parte applicant's application without establishing the correct facts regarding the said company.

In **KIBAKI VS MOI & ANOTHER (Supra)**, the court held that in the exercise of its ordinary jurisdiction the High Court is vested with discretionary power to allow the cross-examination of a deponent upon an application for such an order. However, the power will only be exercised after a proper basis has been made. If the facts of the deponent are not disputed, cross-examination will not be ordered, the court held.

Article 50(1) of the **Constitution of Kenya, 2010** grants every person a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent tribunal or body. The right to cross-examine a witness in appropriate circumstances is, in my view, a component of the right to fair hearing. Besides, **Article 159(2) (d)** of the **Constitution** states that justice shall be administered without undue regard to procedural technicalities. These are relevant and important constitutional principles which this court should not overlook.

No prejudice will be suffered by the ex parte applicant if the respondent's application is allowed. Cross-examination of Mr. Galot may cause a little delay in finalization of this matter but I think the interests of justice which include fair hearing cannot be sacrificed at the altar of expediency in disposal of cases. For these reasons I allow the respondent's application and direct counsel to agree on a suitable date when Mr. Mohan Galot can be cross-examined. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2011.

D. MUSINGA

JUDGE

In the presence of:

Nazi – Court Clerk

Mr. Kibe Mungai for the Ex Parte Applicant

Mr. Adera for the Respondent

Mr. Kaka for the Interested Parties