



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL CASE 63 OF 2009

MANCHESTER OUTFITTERS LTD.....PLAINTIFF

VERSUS

PRAVIN GALOT1ST DEFENDANT

RAJESH GALOT 2ND DEFENDANT

GANESH GALOT 3RD DEFENDANT

KEVIN GALOT 4TH DEFENDANT

MANCHESTER OUTFITTERS (E.A.) LTD. 5TH DEFENDANT

R U L I N G

On 12/2/09 the defendants in this suit filed chamber summons dated 11/2/09 seeking orders; (1) to strike out the plaint dated 29/1/2009. Consequently dismiss the plaintiff's suit.

On the grounds that Mr. Mohan Galot, the deponents in chamber summons dated 4/2/2009 is not clothed with any authority to institute suit on behalf of Manchester Outfitters Ltd. as in the instant case and that he lacks the quorum required to instruct and/or institute any suit on behalf of the plaintiff herein. And further the suit is frivolous and vexatious.

To this application there are two Preliminary Objections raised by the plaintiff's advocates;

- 1. Dated 10/3/09 against the application dated 11/2/09.**
- 2. Dated 11/3/09 against the affidavit of Rajesh Galot sworn on 2009 on the grounds set down.**

Both Preliminary Objections were argued on the same date. Mr. Arwa was with Preliminary Objection dated 11/3/08. On the issue of affidavit, it is said to contravene the provisions of the **Oaths and Statutory Declarations Act**, it contains irrelevant, scandalous and oppressive matters and raises issues not canvassed in the application and contains hearsay, and contains argumentative matters, opinions in matters of law and other irrelevant details that will only prejudice the fair trial of this suit.

There is complaint that appointment of advocates is an issue. In fact, there is complaint regarding paragraphs 8, 10, 11, 12, 15, 17, 18, 20, 21, 22, 23, 26, 30, 31, 32, 33, 34, 35, 36 and 37.

I have perused the said affidavit. The said **Act, “Oaths and Statutory Declarations Act”** and the same is struck off. The appointment of advocates (paragraph 8) is a matter of evidence as was held by court in case of **Buikie Estate Coffee Ltd. vs. Lutabi Holding No.1:**

The question whether the plaintiff’s advocate had been duly authorized would depend upon the courts finding who were the lawful directors and this could only be determined by hearing evidence.”

Again in the judgment of Horns, J. in **Meyers & another vs. Akira [1974] E.A. 169** it was held:-

“(iv) to retain inadmissible matter in an affidavit would be oppressive.”

Order 18 rule 6 the Civil Procedure Rules, the court is empowered to strike out any matter which is scandalous, irrelevant or oppressive. Paragraph 10 in the present affidavit refers to filing fraudulent annual returns. Paragraph 12 swears as to the background history, controversial matters of information only, paragraph 15 alleges mischievous acts and for 22 alleges illegal and fraudulent and limit actions which have not been tried by any criminal court.

There are allegations of “pure malice and vendetta”. It is my opinion that the paragraphs complained of make that affidavit fatally defective. It raises matters that are not canvassed in the application. There are disputes as to which of the two groups have been removed. The affidavit is not replying to applicant’s affidavit but attacking the conduct of Mohan. The said affidavit is struck off.

In the Court of Appeal decision in the appeal of **Pattni vs. Ali & others – Appeal No.354/2004** the court held that:

“Under Order XVII rule 3 (1) Civil Procedure Code, it is permitted that a statement may be deponed to as being a fact when the source of that knowledge is information.”

In the same judgment the court said affidavit evidence is sworn evidence on matters of fact. Since the enactment of **Act 10 of 1969** the provisions of **Evidence Act** have been applied to affidavits and therefore the rules of admissibility and relevancy apply.

Hearsay evidence is for exclusion. So are legal opinions. Further, the court proceeded to state, quoting **Order XVIII rule 3 (1)**, affidavits shall be confined to such facts as deponent is able of his own knowledge to prove. In this present case the affidavit is lengthy and relies on matters of hearsay and is argumentative. The same is hereby struck off.

Regarding the chambers summons dated 11/2/09 seeking to strike out the plaintiff’s suit and application dated 4/2/2009 on the grounds stated. It is sworn that the said Mohan Galot is a minority shareholder and is not duly authorized to deal with day to day management of the company business and specifically filing suits. However, Mohan Galot swears that he is the governing director of the plaintiff company. He has been a director for over 30 years. He swears that he has power under the provisions of Clause 10 (a) of the plaintiff’s Articles of Association. The dispute arises from occupation of some property of the plaintiff by the defendants and competition in business between the two groups. There is also a dispute as to appointment of advocate. This is a matter can only be determined by evidence not by Preliminary Objection.

I have perused the plaint and I am not satisfied that there is reasons to allow the objections. The Preliminary Objection is not upheld. Costs in the cause.

DATED, SIGNED and DELIVERED at Nairobi this 16th day of June 2009.

JOYCE N. KHAMINWA

JUDGE