



Manchester Outfitters Limited v Galot & 4 others; Galot (Defendant to the Counterclaim); Galot (Plaintiff to the Counterclaim); Galot & 7 others (Interested Parties) (Civil Suit 55 of 2012) [2024] KEHC 11005 (KLR) (Commercial and Tax) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11005 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 55 OF 2012
FG MUGAMBI, J
SEPTEMBER 20, 2024

BETWEEN

MANCHESTER OUTFITTERS LIMITED PLAINTIFF

AND

PRAVIN GALOT 1ST DEFENDANT

RAJESH GALOT 2ND DEFENDANT

GANESH GALOT 3RD DEFENDANT

KEVIN GALOT 4TH DEFENDANT

MANCHESTER OUTFITTERS (EA) LTD 5TH DEFENDANT

AND

MOHAN GALOT DEFENDANT TO THE COUNTERCLAIM

AND

GANESHLAL GALOT PLAINTIFF TO THE COUNTERCLAIM

AND

MOHAN GALOT INTERESTED PARTY

MOHAN GALOT INTERESTED PARTY

GALOT INDUSTRIES LIMITED INTERESTED PARTY

MOHAN GALOT INTERESTED PARTY

GALOT LIMITED INTERESTED PARTY



GALOT INDUSTRIES LTD INTERESTED PARTY
GALOT INDUSTRIES LTD INTERESTED PARTY
THE ESTATE OF LALCHAND PUSHARAM GALOT INTERESTED PARTY

RULING

1. On 25/7/2024 this court delivered a ruling on 3 pending applications all of which were allowed with the result that the orders issued on 8/7/2024 staying the proceedings herein were set aside. Following the ruling, the court directed the two parties involved in the dispute over the representation of the plaintiff, Manchester Outfitters Limited (MOL), to file skeleton submissions, limited to four pages, so as to allow the court to determine the issue of representation.
2. Mohan Galot (Mohan), who describes himself as the original subscriber, founder, governing director, principal shareholder and chairman of MOL filed an affidavit sworn on 29/7/2024 alongside written submissions dated 30/7/2024 through the firm of George Gilbert Advocates.
3. His case is that HCCC No. 55 of 2012 was presided over by a three-judge bench which called for HCCC No. 430 of 2012 to be placed before them for purposes of staying pending the hearing and determination of the issues of directorship which the court found was intertwined with the issue of representation. The three-judge bench had since determined the question of directorship and shareholding and found that the 1st and 2nd defendants are neither directors nor shareholders of MOL. He therefore contends that the two-lack locus standi in so far as issues of MOL are concerned and that this matter was hence sub judice.
4. Mohan faults the 1st and 2nd defendants for relying on the court orders in HCCC No. 430 of 2012 as the basis of their instructions to the firm of H. Kago & Company Advocates to represent MOL. It is his case that the decision by the three-judge bench applies to all other cases including HCCC 430/2012. Additionally, it is contended by Mohan, that as the sole director and governing director of MOL, he has powers under Article 10 of the plaintiff's Articles to do everything that directors are generally empowered to do.
5. Pravin Galot (Pravin), the 1st defendant, on the other hand, describing himself as the managing director of MOL, filed a replying affidavit sworn on 29/8/2024 alongside written submissions, through the firm of H. Kago & Company Advocates. Pravin contends that the said firm of advocates was properly on record having been appointed by a board resolution of MOL dated 21/4/2015.
6. Pravin further relies on a ruling dated 27/5/2011 (Muga Apondi, J). The Learned Judge found that the firm of Luseno Majanja & Associates had effectively replaced the firm of Rachier & Amolo Advocates and thereafter Messers Sagana Biriq & Company Advocates from whom H. Kago & Company Advocates had taken over. Given the history of representation and that the Learned Judge found that the firm of Luseno Majanja & Associates had been properly on record, it follows that the taking over of the matter by H. Kago & Company Advocates was legitimate.
7. Relying on this court's decision of 11/4/2024, Pravin further argues that the question of representation is premature at this point in time and that this was recognized at paragraph 29 of the said ruling.
8. According to Pravin, the parties, including Mohan, had adopted a consent order in HCCC No. 430 of 2012 on 10/7/2012, allowing the 1st and 2nd defendants to manage MOL until the final hearing



and determination of that case. This, he argues, includes overseeing the company's affairs, such as appointing advocates to defend MOL in legal disputes.

Analysis and determination

9. I have carefully considered the affidavits, evidence, authorities and submissions filed by both parties. I will proceed to deal with the issues that the respective parties have raised.

The ruling of 27/5/2011 by Muga Apondi, J

10. I have carefully studied the decision by the Learned Judge which H. Kago & Company Advocates submit finally determined the question on representation.
11. By dint of section 7 of the Civil Procedure Act, a court is precluded from trying:

“any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
12. Upon reviewing the issues before the Court, as identified by the Learned Judge on page 8 of the ruling, it is clear that they did not concern the authority of Mohan, Pravin, or the 2nd defendant to instruct advocates on behalf of MOL. The core issue before the Judge was the effect of a Notice of Change of Advocates and whether a different firm of advocates could issue a notice of withdrawal of suit, despite the initial notice having been filed by another firm.
13. At no point did the Judge address the question of directorship or who held the legitimate authority to instruct advocates on behalf of MOL. Thus, the argument that this ruling settled the question of representation is without merit. It is my finding that the matter of representation is not res judicata and remains open for determination.

The ruling in HCCC 55/2012, (Ochieng, Ogola & Kamau, JJ)

14. Pravin relies on the decision of the three-judge bench referenced in his documents as PG4, particularly paragraphs 28 and 29. It is true that the bench acknowledged the issue of representation could not be determined at that point and would need to be resolved during the course of the hearing.
15. For the avoidance of doubt, the bench noted thus:

“However, what may appear to be valid issues have been raised against M/s Havi Company Advocates continued appearance herein for the plaintiff. Those issues require a proper hearing, and it is the wisdom of this court that as recorded on 23/7/2012, that the issue will be determined in the cause of the hearing...In our considered view, justice would not be served in the matter if a decision were made on the issue of representation at this stage.”
16. The bench's clear position, as I understand it, is that justice would not be served by resolving the representation issue prematurely, particularly at the preliminary objection stage, without having heard the substantive arguments on representation. The Black's Law Dictionary (8th Ed) defines a hearing as:

“A judicial session, usu. open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.”



17. Nothing presupposes that a hearing must be a full trial hearing. The 1st and 2nd defendants appear to misinterpret this acknowledgment, suggesting that the question of representation should only be determined during the hearing of the main suit. However, this interpretation overlooks the context of the ruling. The court's comments were made in relation to a preliminary objection raised by H. Kago & Company Advocates, dated 29/4/2015, prior to any substantive hearing.
18. The judges were clear that the issue of representation could not be properly addressed at the preliminary stage, it required a full and substantive hearing to ensure fairness. This does not imply that the matter should proceed with two sets of advocates acting on behalf of the same party, which would only create further confusion and hinder the administration of justice.
19. In light of the subsequent developments, both parties have now been fully heard on the issue of representation. Therefore, these directions are delivered in accordance with the process anticipated by the three-judge bench. The argument put forward by Ms. Kago Advocates, suggesting that the hearing should proceed with two sets of advocates receiving different instructions, is illogical and undermines the efficient resolution of the matter. Such an approach would only serve to complicate the proceedings unnecessarily, which is clearly not what the bench intended when it deferred the issue of representation.

The consent orders in HCCC Nos.430/2012 & 22/2012

20. Regarding the consent orders in HCCC 430/2012 the orders issued on 24/7/2013 state in part:

“That the operations of the 2nd plaintiff, Manchester Outfitters Limited should continue as usual. That includes the procurement and signing of cheques to effect various official transactions. The 1st and 2nd defendants shall continue to run the said company.”
21. I have equally reviewed the consent order filed in HCCC 55/2012 on 24/2/2012. It states in part:

“... the issue of directorship and shareholding of Manchester Outfitters Limited be heard before 3 judges to be appointed by the Chief Justice and the determination to be applied in all other cases.”
22. The argument by Ms. Kago Advocates is that the consent in HCCC 430/2012 allows the 1st and 2nd defendants to instruct advocates, as they were to continue running MOL until the matter has been determined. This is vehemently opposed by Ms. George Gilbert Advocates by virtue of the ruling in 55/2012 which was a consequence of the consent order of 24/2/2012.
23. I believe the main bone of contention is how the two consent orders should be interpreted in relation to each other. It is undisputed that the parties in both matters are the same, meaning they were fully aware of the circumstances and disputes between them. The terms of both consent orders are clear and unambiguous. On 24/2/2012 the parties expressly agreed to refer the question of directorship and shareholding to a three-judge bench, with the understanding that the decision would apply to all existing cases between them. A year later, on 24/7/2013, the same parties entered into another consent, agreeing that the 1st and 2nd defendants would continue to run MOL.
24. In my view, there is no contradiction between the two consent orders. Given that the consent in HCCC No. 430 of 2012 was entered into after the one in HCCC No. 55 of 2012, there was nothing preventing the parties from revisiting or amending the earlier consent if they intended to exclude HCCC No. 430 of 2012 from the impact of the three-judge bench's decision. The absence of any such exclusion clearly demonstrates that the intention was for the three-judge bench's ruling in HCCC No. 55 of 2012 to apply to all related cases, including HCCC No. 430 of 2012.



25. This interpretation is further supported by the fact that proceedings in HCCC No. 430 of 2012 were stayed on 3/10/2014, precisely to allow for the determination of the directorship and shareholding issues in HCCC No. 55 of 2012. Since no exceptions were made, I fully agree with the submission by Ms. George Gilbert Advocates that the effect of the three-judge bench's decision on 11/4/2024 applies uniformly across all connected matters.

The effect of the three-judge bench ruling of 11/4/2024

26. This brings me to the ruling in question, where the Learned Judges made a crucial factual finding that Lalchand died on 10/3/1995 and by operation of article 10(a) Mohan automatically assumed the position of governing director.
27. Equally important is paragraph 58, where the Learned Judges determined that Mohan's removal of Pravin, Rajesh, and Ganeshlal as directors of MOL in 2007 was a valid exercise of the authority conferred upon him as governing director under Article 10. The court's conclusion was unequivocal: the removal of Pravin, Rajesh and Ganeshlal as directors of MOL by Mohan in 2007, was in exercise of the power conferred upon him as governing director by article 10 ... the conclusion we come to is that Pravin and Rajesh ceased to be directors of MOL on 14/3/2007...it follows therefore that Mohan is the only remaining director of MOL.
28. Finally, at paragraph 59(b), the court's disposition clearly stated that:
- “The director of Manchester Outfitters Limited is Mohanlal Purharam Galot who is also the governing director.”
29. It is important to emphasize that the bench was fully aware of the broader context and circumstances surrounding the ruling. The Judges acknowledged the existence of other pending cases, including HCCC No. 430 of 2012, and were well aware that numerous related cases were still before the court involving the same or related parties.
30. The bench proceeded to issue its orders with full knowledge of these ongoing disputes, clearly understanding the implications of their decision. This demonstrates the court's intention to decisively resolve the directorship issue, cutting across all pending cases involving the same parties.
31. The consequence of the findings by the three-judge bench is clear: the 1st and 2nd defendants ceased to be directors of MOL as of 14/3/2007. Therefore, they had no legal capacity to sign the resolution of 21/4/2015 instructing Ms. Kago Advocates to represent MOL. Only Mohan Galot, whom the court unequivocally determined to be the sole director and governing director, had the authority to instruct legal representation for the company. As a result, the resolution signed by the 1st and 2nd defendants is null and void ab initio, it holds no legal validity or consequence.

Disposition

32. Accordingly, I find and hold that the firm of George Gilbert Advocates have the legitimacy by reason of proper instructions to proceed with the hearing of the matter as the counsel on record for MOL. The documents filed by Ms. H. Kago & Company Advocates or any other firm of advocates instructed by any other party save for Mohan Galot on behalf of MOL be and are hereby expunged from the record. The 1st and 2nd defendants shall pursue their claim in their own capacities as defendants in the matter.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 16TH DAY OF SEPTEMBER 2024.



F. MUGAMBI
JUDGE

