



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Galot & 5 others v Kenya National Capital Corporation Ltd (Civil Case 2054 of 1993)
[2023] KEHC 4051 (KLR) (Commercial and Tax) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 2054 OF 1993**

A MABEYA, J

MAY 5, 2023

BETWEEN

**MOHAN GALOT 1ST PLAINTIFF
L.P GALOT 2ND PLAINTIFF
S.P GALOT 3RD PLAINTIFF
G.P GALOT 4TH PLAINTIFF
GALOT INDUSTRIES LIMITED 5TH PLAINTIFF
KING WOOLEN MILLS LTD FORMERLY MANCHESTER OUTFITTERS
LTD 6TH PLAINTIFF**

AND

KENYA NATIONAL CAPITAL CORPORATION LTD DEFENDANT

RULING

1. This ruling is with respect to the 1st plaintiff's application dated November 18, 2022 brought under Article 159(2)(d) of the [Constitution of Kenya](#), section 5 of the [Judicature Act](#), Rule 81(4) of the [Civil Procedure \(Amendment No 2\) Rules 2012](#), Order 2 Rule 15 and Order 51 Rule 1 of the [Civil Procedure Rules](#).
2. The application sought to commit Ganeshlal Galot, Kenyatta Odiwuor Advocate and Odera Were Advocate to jail for a term of 6 months for contempt of the orders issued by Court on November 3, 2016. That the representation of the 2nd and 3rd plaintiffs by Kenyatta Odiwuor Advocate and Odera Were was inconsistent with demeanor and practice of advocates and that the Motion dated November 10, 2022 be struck out.



3. The application was supported by the affidavit sworn by Mohan Galot and was premised on the grounds that Ochieng J had issued a ruling barring the representation of the 2nd and 3rd plaintiffs and the said decision was within the knowledge of Ganeshlal Galot, Kenyatta Odiwuor and Odera Were. That the said advocates have participated in court proceedings on behalf of the 2nd and 3rd plaintiff with instructions from Ganeshlal Galot. That the application dated November 10, 2022 was an abuse to the court process with the aim of derailing the 1st plaintiff from his fruits of the judgment.
4. The application was opposed by the 4th Plaintiff Ganeshlal Galot in a replying affidavit dated November 29, 2022. He swore that the 1st plaintiff filed the application out of greed as he did not want to share the fruits of the judgment with the other plaintiffs. That the two advocates, Kenyatta Odiwuor and Odera Were were not working on his behalf or at his behest. That he was not served with a contempt order.
5. In response to the application, John Odera Were filed a replying affidavit dated December 8, 2022. He averred that the applicant had not presented any evidence to demonstrate that he was served with the contempt orders and had knowledge of them. That the ruling of Justice Ochieng was not brought to his attention by the applicant or any party before he took instructions. He further stated that his relationship with the applicant was good and the problems began after execution proceedings. It was his contention that no objection had been raised in court and that he had not received instructions by the 4th plaintiff to represent him.
6. The application was canvassed by written submissions which I have considered.
7. The applicant submitted that on November 3, 2016, the Court of Appeal held that the suit by the 2nd and 3rd plaintiff had abated and therefore barred their representation in the proceedings. That despite that Court's ruling, Kenyatta Odiwuor and Odera Were continued to act for the said plaintiffs with the instruction of Ganeshlal Galot. Counsel submitted that the judgment and ruling was delivered in the presence of the counsels for the 2nd, 3rd and 4th plaintiffs hence they were aware of the order of the court.
8. It was further submitted that the terms of the order were plain and clear and that the said order was binding on the contemnors. With regard to the Motion dated November 10, 2022, it was submitted that the application was filed by the 4th plaintiff with an aim of delaying the execution of the decree. The applicant submitted that the Court of Appeal had already determined that the 2nd, 3rd and 4th plaintiff were only listed in the suit because the security used by the 5th and 6th plaintiff was registered in their names.
9. The 4th plaintiff submitted that the application was fatally defective as there was no order against the 4th plaintiff that had been annexed to the application. It was submitted that the application was scandalous, frivolous, vexatious and meant to embarrass the court.
10. It was further submitted that the application was an afterthought and an abuse of the court process. That the 1st plaintiff failed to give evidence to show that the contemnors were served with the subject orders. That the orders barring representation were not specific to the contemnors.
11. The 2nd plaintiff submitted that it was upon the applicants advocate to notify the court of any matter within his knowledge which could assist the court in proper management and determination of the case. That the ruling of November 3, 2016 did not expressly bar representation of the 2nd and 3rd plaintiffs in the proceedings. Counsel submitted that there was no proof that the advocates had knowledge of the said court order and could therefore not disobey something they had no knowledge of.



12. I have considered the Motion, the responses as well as the written submissions and case law. The first issue is whether the court should hold the advocates Kenyatta Odiwuor and Odera Were as well as the 4th Plaintiff Ganeshlal Galot in contempt of the orders of the court and commit them to prison.
13. It was the 1st plaintiff's case that advocates Kenyatta Odiwuor and Odera Were having acted for the 2nd and 3rd plaintiffs and the 4th plaintiff were in contempt of the court orders of November 3, 2016. That in its ruling, the Court had barred legal representation of the 2nd and 3rd plaintiff. The applicant faulted the 4th plaintiff for giving instructions to the said advocates despite knowing the existence of the said order. It was the applicant's contention that at the time the court was giving the orders, the 2nd, 3rd and 4th plaintiff were all in court and could not therefore allege that they did not know of its existence.
14. The 2nd, 3rd and 4th plaintiff responded to the application. In a nutshell, their case was that the applicant failed to demonstrate that indeed the said contemnors were well aware of the order of the order that is said to have been breached. The advocates were of the view that the application was an afterthought since the applicant did not want the other plaintiffs to participate in the execution proceedings. It was contended that the applicant ought to have alerted the court of the said order.
15. In the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR it was held that: -

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”
16. Further, in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders, stating: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. “
17. I have perused the ruling dated November 3, 2016 Ochieng J and the subject matter therein was in respect to the representation of the 5th and 6th respondent. The court observed that it was bound by the decision of the Court of Appeal. In the said ruling, the issue of the representation of the 2nd and 3rd plaintiff did not arise. However, in the Court of Appeal relied on by the 1st plaintiff, that Court firmly held that the 2nd and 3rd plaintiff's suit had abated at the time of making the application to that Court and that no representation on their behalf could arise. That is a decision that still stand and has never been set aside. It therefore stands.
18. That being the case, there can never be any advocate that can purport to represent the 2nd and 3rd plaintiffs. Their cases abated long time ago and no one can purport to represent them. This means that their suits are no longer existent and therefore they not participate in the proceedings and neither can any advocate purport to represent them.



19. The basis of the application was that the alleged contemnors were aware of the subject order. They deny any knowledge of the same. My understanding of the law is that, he who alleges must prove. See sections 107 and 108 of the [Evidence Act](#) Cap 80 Laws of Kenya. The record shows that the subject ruling was delivered on November 3, 2016. Those represented were, the 1st plaintiff, the 5th and 6th plaintiffs. Neither Kenyatta Odiwuor, John Were nor the 4th plaintiff were present or represented.
20. Further, the 1st plaintiff did not show or prove that the terms of the two orders were brought to the attention of the alleged contemnors.
21. In the premises, it is my finding that the contemnors were not in willful disobedience of the court orders to warrant committing them to jail. However, I hereby put them on notice that any further pretence that they act for the 2nd and 3rd plaintiffs will attract swift action against them to safeguard the courts dignity. They cannot act with impunity against the Orders of this Court and the Court of Appeal.
22. The 1st plaintiff also sought to have the 4th Plaintiff's Motion dated November 10, 2022 struck out. The 1st plaintiff argued that the application sought to derail him from enjoying the fruits of the judgment herein. The application was termed to be frivolous, vexatious and scandalous as it sought to derail the 1st plaintiff from benefiting from the fruit of its judgment.
23. I have perused the application by the 4th Plaintiff which seeks to stay the execution of the judgment where the 1st Plaintiff is faulted for excluding the other plaintiffs in the execution process. I have considered the parties' averments and my take is that it would be in the interest of justice that the said Motion be heard on merit. It would be against the rules of natural justice to rule on it without hearing the applicant therein.
24. In the upshot, I find no merit in the application and the same is dismissed with costs.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

