



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MILIMANI LAW COURTS**

**CIVIL SUIT NO. 55 OF 2012 (FORMERLY 63 OF 2009)**

**MANCHESTER OUTFITTERS LTD.....PLAINTIFF**

**VERS**

**PRAVIN GALOT.....1<sup>ST</sup> DEFENDANT**

**RAJESH GALOT.....2<sup>ND</sup> DEFENDANT**

**GANESH GALOT.....3<sup>RD</sup> DEFENDANT**

**KEVIN GALOT.....4<sup>TH</sup> DEFENDANT**

**MANCHESTER OUTFITTERS (EAST AFRICA) LTD.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. This Ruling is made pursuant to an oral application by Mr. Tiego, learned counsel for the Plaintiff/Applicant that the court issues witness summons for the attendance in court of one Lalita Galot in her capacity as the administratatrix of the estate of the late Lalchand P. Galot. She is the wife of the deceased Lalchand Galot.

2. In support of the application, counsel submitted that the evidence discloses that the estate of the late Lalchand Galot holds 349 ordinary shares and one management share. That the said Lalita Galot is a necessary party who should come and defend the interests of her late husband's estate. To this end, Mr. Tiego urged that she be asked to record a statement in support of her evidence.

3. To buttress the usefulness of the intended witness to the case, Mr. Tiego submitted that Mohan Galot, PW1 and the Applicant in these proceedings, in his witness statement dated 31/12/2020 at paragraph 73 has alluded to **Nairobi High Court Succession Cause No. 1997 of 1995** which is in reference to the estate of the late Lalchand Galot. Ms. Lalita, as the wife of the deceased is the Petitioner in the cause. The witness is intended to produce an application dated 23/11/2020 that was filed by Kaka Kamau Advocate where she (intended witness) alleges that Lalchand Galot owned 25% shares in the Plaintiff's Company, Manchester Outfitters Limited. That she also adduced an order dated 21/10/1995 in the succession cause in that regard. It is thus submitted that she should testify to support this position.

4. It suffices to note that, in the succession cause, Mr. Kaka Kamau and Mr. Kenyatta represent the estate of the deceased whilst Mr. George Gilbert represents Mohan Galot.
5. It was submitted that in this case, Mr. Kaka Kamau only filed a Statement of one witness, namely Narendra Galot, a son of Lalita dated 21/1/2021. That at paragraphs 4 and 5, the witness (Narendra) claims that the shares of his father were stolen by Mohan Galot, which are the same shares that Rajesh Galot, a Respondent herein, is claiming.
6. Mr. Tiego added that the intended witness will testify in support of the Applicant's case.
7. In support of the application was Mr. George Gilbert, counsel also appearing for the Plaintiff/Applicant. He confirmed that he represents Mr. Mohan Galot in the Succession Cause No. 1997 of 1995. He added that Mohan Galot has, in the cause, filed an application for revocation of the grant issued to Lalita. That on the other hand, Mr. Kaka Kamau has filed a Motion in which he cites Mohan Galot for contempt of a court order arising from the application for revocation of the grant wherein the court restrained any party from interfering with the estate of the late Lalchand Galot; more specifically with Lalita's 25% share in the Estate, being the share of ownership of her late husband in the Plaintiff Company herein.
8. Mr. Gilbert submitted that it was interesting that both Mr. Kaka and Mr. Kenyatta in the Succession Cause advance the interests of Lalita whilst in this suit, they advance the interests of Pravin and Rajesh Galot. That there was therefore, a likelihood that Lalita was unaware of what was happening in these proceedings, reasons wherefore there was need to involve her.
9. Finally, it was the submission of the counsel that the proceedings herein being about a determination of the directorship and shareholding of Manchester Outfitters Ltd, Lalita ought to be summoned to ventilate the interests of her late husband, and by extension, her own interests.
10. In opposing the application, Mr. Kaka submitted that the request was unnecessary because the issue of the 25% share of Lalita was pursuant to a grant of administration that was issued on the afore stated Succession Cause. That in any case, it was Mohan Galot who filed an application to challenge the grant.
11. Mr. Kaka submitted that the Succession Cause was one of the matters whose continuation was dependent on the outcome of the proceedings herein. As such, as at now, the interests of Lalita cannot be questioned until the proceedings are closed.
12. Furthermore, that anything that Lalita would wish to canvass is well taken care of by other Respondents' witness statements, including her own son, Narendra Galot. He added that Lalita was an old woman in her 80's and dragging her to court was unnecessary. Counsel conceded that he and Mr. Kenyatta represent Lalita in the succession cause.
13. In support of Mr. Kaka, Mr. Kenyatta submitted that Mr. Mohan Galot who filed these proceedings ought to have enjoined Lalita as an Interested Party if he ever wished that she testifies.
14. That in any case, Mr. Mohan Galot recorded his statement over five months ago and as such, the application is being made too late in the day. He added that the Respondents have not been served with any of the documents that Lalita is intended to adduce. He persuaded the court that a formal application ought to be filed to enable him to effectively respond.
15. Learned counsel, Mr. Musyoka, also for the Plaintiff Company equally opposed the application. He submitted that Mohan Galot recorded his statement way back five months ago and the request to summon an extra witness is belated and intended to scuttle the proceedings. He too urged that a formal application ought to be made.
16. In rebuttal, Mr. Tiego vehemently refuted that the application was intended to scuttle the hearing. He urged the court to consider that Mr. Kaka had not denied that the document Ms. Lalita will come to

adduce came from him and as such nothing new was being introduced to the proceedings. Further and in any event, the court has powers to summon any witness for purposes of determining any issue relevant to a dispute. As such, making a formal application is a waste of time. He thus urged that the application be allowed.

### **Determination**

17. We have appraised ourselves with the respective rival submissions. We have deduced that the only issue for determination before us is whether the court should issue witness summons for the attendance as a witness of one Lalita Lalchand Galot.

18. The power conferred on the court to summon a witness is provided for under **Section 22 (b) of Civil Procedure Act** as follows:

*“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party-*

*(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;”*

19. **Order 16 of the Civil Procedure Rules** also generally deals with summoning and attendance of witnesses. **Rule 1** provides that:

*“At any time before the trial conference under Order 11 the parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.”*

20. **Rule 6** as regards summoning to produce documents provides that:

*“Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.”*

21. From the foregoing provisions, it is clear that a court *suo moto*, can summon any person it deems is a necessary witness either for purposes of giving a testimony or for producing a document(s). An application in this regard can also be made by a necessary party.

22. It is however a cardinal rule of procedure and evidence that before such summons is issued on the application by a party, the party must lay the basis for relevance of the witness.

23. In the present case, PW1 who is Mr. Tiego’s client completed his evidence in chief without mentioning the documents that the intended witness shall adduce. The cross examination of the witness is at an advanced stage. It was not well elucidated why the intended witness should testify for the Plaintiff to convince us to issue the summons. On that, we think that a proper foundation has not been laid to convince us that the intended witness should be called to court.

24. This is a matter where parties have severally attended Case Management Conference pursuant to **Order 11 of the Civil Procedure Rules**. At no point did Mr. Tiego mention that he intended to call the said, Ms. Lalita. Further, the documents which the intended witness would adduce have not been served upon the Respondents for a proper preparation for the case in that respect. The request therefore coming too late in the day amounts to a trial by ambush.

25. We emphasize that it is not lost in our minds that the ongoing proceedings specifically are intended to determine the directorship and shareholding of the Plaintiff Company. To this end, the proceedings are conducted in the form of an inquiry. What this implies is that notwithstanding our finding that no basis

has been laid for the summoning of Ms. Lalita Galot, the court on its own motion, may summon any person it deems fit as a necessary witness to aid it in arriving at the determination. A witness summoned by the court may also be intended to fill any void identified in the course of the proceedings and which void, if not filled, may undermine a just, objective and concise determination.

26. We agree with the submission of learned counsel, Mr. Kaka that since Ms. Lalita Galot is, in these proceedings represented by her son, Narendra Galot, her role in testifying is rendered moot unless for good reasons the court may render itself otherwise. Her son has been appointed in that capacity to ably represent her interests. Calling her as a witness, in our view, would be tantamount to duplication of evidence. We however contrast this position with her role in the Succession Cause because in the latter proceedings, the personal representation of the party applying for a grant cannot be overemphasized.

27. Finally, we align ourselves with the submission by Mr. Tiego that a formal application is superfluous. The learned counsel has clearly outlined the reasons he deems are necessary to warrant the issuance of the summons, the merits or otherwise notwithstanding. There is no provision in law mandating that a formal application be made. The reasons advanced by Mr. Tiego are easy to discern, and more so, one borne from the record and matters within the knowledge of all counsel in this matter. Hence, a formal application would just but unnecessarily lengthen the proceedings.

28. For the foregoing reasons, we find this application unwarranted and accordingly dismiss it. There shall be no orders as to costs.

**DATED AND DELIVERED IN NAIROBI THIS 4<sup>TH</sup> DAY OF MAY, 2021**

**HON. L. MUTENDE**

**JUDGE**

**HON. G. W. NGENYE**

**JUDGE**

**HON. J. MATIVO**

**JUDGE**

**In the presence of:**

1. *Mr. Tiego for the Applicant/1<sup>st</sup> Interested Party- Mohan Galot.*
2. *Mr. George Gilbert, Ms. Maumo && Ms.Awiti for the Plaintiff/ Applicant.*
3. *Mr. Musyoka for the Plaintiff/Applicant.*
4. *Mrs. Omondi h/b for Mr.Were for the 1<sup>st</sup> Defendant/ Respondent.*
5. *Mr. Kenyatta for the 2<sup>nd</sup> Defendant/Respondent.*
6. *Mr. Kaka Kamau for the 3<sup>rd</sup> & 5<sup>th</sup> Defendants/Respondents.*
7. *Mr. Njenga for the 2<sup>nd</sup> Interested Party-Galot Limited.*
8. *Mr. Odhiambo for the Registrar of Companies.*