



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW MISC. CIV. APPLICATION NO. 640 OF 2008**

**MOHAN GALOT.....APPLICANT**

**VERSUS**

**REGISTRAR OF COMPANIES.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**MANCHESTER OUTFITTERS LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**PRAVIN GALOT & RAJESH GALOT.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**Introduction**

1. It is common ground that the parties in this case have numerous interrelated suits pending in court. For unexplained reasons, the said suits have remained undetermined for years, a position I find to be perplexing and unacceptable. The common thread in the said suits as far as I can discern it from the material in this case is a dispute between the directors and the shareholders of Manchester Outfitters Limited.

2. Among the said suits is *Manchester Outfitters Limited v Pravin Galot, Rajesh Galot, Ganesh Galot, Kevin Galot and Manchester Outfitters (East Africa) Limited, Hcc No. 55 of 2012 (formerly 63 of 2009)*, in which a consent order was recorded on 24<sup>th</sup> February 2012. The terms of the consent were:-

a. ***That*** an inventory detailing all the matters to this suit be done within fourteen (14) days from the date hereof.

b. ***That*** 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 thereof to be applied in all the other cases.

c. ***That*** the matter be mentioned for compliance and giving further direction on 23<sup>rd</sup> March 2012.

3. From the limited material before me, it is not clear what substantial questions of law were referred to uneven number of judges in conformity with Article 165 (4) of the Constitution, and why since 2012, the matter has never been heard since as per the above consent, the decision was to be applied to all the related cases. But what is clear is that a schedule of cases was filed in the said matter disclosing the existence of a total of 14 civil suits filed in the High Court between 1993 and 2011 involving the directors and or shareholders of the said company or related companies.

4. The instant case is one of the 14 interrelated suits pending in the High Court and pursuant to the said consent, the determination by the three judge bench is to be applied to it. It is important to point out that the said order was recorded by consent, and from the scanty material before me, it has not been varied, reviewed or set aside.

5. In addition, the court record shows that as early as on 15<sup>th</sup> October 2009, Wendoh J ordered that this suit be stood over generally to await the determination of HCCC No. 63 of 2009 (i.e *Manchester Outfitters Limited v Pravin Galot, Rajesh Galot, Ganesh Galot, Kevin Galot and Manchester Outfitters (East Africa) Limited, Hcc No. 55 of 2012 (formerly 63 of 2009)* in which the above consent was recorded.

6. The effect of the above order was to stay these proceedings. In fact on 11<sup>th</sup> March 2010, Sitati J directed any party aggrieved by the say

order to apply to set it aside within 14 days. On 29<sup>th</sup> May 2010 the *ex parte* applicant filed an application seeking to *inter alia* set aside the orders made on 15<sup>th</sup> October 2009, but after several attendances before different judges, on 10<sup>th</sup> October 2017, Aburili J ordered that the application awaits the determination of HCC No. 63 of 2009. The upshot is that the said application has never been heard, hence, the order of stay is still in force.

7. Also relevant to the application under consideration is that on 10<sup>th</sup> July 2012, the High Court in HCCC No. 430 of 2012 between *Galot Limited, Manchester Outfitters Limited, Galot Industries Limited, King Woolen Mills Limited and Galot International Limited v Pravin Galot, Rajesh Galot and Kamau Ernest Kaka*, a consent order was recorded couched in the following terms:-

1. **That** the orders issued on 6<sup>th</sup> July 2012 be and are hereby varied as follows:-

i. **That** there shall be no alteration or variation of any record regarding any of the plaintiff companies pending the hearing scheduled for 20<sup>th</sup> July 2012.

ii. **That** all title documents relating to any of the properties owned by any or all of the plaintiff companies shall be preserved as they are today. There shall be no dealing in any of them.

iii. **That** the operations of the 2<sup>nd</sup> plaintiff Manchester Outfitters limited should continue as usual. That includes procurement and signing of cheques to effect various transactions. The 1<sup>st</sup> and 2<sup>nd</sup> defendants shall continue to run the said company.

iv. **That** there should be no filing of any other suit or application except with leave of the court.

v. **That** there shall be liberty to apply.

### **The Interested Partys' application**

8. Despite the existence of the above clear court orders, by a Notice of Motion dated 12<sup>th</sup> April 2017, the Interested Parties herein moved this court seeking the following orders:-

a. Spent

b. **That** leave be granted for the institution of this application in terms of the court order in HCC 430/12 made on 10<sup>th</sup> July 2012.

c. **This** honourable court be pleased to order the 1<sup>st</sup> Respondent to issue the Interested parties with a search in respect of the 1<sup>st</sup> Interested party for the year 2017 as he had done in all the previous years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

d. **This** honourable court be pleased to order the 1<sup>st</sup> Respondent to issue the 2<sup>nd</sup> Interested Party with a search for 2017 in respect of the 1<sup>st</sup> Interested Party to facilitate the implementation of the court order made on the 10<sup>th</sup> of July 2012 in HCC 430 OF 2012.

e. Costs of this application be provided for.

9. The core grounds in support of the application as disclosed in the grounds listed on the face of the application and the supporting affidavit of Pravin Galot dated 12<sup>th</sup> April 2017 annexed thereto are that the interested parties are textile merchants working mainly on procurement of tenders for their manufacture and invariably a search from the company's registry yearly is required as a prerequisite qualification for its business. The applicants state that from 2007 to 2016, the 1<sup>st</sup> Respondent dutifully issued them with search certificates for each year but it has declined to issue a search certificate for the year 2017 despite payment and requests.

10. The applicants also state that without a search, they would not get tenders without which their business would come to a halt, hence, the urgency of the matter. They state that there is no alternative avenue for redress, hence the plea for the orders. They also state that the refusal to grant the a search certificates is unreasonable, arbitrary, unlawful, procedurally unfair and infringes upon their fundamental freedoms under Article 47 of the Constitution.

### **Ex parte applicant's Notice of Preliminary Objection**

11. The *ex parte* applicant, Mr. Mohan Galot filed a Notice of Preliminary Objection dated 8<sup>th</sup> May 2017. The substance of the objection is that the application is defective, bad in law and an abuse of the process of the court, and, that, the prayer sought cannot be sought within these judicial review proceedings, and, that, the applicant can only file fresh proceedings and seek the substantive orders therein. Further, he stated that the applicant cannot invoke the provisions of the Civil Procedure Act and the rules in these judicial review proceedings.

### **Applicant's Replying Affidavit**

12. In addition to the above grounds, Mohan Galot, the Chairman and governing director of Manchester Outfitters Limited swore the Replying Affidavit dated 5<sup>th</sup> May 2017 in opposition to the application. He deposed that the application is frivolous and an abuse of court process. He further deposed that the application is aimed at defeating the proceedings in HCC Civil Suit No. 55 of 2012 (formerly 63 of 2009) in which the shareholding of the directorship of Manchester Outfitters Limited is pending determination before a three judge bench.

13. He averred that the substantive application herein was precipitated by the refusal or failure by the first Respondent to issue a CR 12 Certificate to confirm the correct directorship and shareholding of the applicant company upon his application, and, that, the second Interested Party have vehemently opposed the application on grounds that on 15<sup>th</sup> October 2009, this honourable court made an order staying further proceedings until High Court Civil Suit Number 55 of 2013 is heard and determined.

14. Mr. Galot deposed that it is deceptive on the part of the second Interested Party to seek an order from this court that he be supplied with a search in respect of Manchester Outfitters Limited and at the same time object to CR12 being issued to him. In addition he deposed that the continued action by the first Respondent of issuing searches in respect of Manchester Outfitters Limited whilst the dispute over the shareholding and directorship is pending determination in HCCC No. 55 of 2012 only complicates the dispute. He averred that the Interested Parties should not be allowed to benefit from matters which are in dispute before the court at the expense of the other parties and, that, the first Respondent should not be perceived to be assisting one of the parties in the dispute by issuing searches whose content is in dispute.

#### **Second Interested Party's supplementary Affidavits**

15. Pravin Galot swore the supplementary affidavit dated 18<sup>th</sup> May 2017 in which he reiterated his affidavit dated 12<sup>th</sup> April 2017 and disputing the contents of Mr. Pravin Galot's affidavit.

16. Pravin Galot also swore the further supplementary affidavit dated 6<sup>th</sup> May 2019. He averred that the *ex parte* applicant herein has since been arraigned in court charged with *inter alia* forging and uttering a CR 12 in Criminal Case Number 276 of 2018. He averred that the instant application merely seeks the first Respondent to confirm that there has been no variation or alteration in the management and shareholding of the first Interested Party as ordered by the court, hence, they are not asking the court to determine the issue of directorship and shareholding of the first Interested Party as alleged by the *ex parte* applicant.

#### **Determination**

17. At the hearing of the application, the parties adopted their affidavits filed in support and or in opposition to the application and left it to the court to determine the application.

18. As explained earlier, there are stay orders in these proceedings. A **stay of proceedings** is a ruling by the [court](#) in [civil](#) and [criminal procedure](#), halting further legal process in a [trial](#) or other legal proceeding. Stay of proceedings are court orders which bring litigation or enforcement of other court orders to a standstill. An order of stay is made during the course of litigation to postpone or suspend the whole or any part the proceedings. While the stay is in force, no substantive step may be taken in the proceedings, other than where court provide for an exception, or the stay provides an exception to the case.

19. The effect of the stay order is that no proceedings can be entertained in this case unless and until the said stay order is set aside, varied or reviewed. To this extent, the application dated 12<sup>th</sup> April 2017 is unsustainable and on this ground it cannot stand.

20. Curiously, the applicant in the instant application did not mention the stay orders in this file at all. Instead, the applicants referred to the order made on 10<sup>th</sup> July 2012, in HCCC No. 430 of 2012 between *Galot Limited, Manchester Outfitters Limited, Galot Industries Limited, King Woolen Mills Limited and Galot International Limited v Pravin Galot, Rajesh Galot and Kamau Ernest Kaka* referred to above which decreed *inter alia* that there should be no filing of any other suit or application except with leave of the court. Taking cue from the said order, the applicant in prayer one seeks leave. There is no application or prayer to set aside the stay order. The leave sought in prayer one of the application as I understand it is premised on the order issued in HCC No. 430 of 2012. Unfortunately, the prayer for stay in place remains in force until it is set aside, varied or reviewed. The effect is that, no further proceedings can lie.

21. The request for leave is not the same as setting aside, varying or reviewing. It can only apply if the proceedings are not stayed. The leave sought, even if it was available from this file, cannot issue so long as the stay order is in force. Simply put, the prayer for leave cannot lay side by side with the stay order already on record. The effect is that so long as the stay order remains in force, no proceedings can be entertained in this case.

22. In the circumstances, the application dated 12<sup>th</sup> April 2017 offends the stay orders in existence in this file. It cannot be allowed to stand. The effect is that the said application is incompetent, unsustainable, and fit for dismissal, Accordingly, I dismiss the Interested Parties application dated 12<sup>th</sup> April 2017 with costs to the *ex parte* applicant and the Respondents.

Orders accordingly

**Signed, Dated and Delivered at Nairobi this 16<sup>th</sup> day of December 2019**

**John M. Mativo**

**Judge**