Galot Holdings Limited v Manchester Outfitters Limited & 5 others (Civil Appeal (Application) E825 of 2025) [2025] KECA 1597 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KECA 1597 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL (APPLICATION) E825 OF 2025

SG KAIRU, J MOHAMMED & AO MUCHELULE, JJA

OCTOBER 3, 2025

BETWEEN

GALOT HOLDINGS LIMITED .... APPLICANT

AND

MANCHESTER OUTFITTERS LIMITED .... 1ST RESPONDENT

MOHAN GALOT .... 2ND RESPONDENT

GALOT LIMITED .... 3RD RESPONDENT

MANCHESTER OUTFITTERS (EA) LIMITED .... 4TH RESPONDENT

PRAVIN GALOT .... 5TH RESPONDENT

RAJESH GALOT .... 6TH RESPONDENT

(Being an application for an order of stay of proceedings against the ruling and order of the Environment and Land Court at Nairobi (O.A. Angote, J.) dated 19th September 2024 in ELC Case No. 358 of 2012)

RULING

1. By way of motion dated 11th November 2024 the applicant, Galot Holdings Limited, seeks an order to stay the proceedings in Nairobi ELC Case No. 358 of 2012 pending the hearing and determination of the appeal in Civil Appeal No. COACA/E825/2024. The applicant was aggrieved by the ruling delivered on 19th September 2024 by the Environment and Land Court (ELC) (O.A. Angote, J.) which reviewed orders of 31st October 2018 that had dismissed the suit between the parties for want of prosecution.

2. So that this application is placed in perspective, the following are the brief facts of the dispute between the parties. Manchester Outfitters Limited, the 1st respondent, Mohan Galot, the 2nd respondent, and

Galot Limited, the 3rd respondent, sued Galot Holdings Limited, the applicant, Manchester Outfitters (E.A.) Limited, 4th respondent, Pravan Galot, 5th respondent, and Rajesh Galot, the 6th respondent over LR No. 24092 (Grant No. IR 79398) (the suit property). According to the 1st, 2nd and 3rd respondents, the 5th and 6th respondents bought the suit property using the funds of the 1st respondent and transferred it to the 5th and 6th respondents. The 5th and 6th respondents then transferred the property to the 1st respondent ostensibly to enable the 1st respondent to raise funds for its operations. The 5th and 6th respondents then registered a company, the 4th respondent. Because the relationship between the 2nd respondent and the 5th and 6th respondents was strained, the 5th and 6th respondents took advantage of that and transferred the property into the name of the applicant. The 1st, 2nd and 3rd respondents claimed that the transfer was without their knowledge, was unjust enrichment and was fraudulent. They sought a declaration that they were beneficial owners of the property and asked that it be found that the property was held in trust for them.

3. According to the 5th and 6th respondents, they bought the suit property from Chemchemi Holdings Limited for Kshs.8 million; that, at the time the 1st respondent was experiencing financial difficulties. The 5th and 6th respondents were directors in the 1st respondent. They resolved as a Board to seek a loan from Barclays Bank. They agreed to transfer the property, which was registered in their names, to the 1st respondent at a nominal value of Kshs.500,000/= to be used as security for the loan. It was agreed that upon the loan repayment, the property would be re-transferred to them. Subsequently, the 1st respondent secured the loan and the suit property was used as security. Subsequently, the loan was repaid and the charge on the property was discharged; that a court had determined that these transactions were not fraudulent.

4. According to the record, on 31st October 2018 the suit was scheduled for a notice to show cause why it should not be dismissed for want of prosecution. The learned S. Okongo, J. heard oral submissions by counsel for the parties. He was not satisfied with the explanation why the suit had not been prosecuted for a long time. He dismissed the suit for want of prosecution.

5. On 19th September 2024, the learned O.A. Angote, J. following the application by the 1st, 2nd and 3rd respondents to review the dismissal orders and to reinstate the suit for hearing, allowed the same. Hence the instant application. An objection had been raised against the application on the basis that under sections 4(2), 3 and 7 of the *Limitation of Actions Act* the court was barred from hearing the question, and, secondly, that the application was res-judicata, given the court's determination vide its ruling of 15th August 2013. The objections were not sustained. In allowing the application, it was noted that there was a pending dispute in the High Court over the directorship of the 1st respondent and the High Court had stayed all matters pertaining to the dispute until the issue had been determined. This was the reason, according to the court, there was delay in the prosecution of the dispute. These are the orders that aggrieved the applicant, who filed a notice of appeal on which the present application is based. The record of appeal has already been filed.

6. According to the grounds, supporting affidavit by the 5th respondent and the written submissions by learned counsel Mr. Ouma, it was contended that the appeal raised substantive grounds that we should allow to be considered by the relevant bench. Relying on the grounds in the Memorandum of Appeal, the learned counsel submitted that the learned Judge, in allowing the application, had misdirected himself by considering the same issues that the Judge who had dismissed the suit for want of jurisdiction had considered and ruled on, and, therefore, the well-established principle of res-judicata had been offended. Secondly, that there had been an earlier determination contained in the ruling of 15th August 2013 that there was no fraud in the transactions relating to the suit property. If, it was argued, the suit is reopened for hearing, the same issue of fraud will be up for decision; and that again,

will offend the doctrine of res- judicata. Thirdly, that the learned Judge had exceeded his jurisdiction in reviewing findings of fact and law that had already been adjudicated upon by the previous court and, in so doing, had overstepped the limits of the court's jurisdiction on review. Learned counsel Mr. Kenyatta for the 6th respondent in supporting the application, urged us to consider that the application for review was based on apparent error on the face of the record. The learned Judge found that there had been no apparent error, but went on to rely on the ground of any other sufficient reason. Learned counsel pointed out that the learned Judge had acknowledged that the meaning, scope and extent "of any other sufficient reason" for purposes of review was contentious but went on to find that a case had been made. According to learned counsel, while agreeing with Mr. Ouma for the applicant and learned counsel Mr. Kaka for the 4th and 5th respondents, submitted that the appeal will turn on whether the learned Judge properly interpreted the ground of any other sufficient reason when he allowed the application for review. We consider that, it is true that the learned Judge, after reviewing the application, found that there had been no demonstration that there was any apparent error on the face of the record.

7. On whether the failure to stay the proceedings now before the ELC will render the appeal nugatory, learned counsel Mr. Ouma urged us to find that his client will suffer irreparable harm by participating in a trial on issues that have already been conclusively determined; and a suit that had already been dismissed for want of prosecution; and that allowing the suit to be reinstated would undermine the principle of finality. In Court before us, learned counsel submitted that the suit sought, among other orders, the eviction of his client from the suit property. He wanted the appeal determined first, otherwise his client would suffer irreparably but also that the appeal will be rendered nugatory.

8. Pushpinder Singh Mann, a director of the 1st respondent, opposed the application. Before us, the 1st respondent was represented by learned counsel Mr. Gilbert. According to learned counsel, the application for stay of proceedings had not raised any exceptional circumstances. It was urged that the dispute between the parties had not been heard on merits, and this is what the 1st respondent is seeking and the applicant does not want. Secondly, the applicant had failed to disclose that an application for stay had been dismissed by the superior court and the dismissal had not been challenged on appeal. A litigant who is guilty of non-disclosure, it was contended, cannot benefit from the exercise of discretion by this Court. Thirdly, that in allowing the application for review the learned Judge had exercised his discretion. Before us, it was submitted, there had been no demonstration that the discretion had been improperly exercised. Consequently, it was submitted that the appeal raised no arguable grounds.

9. In terms of whether the appeal will be rendered nugatory, if the application is not allowed, learned counsel submitted that, if the claim were to be successful before the ELC, all that will happen will be the cancellation of title. Such cancellation can be undone. In any case, it was urged, it had not been shown that whatever damage could not be compensated in damages.

10. We have considered the application, the responses and the rival submissions. We shall determine whether the applicant has made a case to have the proceedings before the ELC stayed until the appeal now before this Court is heard and determined.

11. The present motion was brought under Rule 5(2)(b) of the Court of Appeal Rules, 2022. Whether this Court is dealing with an application for stay, an application for injunction or an application for stay of proceedings, the applicant has to establish that the appeal is arguable, and that the appeal will likely be rendered nugatory, if stay of the application is not granted and the appeal succeeds (see Githunguri -vs- Jimba Credit Corporation Limited (No. 2) [1988]KECA 141 (KLR); Wasike -vs- Swala [1984] eKLR).

12. An arguable appeal is one that is not idle or frivolous. A single arguable point is sufficient to meet the threshold (see Regnoil Kenya Limited -vs- Winfred Njeri Karanja [2019] KECA 714 (KLR)).

13. It was acknowledged by the learned O.A. Angote, J. that, when the learned S. Okongo, J. was dealing with the question whether or not to dismiss the suit for want of prosecution, he had considered the issue that there was pending before the High Court, Commercial Division, a dispute over the directorship of the 1st respondent; that the dispute had been unresolved and that is what had delayed the suit before the ELC. S. Okongo, J. had, upon hearing the parties, dismissed the explanation as a basis for the delay in prosecuting the suit. This is how O.A. Angote, J. dealt with the issue.

> " 94. However, the Court notes that not only was the dispute over the 1st Plaintiff's directorship pending in the commercial court, the aforesaid Court had stayed all the matters in which this issue arose. Whereas this suit was filed subsequently, it was affected by the issue of directorship. This is so because right from the interlocutory phases, the Defendants had raised objections as to the Plaintiffs' locus, a material issue as admitted by this Court on 15th August, 2013."

14. The applicant's contention is that the learned Judge, while acknowledging that the issue regarding 1st respondent's directorship had been raised before the learned Judge S. Okongo, J. and dismissed, it was wrong for him to revisit the issue and use it to reinstate the suit; that the issue was res-judicata.

15. Our view is that the applicant is not raising a frivolous ground of appeal. We say this while aware that, an arguable ground is not necessarily one which will succeed. The Court's role is to ensure that the argument is fully heard and argued on its merits, not to make a final decision on whether it will succeed at the initial stage (see Lake Victoria South Water Service Board -vs- Seline Akoth Oyiengo [2020] KECA 249 (KLR).

16. We do not want to point out that whether or not the learned Judge misapplied the principle of "any other sufficient" to the facts of the application would be another arguable ground.

17. In Britam General Insurance Company Ltd -vs- Rentco East Africa Limited & Another; Festus Mbithi Thomas and 36 Others (Interested parties) [2022] eKLR, this Court observed that –

> " the power to stay proceedings which is discretionary, should be exercised sparingly and only in exceptional cases where the proceedings are shown to be frivolous, vexatious, where they are manifestly groundless or lastly where it is clearly shown that there is no cause of action."

18. We reiterate that Rule 5(2)(b) provides a crucial procedure mechanism for the Court of Appeal to intervene and maintain the status quo, thereby ensuring that justice can be effectively served and that an appeal is not rendered a futile exercise.

19. It is acknowledged that an order of stay of proceedings is a –

> serious and grave judicial intervention because it has the effect of suspending or delaying pending proceedings" (see National Assembly of Kenya -vs- Njiru & 41 Others [2025] KECA 494 (KLR)).

20. It was argued in opposition to the application that, should the superior court proceed and hear the suit on its merits, the decision can still be reversed on appeal, noting that this is an interlocutory appeal. In Reliance Bank Limited -vs- Norlake Investment Limited [2002] IEA 227, it was observed that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed or restrained, if allowed to happen, is reversible, or if not reversible, whether damages will reasonably

compensate the party aggrieved. Ultimately, we note the Court must seek to do justice to the parties, given the peculiar facts of each case.

21. The suit by the 1st and 2nd respondents was dismissed for want of prosecution. This means that the parties' respective claims have not received any meritorious determination. If we do not grant stay, the parties shall subject themselves before the ELC for their claims to be heard and determined. We consider that, if the applicant does not succeed before the ELC it will still come before this Court on appeal. It cannot, therefore, be argued that, if the proceedings before the superior court are not stayed, and the present appeal ultimately succeeds, the applicant will suffer irreparably.

22. We consequently find that the applicant has failed to establish that the appeal will be rendered nugatory if the proceedings before the ELC are not stayed. We dismiss the application.

23. Costs follow the event. We order that the applicant pays the costs of the application to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

S. GATEMBU KAIRU, C.Arb, FCIArb

……………………………….

JUDGE OF APPEAL

JAMILA MOHAMMED

……………………………….

JUDGE OF APPEAL

A.O. MUCHELULE

……………………………….

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.