



Manchester Outfitters Limited & 2 others v Galot Holdings Limited & 3 others (Environment and Land Case 358 of 2012) [2025] KEELC 6626 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 358 OF 2012
OA ANGOTE, J
OCTOBER 2, 2025**

BETWEEN

**MANCHESTER OUTFITTERS LIMITED 1ST PLAINTIFF
MOHAN GALOT 2ND PLAINTIFF
GALOT LIMITED 3RD PLAINTIFF**

AND

**GALOT HOLDINGS LIMITED 1ST DEFENDANT
MANCHESTER OUTFITTERS (EA) LIMITED 2ND DEFENDANT
PRAVIN GALOT 3RD DEFENDANT
RAJESH GALOT 4TH DEFENDANT**

RULING

Background

1. This ruling is with respect to a dispute over representation of the 1st Plaintiff, Manchester Outfitters Limited. The dispute on representation of the 1st Plaintiff arose when on 14th July 2025, the firm of Havi & Company Advocates filed a Notice of Change of Advocates, indicating that it had been appointed to act for the 1st Plaintiff in place of George Gilbert Advocates. Contemporaneously, the firm of Havi & Company Advocates filed a Notice of Withdrawal of the suit on behalf of the 1st Plaintiff.
2. On the very next day, 15th July 2025, the firm of George Gilbert Advocates lodged a Notice of Change of Advocates, stating that the 1st Plaintiff had reappointed it in place of Havi & Company Advocates. At the same time, it filed a notice purporting to withdraw the Notice of Withdrawal dated 14th July 2025. It was contended by George Gilbert Advocates that the 1st Plaintiff had not instructed Havi &



Company Advocates to act on its behalf, and that the said firm could therefore not withdraw the suit on behalf of the said 1st Plaintiff.

3. When this suit came up for hearing on 16th July, 2025, this court directed that it will determine the question of the 1st Plaintiff's legal representation first. The court directed the two firms of Advocates to exchange Affidavits stating the set of Directors of the 1st Plaintiff that had appointed them.

The Affidavit in support of the appointment of George Gilbert Advocates

4. In an Affidavit sworn on 29th July 2025, Mr. Pushpinder Singh Mann, deponed that he was a director of the 1st Plaintiff. He deponed that the firm of George Gilbert Advocates had been appointed by the company to represent it in this suit and in other matters, including HCCC No. 55 of 2012 and HCCC No. 430 of 2012. He deponed that those instructions have not changed and the said firm has remained on record in the matters mentioned.
5. According to the deponent, there exists two suits in which the directorship of the 1st Plaintiff are in dispute. In HCCC No. 55 of 2012 Manchester Outfitters Limited vs Pravin Galot & others, Manchester Outfitters Limited is the only company suing Pravin Galot and Rajesh Galot, the 3rd and 4th Defendants herein. In HCCC No. 430 of 2012 Manchester Outfitters Limited & 4 others v Pravin Galot & 2 others, five companies, including the 1st Plaintiff, have challenged the alleged fraudulent acquisition of directorship by the said Defendants.
6. It was further deponed by Mr. Pushpinder that in several other suits, including the present one, Pravin Galot and Rajesh Galot had frustrated proceedings by asserting that they too were directors of the 1st Plaintiff. To address this, it was deposed, the court directed that an inventory of all such suits be prepared and stayed pending the outcome of HCCC No. 55 of 2012.
7. Mr. Pushpinder deposed that consent orders were thereafter recorded to the effect that questions of directorship and shareholding of the 1st Plaintiff would be determined in HCCC No. 55 of 2012, and the outcome thereof would bind all related cases.
8. The deponent emphasized that the order issued subsequent to the consent order, which allowed Pravin and Rajesh Galot to run the affairs of the company, did not amount to an appointment of directors.
9. He asserted that the suit on shareholding and directorship of the 1st Plaintiff, Manchester Outfitters Limited, in HCCC No. 55 of 2012 was fully heard and finally determined by the High Court on 11th April 2024 and that the High Court therein held that neither Pravin Galot nor Rajesh Galot were directors or shareholders of Manchester Outfitters Limited.
10. Instead, it was deposed, the court affirmed that Mohan Galot was the Governing Director with authority under Article 10 of the company's Memorandum and Articles of Association to hire and remove directors and that an order was accordingly extracted confirming the directors and shareholders of the company to the exclusion of Pravin and Rajesh Galot. It was contended that this decision, being final, was binding on all related matters and rendered the issue of directorship res judicata.
11. The deponent averred that it was only following the determination of HCCC No. 55 of 2012 that this suit became ripe for hearing; that on 24th May 2024, when the matter was mentioned, Pravin and Rajesh Galot raised the issue of their involvement as directors of the 1st Plaintiff and that this Court dismissed the objection, holding that the conditions for stay had crystallized.
12. The deponent further stated that, as the Governing Director, Mohan Galot appointed additional directors, namely Rajeev Modi, Avin Galot, Rita Galot, and the deponent (Mr. Pushpinder), in compliance with the company's constitution, which required more than one director and that the



- appointments were duly lodged at the Companies Registry and reflected in the CR 12 and that the Board thereafter authorized himself and Avin Galot to swear affidavits and file witness statements on behalf of the company, which authority they have continued to exercise.
13. It was also averred that following these developments, Mabeya J, the then Presiding Judge of the Commercial Division, directed that the previously stayed suits proceed without further delay and that the Defendants, however, subsequently filed an application seeking his recusal.
 14. The deponent contended that Pravin and Rajesh Galot had filed more than ten stay applications in different courts, including the Court of Appeal, all of which had been dismissed. He accused the 3rd and 4th Defendants of engaging in tactics designed to frustrate the fair and timely disposal of this matter, including the filing of parallel suits through proxies in different courts with the aim of obtaining conflicting outcomes.
 15. It was deposed by Mr. Mr. Pushpinder that to avoid conflicting outcomes, the Presiding Judge of the Commercial Division directed that all matters involving the 3rd and 4th Defendants be handled by one judge. Consequently, HCCC No. 55 of 2012, HCCC No. 430 of 2012, HCCC No. 256 of 2024, HCCC No. E062 of 2025, Petition No. E027 of 2024, HCCC No. 1031 of 2024, and HCCC No. 298 of 2009 were all placed before Justice Fridah Mugambi.
 16. It was further deposed that in a ruling delivered in HCCC No. 430 of 2012, Justice Mugambi clarified that the earlier orders allowing Pravin and Rajesh to run the company had been superseded by the three-judge bench decision in HCCC No. 55 of 2012, which applied across all related matters and that in that case, the 3rd and 4th Defendants had purported to instruct counsel on behalf of the 1st Plaintiff, but the learned Judge held that they lacked such authority.
 17. The deponent added that Justice Mugambi rightly observed that she lacked jurisdiction to alter, review, or sit on appeal over the decision of the three-judge bench; that the issues raised by the 3rd and 4th Defendants were res judicata; that this Court equally lacks jurisdiction to reopen them and that the Defendants have since filed a recusal application against Justice Mugambi.
 18. The deponent urged this court to resist the attempt by the 3rd and 4th Defendants to procure judicial sanction for a parallel and non-existent set of directors.
 19. He further deposed that following the three-judge bench decision, one of the shareholders of the 1st Plaintiff was the estate of Lalchand Galot, whose administrators have held letters of administration for over 25 years and that the administrators, through one Narendra Galot, wrote to the Board of Directors seeking transmission of shares to the beneficiaries.
 20. It is Mr. Pushpinder's case that those shares, however, are claimed by the 3rd and 4th Defendants; that the Board had declined to act on the request as it was illegal because registration was not automatic and that a fresh suit was filed by the administrators before Justice Mugambi to compel registration, but no interim orders were issued.
 21. Mr. Pushpinder confirmed that on 18th June 2025, Mohan Galot passed away. He emphasized, however, that under the doctrine of perpetual succession, the company continued to subsist under its existing directors, and no fresh appointments had been made since then.
 22. The deponent reiterated that the 1st Plaintiff remains satisfied with the representation of George Gilbert Advocates and has never instructed Havi & Company Advocates or any other firm to act for it. He maintained that there exist no separate set of directors as alleged by Mr. Havi, and contended that the 3rd and 4th Defendants, who are clients of Mr. Havi, are neither directors nor shareholders of



the company and urged this Court to nullify the Notice of Appointment filed by Havi & Company Advocates together with the accompanying Notice of Withdrawal.

23. In an Affidavit sworn on 2nd September 2015, Narendra Galot deponed that together with Lalita Galot and Pradeep Galot, he holds by transmission one (1) management share and three hundred and forty-nine (349) ordinary shares in the paid-up share capital of the 1st Plaintiff and that by reason of such holding, he was competent to swear the affidavit on his own behalf and on behalf of his co-grantees.
24. Narendra Galot deponed that the issue before the Court was who, between the opposing parties, holds the proper instructions to appoint counsel for the 1st Plaintiff.
25. Mr. Narendra Galot averred that by a ruling delivered on 11th April 2024 in HCCC No. 55 of 2012, the estate of Lalchand Pusharam Galot was recognized as a shareholder in the 1st Plaintiff of one (1) management share and three hundred and forty nine (349) ordinary shares. He stated that by way of transmission, operation of the law and order of the court, he became the holder of those shares in the paid-up share capital of the company.
26. He further deponed that the 1st Plaintiff has only two management shares in the paid-up share capital: one held by the late Mohan Galot, and the other by himself and that under Clause 5(ii) of the 1st Plaintiff's Memorandum of Association, a holder of a management share is conferred with the right to management of the business and the control of the company.
27. Mr. Narendra Galot stated that it was in recognition of his rights as a management shareholder that Mohan Galot, as Chairman and Governing Director, appointed him on 25th December 2024 as team leader in the management of the 1st Plaintiff prior to his demise.
28. According to the deponent, following the death of Mohan Galot on 18th June 2025, he was left as the sole surviving management shareholder; that in exercise of those rights, he appointed the firm of Havi & Company Advocates to act for the 1st Plaintiff in this suit and that Pushpinder Singh Mann, Avin Galot, Rita Galot Parihar, and Rajeev Modi were neither management shareholders nor directors, and therefore lacked authority under the company's Articles of Association to control its affairs.
29. He contended that their so-called directorship cannot override his power and right to the management of the 1st Plaintiff and that under Section 138(1) of the Companies Act, any change in directorship must be notified to the Registrar of Companies within 14 days.
30. He produced an official search conducted on 27th April 2024, which, in his view, confirmed that the shareholding and directorship remained as decided by the High Court on 11th April 2024. He contended that had any valid changes been effected by 12th April 2024, the same ought to have been reflected in the Registrar's records by 27th April 2024.
31. Mr. Narendra Galot deponed that the purported board resolution of 12th April 2024 designating Pushpinder Singh Mann and Avin Galot to sign documents and represent the 1st Plaintiff company in the absence or unavailability of Mohan Galot was a forgery and ultra vires the articles of association, particularly, Article 10.
32. He stated that under Article 10 of the Articles of Association, there can be no Governing Director after the death of Mohan Galot and that the impugned resolution, in his view, unlawfully purported to create perpetual Governing Directors in the persons of Pushpinder Singh Mann and Avin Galot.
33. He further deponed that the impugned board resolution was null and void as it purported to amend the company's Articles of Association without a general meeting and the same was not signed by Mohan Galot, but by Pushpinder Singh Mann and Jophece Yogo, and was backdated. He contended that it



- amounted to a power of attorney, which could not be valid without the donor's signature and that Pushpinder Singh and Avin Galot only consented to become directors on 16th May 2024 and therefore could not have signed a resolution dated 12th April 2024.
34. It was deponed that on 25th April 2024, Jophece Yogo, purporting to be the company secretary, convened a special general meeting scheduled for 18th May 2024 and that the agenda included the introduction of new directors, although no names were specified.
 35. The deponent stated that he challenged the said notice of meeting in the High Court, Commercial Division, in HCCOM/E256/2024, whereupon the Court granted an injunction on 14th May 2024 restraining the naming of new directors and that those orders were later extended by consent on 17th June 2024 and remain in force.
 36. Mr. Narendra Galot contended that any purported consents or changes lodged with the Registrar of Companies after 14th May 2024 were in contempt of Court and therefore null. He disclosed that he has since filed an application for contempt, dated 19th February 2025, against Mohan Galot (deceased), Pushpinder Singh Mann, Jophece Yogo, Rajeev Modi, Rita Galot Parihar, and Avin Galot, which is pending determination.
 37. The deponent further stated that he has separately challenged the alleged directorship of Pushpinder Singh Mann and others in Petition No. E027 of 2024 and before the Registrar of Companies.
 38. Following the demise of Mohan Galot on 18th June 2025, the deponent reiterated that he remains the sole surviving holder of a management share, and by virtue of Clause 5(ii) of the Memorandum of Association, entitled to control the affairs of the 1st Plaintiff. He asserted that it was within his power to instruct counsel and that it was pursuant to this power that he appointed Havi & Company Advocates, who thereafter withdrew the present suit.
 39. It was his contention that the ruling of 11th April 2024 in HCCC No. 55 of 2012 has been overtaken by events following the death of Mohan Galot, leaving the company without a Governing Director under Article 10. Given the subsisting injunction in HCCOM/E256/2024, which bars the holding of general meetings, he argued that the company can only operate under Clause 5(ii) of its Memorandum of Association.
 40. Mr. Narendra Galot accused Pushpinder Singh Mann of concealing material facts, including the true share capital of the 1st Plaintiff, which as per an official search dated 15th May 2025 stood at Kshs. 54,000,000, and not Kshs. 14,000,000 and that the increase in share capital after 24th October 2024 was done in violation of the injunction issued on 14th May 2024, and was aimed at diluting his shareholding by illegally allocating majority shares to the 2nd Plaintiff. He also contended that Pushpinder Mann Singh failed to disclose that this particular case was not part of the inventory of cases that were stayed at some point.
 41. The deponent averred that on 18th July 2025, he instructed his advocates, Messrs. Kaka Kamau & Company Advocates, to lodge a complaint with the Registrar of Companies regarding the alleged illegal increase in Mohan Galot's shares from 349 to 4,349, and that by a letter dated 22nd July 2025 addressed to Jophece Yogo, the Registrar sought justification and documentation for the changes in shareholding and the general meeting at which they were allegedly made.
 42. In his view, the ongoing disputes as to shareholding and directorship of the 1st Plaintiff are commercial in nature and outside the jurisdiction of this Court. Nonetheless, he maintained that this Court retains jurisdiction to interpret the Memorandum and Articles of Association for purposes of determining who has authority to instruct counsel on behalf of the 1st Plaintiff.



43. He stated that in the exercise of his powers as a management shareholder of the 1st Plaintiff, he had terminated the services of George Gilbert LLP Advocates and that no reappointment of the said firm had since been made.
44. In a Further Affidavit sworn on 6th September 2025, Avin Galot, averred that he is a duly appointed director of the 1st Plaintiff together with Mr. Pushpinder Singh Mann. He stated that should this court find in favour of Narendra Galot, the inevitable consequence would be withdrawal of the suit.
45. Conversely, it was deposed, should the Court find in his favour and Pushpinder Singh, the matter ought to be given priority hearing dates, noting the 3rd and 4th Defendants' history of attempts to scuttle the proceedings.
46. He referred to Justice Mugambi's ruling on recusal in which the court observed that at least six separate recusal applications had been mounted against different judges at various stages, and multiple complaints lodged before the Judicial Service Commission seeking the removal of judicial officers who had presided over the dispute.
47. The deponent stated that notwithstanding this Court's directions requiring parties to file documents evidencing their authority and/or appointment as directors, Narendra had not filed such documentation and had instead shifted his position to questions of shareholding, seeking a determination which he had failed to obtain in other courts.
48. It was further contended that Narendra has not disputed that the High Court confirmed his appointment and that of Pushpinder Singh as directors after finding that Mohan Galot possessed the power, under Article 10 of the Articles of Association, to appoint directors and that they have exercised those powers and operated the 1st Plaintiff for the last one year and five months.
49. Avin Galot maintained that there is no attempt to present a parallel board and that Narendra has not claimed to be a director. While acknowledging that Mohan Galot, as Governing Director, had power to make appointments to management and directorship, he contended that the letter relied upon by Narendra and marked NG-4 did not create a position known as "team leader," and in any event was expressed to be subject to a Board meeting which never took place.
50. Avin Galot averred that as a member of the Board of Directors, he attended the board meeting, which resulted in the letter marked NG4. He stated that it was his personal proposal, seconded by Pushpinder Singh Mann, to involve Narendra in the company's management, but Mohan Galot did not approve the idea and the Board never appointed Narendra as "team leader," the latter not having met the conditions set out in the letter.
51. He added that Narendra's own letter of engagement, relied upon by him, recognized the Board of Directors to comprise Rajeev Modi, Rita Galot, Pushpinder Singh Mann and himself.
52. The deponent stated that, in further recognition of the Board's authority, Narendra by a letter dated 19th February 2025, he requested transmission of shares to himself and his co-beneficiaries; that the Board instructed the Company Secretary to seek supporting documentation so that the request could be considered and that Narendra and his co-beneficiaries did not supply the requested documents and no transmission occurred.
53. As a result, it was deposed, Narendra filed, HCCOMMISC/ E514/2025 in the High Court through Oduor Kenyatta Advocates seeking orders that the register of members of the 1st Plaintiff be rectified to replace the late Lalchand Galot with Lalita Lalchand Galot, Pradeep Lalchand Galot and Narendra Lalchand Galot as joint shareholders.



54. It was averred that interim relief was declined and the matter remains pending and consequently, no shares have been transmitted to Narendra or his co-beneficiaries and that Narendra is not a shareholder of the 1st Plaintiff.
55. The deponent argued that the order issued in HCCOM/E256/2024 is a temporary injunction restraining the holding of a special general meeting, and does not address or restrain directorship. He asserted that directors of the 1st Plaintiff are not appointed at a general meeting of members; rather, appointments fall within the remit of the Governing Director and the Board under Article 10. He contended that Narendra had mischaracterized the purport of that order.
56. He further stated that Narendra filed Petition No. E027 of 2024 in which he sought, inter alia, to restrain certain parties from holding themselves out or acting as directors of the 1st Plaintiff, but failed to obtain interim relief and has since abandoned that avenue while seeking identical relief before this Court. The deponent characterized this conduct as an abuse of process and noted that it marked at least the fourth attempt to obtain interim orders against the directors of the 1st Plaintiff.
57. The deponent added that Narendra also lodged a complaint before the Registrar of Companies seeking interim orders against the directors of the 1st Plaintiff; that upon service, he objected on the ground that the issues raised were res judicata by virtue of rulings by Justice Mugambi, or otherwise sub judice and that by a letter dated 2nd September 2025, the Registrar dismissed Narendra's complaint.
58. It was further stated that the Presiding Judge of the High Court expressly directed that all twenty three matters involving the 1st Plaintiff be placed before Justice Fridah Mugambi to ensure consistency and avoid conflicting decisions and that Justice Mugambi declined to grant Narendra and the 3rd and 4th Defendants any interim orders restraining the current directors and confirmed that only the said directors may control the 1st Plaintiff and its finances pending determination of the suit.
59. The deponent stated that the suit property was valued at Kshs 675 million in 2021, as per the valuation of the 3rd and 4th Defendants, and that by 2025 the value would exceed Kshs. One (1) billion. He contended that the protraction of the dispute benefits the 3rd and 4th Defendants, whom he accused of engineering delays to forestall hearing and determination.
60. Avin Galot further contended that the 3rd and 4th Defendants have "camouflaged" themselves through Narendra to advance their agenda. He stated that, Justice Mutungi had earlier determined that shareholders are not necessary parties to this suit, rendering Narendra's shareholding immaterial to the issues herein. He asserted that Narendra, who is aligned to the 3rd and 4th Defendants, is seeking to relitigate stay orders before this court, having failed to obtain interim relief from the Commercial Division and that Narendra himself had admitted that this court lacks jurisdiction to deal with the issues he has raised.
61. The deponent maintained that the questions of directorship and shareholding were addressed in HCCC No. 55 of 2012 and are therefore res judicata. He contended that the instant controversy amounts to a camouflaged application for stay of which should not be granted because similar applications have been dismissed on multiple occasions.
62. The deponent asserted that if Narendra was a director or shareholder of the 1st Plaintiff, he would be expected to safeguard its assets. Instead, it was contended, his conduct evidences bad faith and an intention to obstruct recovery of the company's property.



The Defendants' Affidavits

63. The 3rd Defendant, Pravin Galot, averred that he had no personal interest in who represents the 1st Plaintiff. He stated that his corporate interest straddles both the 1st Plaintiff's and the Defendants' side. He deponed that he is the Managing Director of the 3rd Plaintiff and that the 3rd Plaintiff is an undisputed 50% shareholder in the 1st Plaintiff.
64. He further stated that he was appointed Managing Director of the 1st Plaintiff company on 21st November 1991 and that by virtue of that appointment, he was entitled to attend and vote at all meetings of the Board of the 1st Plaintiff.
65. He stated that he continuously acted as Managing Director of the 1st Plaintiff until 11th April 2024 when in HCCC No. 55 of 2012, the High Court at Nairobi declared the 2nd Plaintiff, since deceased, to be the sole director and Governing Director of the 1st Plaintiff.
66. He added that on 10th July 2012, in HCCC No. 430 of 2012, the High Court ordered, inter alia, that the 4th Defendant and the 3rd Defendant continue to run the affairs of the 1st Plaintiff. These orders, he averred, were only stayed/ suspended on 7th February 2025.
67. It was further averred that the 2nd Plaintiff passed away on 18th June 2025. Consequently, there is no longer a holder of the office of Governing Director of the 1st Plaintiff, as that office lapsed with the demise of the 2nd Plaintiff. He asserted that circumstances have fundamentally changed since the decision of 11th April 2024, and that, in so far as the office of Governing Director is concerned, the decision has been overtaken by events.
68. The 3rd Defendant contended that Pushpinder Singh Mann, Avin Galot, Rita Galot Parihar and Rajeev Modi cannot hold themselves out as directors of the 1st Plaintiff. He relied on Article 10 of the Articles of Association, requiring appointments of directors to be in writing under the hand of the Governing Director and Section 16(4) of the Companies Act, requiring prior statutory consent to act as a director.
69. The 3rd Defendant relied on the order in HCCOM E256 of 2024 of 14th May 2024, which, according to him, restrained the holding of a special general meeting on 18th May 2024 or any other date and, inter alia, the introduction of any new directors. He stated that those orders were confirmed and extended by consent on 17th July 2024 and remain in force. It was his position that the said individuals could not become or purport to be directors after 14th May 2024.
70. He averred that Pushpinder Singh Mann and Avin Galot rely on a purported Board Resolution of 12th April 2024 signed by Jophece Yogo and Pushpinder Singh Mann, the latter styling himself as director even before consenting to act. He termed the resolution incurably defective for not being under the hand of Mohan Galot, then the sole and Governing Director pursuant to the ruling of 11th April 2024.
71. The 3rd Defendant contended that the resolution is a forgery and null. He further stated that on 19th April 2024, Jophece Yogo filed annual returns and that on the same date, Mohan Galot and Pushpinder Singh Mann signed annual returns indicating that Mohan Galot was the sole director, thus, in his view, disproving the alleged resolution of 12th April 2024.
72. The 3rd Defendant stated that upon the demise of Mohan Galot, the 1st Plaintiff ceased to have any director or governing director and consequently, Pushpinder Singh Mann, Avin Galot, Rajeev Modi and Rita Galot Parihar cannot claim to be directors.
73. He further contended that Pushpinder Singh Mann had concealed relevant facts that Pushpinder Singh Mann, Avin Galot, Rita Galot Parihar and Rajeev Modi have never been directors after 12th April



- 2024; that there is no longer a sole / Governing Director as envisaged under Article 10 of the Articles of association and that an official search dated 24th October 2024,annexed by Pushpinder, reflected Mohan Galot holding 350 shares in line with the ruling of 11th April 2024 yet an official search of 16th September 2025 shows Mohan Galot holding 4,350 shares.
74. It was deponed that Pushpinder Singh Mann, Avin Galot, Rita Galot Parihar and Rajeev Modi have approached the court with unclean hands and are undeserving of the reliefs having failed to disclose that they are in contempt of the orders of 14th May 2024.
 75. He further contended that the alleged directors were agents of Mohan Galot under Article 10 of the Articles of Association of the 1st Plaintiff and such agency relationship ceased upon the demise of Mohan Galot, even if their directorship was to be stretched far enough. He stated that clause 5(ii) of the Memorandum of Association vests the management and control of the 1st Plaintiff in the management shareholders, independent of the existence of a Board of Directors.
 76. In the absence of a sole/Governing Director, he argued, the fall-back position for management of the company rests with the management shareholders, including the power to initiate or terminate proceedings on behalf of the 1st Plaintiff.
 77. The 4th Defendant, Rajesh Galot stated that it is not in dispute that this suit was filed on 12th June 2012 on the instructions of Mr. Mohan Galot (now deceased) then the Governing Director and Chairman of the Board of the 1st Plaintiff under Article 10 of its Memorandum and Articles of Association.
 78. He further averred that in HCCC No. 430 of 2012, by orders issued on 24th July 2013, the High Court vested the management and operations of the 1st Plaintiff in the 3rd and 4th Defendants, barely one month after the present proceedings were initiated. In his view, this laid the seeds of the current contest on representation, given the existence of two competing directors with conflicting positions on whether and how this suit should proceed.
 79. He stated that by a ruling dated 15th August 2013, upon the Plaintiff's application dated 19th June 2012, the court determined that Mohan Galot and Galot Limited could not be co-plaintiffs as shareholders and struck them out, leaving Manchester Outfitters Limited as the sole Plaintiff.
 80. The 4th Defendant further stated that the ex parte orders issued by Justice Mugambi on 7th February 2025, authorising Mohan Galot and other directors appointed as governing directors to access and operate the Plaintiff's bank accounts, were premised on Mohan Galot's status as sole Governing Director. He contended that those interim orders could not be used to perpetually run and control the 1st Plaintiff to the detriment of the management shareholders.
 81. He averred that upon Mohan Galot's demise on 18th June 2025, the office of Governing Director and Chairman ceased, and by Clause 5(ii), the management and control reverted to the management shareholders. He stated that the Estate of Lalchand Pusharam Galot is the only surviving management shareholder, its status having been confirmed by the Succession Court vide Certificate of Confirmation of Grant issued on 20th July 2000 and amended on 21st June 2023. In his view, only that estate could instruct counsel for the 1st Plaintiff after Mohan Galot's demise, not the purported directors allegedly appointed by him.
 82. It was his further contention that the purported directors are, at most, temporary directors whose alleged mandate under Article 14 of the Articles of Association could not exceed twelve months from their alleged appointment and consent on 16th May 2024. In any event, he averred, they remain bound by the Memorandum and Articles which vest management and control in the management shareholders.



Submissions

83. Mr. Gorge Gilbert, Counsel appointment by Mohar Galot, and by extension Mr. Pushpinder Singh Mann and Mr. Avin Galot, relied on Section 143 of the *Companies Act* which provides for the duty of a director to promote the success of the company. It was submitted that all parties are in agreement that in HCCC No. 55 of 2012, the High Court decreed Mohan Galot to be the Governing Director with power to appoint directors, and that the question whether he could appoint advocates for the 1st Plaintiff is res judicata.
84. Counsel submitted that in line with Article 10 of the company's Articles, Mohan Galot duly appointed Pushpinder Singh Mann, Rajeev Modi, Avin Galot and Rita Galot, and that this is reflected in the CR12.
85. It was further submitted that in a subsequent ruling, the High Court ruled that the firm of George Gilbert Advocates is the one properly on record for the 1st Plaintiff and that in a further ruling, the court held that only Mohan Galot and other directors appointed by himself should be allowed to operate and access the bank accounts. It was submitted that the directorship of the four was no longer an issue.
86. Counsel contended that upon Mohan Galot's demise, the company, being a body corporate with perpetual succession, continued to run through its remaining directors. It was highlighted that in an earlier stay application before this Court, Pushpinder Singh Mann opposed the application on behalf of the 1st Plaintiff and neither Narendra, Pravin nor Rajesh opposed his directorship or his swearing of affidavits in that capacity.
87. It was also submitted that when Narendra sought to be registered as a shareholder of the 1st Plaintiff, he wrote to the same board of directors and upon their refusal, he filed a suit to compel that registration. Counsel argued that Narendra thereby recognizes who the directors are, has acted under their authority, and has sued them for declining to register him.
88. Counsel added that Narendra's attempt to restrain the directors in HCC Comm Pet E027 of 2024 failed at the interlocutory stage, and that he cannot re-litigate in this forum what the High Court has declined, as doing so amounts to an abuse of process.
89. Counsel further submitted that Narendra has filed no document from any court or any other source showing a different set of directors and has not claimed to be a director himself. It was argued that Narendra is not a shareholder until he is registered in terms of Section 92(3) of the *Companies Act*.
90. Mr. Gorge Gilbert submitted that upon the Directors' refusal to register him pending compliance, Misc. Application No. 514 of 2025, was filed but interim relief was not granted. Counsel pointed to a High Court ruling dated 31st July 2025 in HCCC No. 55 of 2012 affirming that the Presiding Judge's transfer directive was aimed at consistency across interconnected disputes, and urged that this Court is estopped from entertaining issues reserved for the High Court and lacks jurisdiction over Narendra's plea.
91. Reliance was placed on the case of Clement Muturi Kigano vs Kibera Development Company Limited [2019] KECA 183 (KLR) for the proposition that, absent registration, an applicant is not a holder of shares or a member of a company.
92. Without prejudice, Counsel submitted that Order 25 Rule 1 allows withdrawal of a suit at anytime before it is set down for hearing. It was submitted that this suit was already fixed for a two-day hearing, and any withdrawal could only be under Order 25 Rule 2(1), by written consent signed of all the parties, or with the leave of the court.



93. It was submitted that no such consent exists and no court order was issued withdrawing the suit. Counsel cited the case of Beijing Industrial Designing & Research Institute vs Lagoon Development Limited (2015) KECA 375 (KLR), where the Court of Appeal invoked Section 3A of the Civil Procedure Act to revoke the withdrawal of a suit.
94. Mr. Nelson Havi, Counsel instructed by Mr. Narendra Galot to act for the 1st Plaintiff, submitted that the suit stood withdrawn upon the filing of the Notice of Withdrawal by Havi & Company Advocates on 14th July 2025, pursuant to Order 25 Rule 1 of the Civil Procedure Rules. Counsel argued that if the matter was set down for hearing, and an order of the court was necessary, then Order 25 Rule 2 of the Civil Procedure Rules on costs due to the Defendants apply.
95. It was contended that the withdrawn suit cannot be reinstated by filing a notice of withdrawal of the notice of withdrawal as attempted by George Gilbert Advocates on 15th July 2025. If there was a bona fide contest, it was submitted, the proper recourse was an application to strike out the notice of withdrawal. Reliance was placed on the case of Ntutu vs County Government of Narok & Another [2024] eKLR and Tatu City Limited & 3 others vs Stephen Jennings & 6 others [2016] eKLR.
96. Counsel submitted, in the alternative, that George Gilbert Advocates bears the onus to demonstrate written authority from the 1st Plaintiff to continue acting or to revive the suit. It was argued that the Board Resolution of 12th April 2024 which was signed by Jophece Yogo and Pushpinder Singh Mann, did not grant authority for legal representation or reinstatement as it merely authorises the swearing of affidavits. Counsel relied on the case of Chevron K Limited vs Harrison Charo wa Shutu [2016] eKLR on the issue of written authority for commencement or continuation of an action.
97. Counsel further argued that the said resolution operates as an agency/ power of attorney to act in the absence or unavailability of Mohan Galot, and such authority does not survive the death of the donor. Reliance was placed on the case of Meru & 3 others v Meru (2023) eKLR on the lapse of agency powers.
98. The validity of the resolution was also questioned for want of Mohan Galot's signature despite his being alive at the time and the sole governing director. Counsel queried how Pushpinder Singh Mann could, on the very date of his alleged appointment, participate in authorising himself to swear affidavits for the company. The case of Kabundu Holdings Limited vs Ali Ahmed [2004] eKLR was cited.
99. It was counsel's further submission that under Article 10 of the Articles, Lalchand Galot was designated Governing Director and, upon his death, was succeeded by Mohan Galot; that there can be no further Governing Director after Mohan's demise; that under Clause 5(ii) of the Memorandum, management and control of the 1st Plaintiff lies with the holders of management shares, and that the ruling of 11th April 2024 in HCCC No. 55 of 2012 confirmed the management shareholders as Lalchand and Mohan.
100. Counsel contended that there has been no board of directors of the 1st Plaintiff subsequent to the orders of 11th April 2024; and, that assuming Pushpinder and Avin were appointed on 12th April 2024, their tenure lapsed on 12th April 2025 under Article 14 and the Companies Act for want of re-election by the management shareholders.
101. It was submitted that management and control now vest in Mr. Narendra Galot, as administrator of the Estate of Lalchand Galot and transmittee of his management share, evidenced by the Certificate of Confirmation of Grant dated 21st June 2023.
102. Counsel argued that during his lifetime, Mohan Galot, unlawfully refused to register Narendra as a shareholder. Relying on Surco Limited vs Prabha Mahesh Gudka [2000] eKLR, it was submitted that



Pushpinder and Avin, not being management shareholders or validly appointed directors, lack locus standi to challenge Narendra's entitlement to manage and control the 1st Plaintiff.

103. Counsel further submitted that where a private company's constitution vests management in a specified class of shareholders, directors cannot countermand that allocation; that a person entitled by transmission enjoys the same rights as the deceased holder and that registration is not a condition precedent to exercising those rights. Reliance was placed on Gower & Davies, Principles of Modern Company Law (8th ed.) and on Section 498 of the Companies Act on registration on transmission.
104. Reference was also made to the case of Abu Chiaba Mohamed vs Mohamed Bwana Bakari [2003] eKLR for the principle that one cannot rely on his wrongdoing to deny another his right.
105. Both counsel appeared before me and made oral submissions, which mirrored the written submissions and the affidavits of their respective clients, which this court has summarized above.

Analysis and Determination

106. Having considered the affidavits, annexures and submissions on record, the following issues arise for this court's determination: -
 - i. Which firm of advocates should be on record for the 1st Plaintiff?
 - ii. Whether this suit was lawfully withdrawn on 14th July 2025?
107. It is common ground that the parties herein are engaged in a multiplicity of interrelated suits, most of which have remained undetermined for several years. A significant number of these disputes concern questions of shareholding and directorship of Manchester Outfitters Limited, the 1st Plaintiff, which are all in the High Court. Among the pending matters are:
 - i. HCCC No. 55 of 2012
 - ii. HCCC No. 430 of 2012
 - iii. HCCC No. E062 of 2025
 - iv. Petition No. E027 of 2024
 - v. HCCC No. 1031 of 2024,
 - vi. HCCC No. 298 of 2009
 - vii. HCCOM No. E256 of 2024
 - viii. HC Miscellaneous Application E514 of 2025
108. By way of background, the Plaintiffs instituted this suit vide a Plaint dated 19th June 2012. They sought, inter alia, a declaration that the transfer of the suit property to the 1st Defendant was procured through the fraud and illegality of the 3rd and 4th Defendants. Consequentially, they prayed that the transfer be revoked and eviction orders do issue.
109. While the parties have argued extensively and passionately on the questing of directorship and shareholding of the 1st Plaintiff, this Court is guided by the determination rendered by a three-Judge bench in HCCC No. 55 of 2012, vide a ruling delivered on 11th April 2024.
110. Earlier, and in recognition of the proliferation of related suits, Musinga J. (as he then was), by an order issued on 28th February 2012, directed that an inventory of all matters relating to Manchester Outfitters



- Limited, the 1st Plaintiff be taken, and that the issues of directorship and shareholding be heard by a three-Judge bench appointed by the Honourable the Chief Justice.
111. The ruling of that bench was to bind all other related proceedings. Although this suit, ELC 358 of 2012, was not part of the inventory before the Commercial Division, the parties, by consent recorded on 23rd September 2020, agreed to stay the same pending the outcome of HCCC No. 55 of 2012.
 112. In its ruling dated 11th April 2024, the three-judge bench in HCCC No. 55 of 2012 determined that the shareholders of Manchester Outfitters Limited, the 1st Plaintiff, were as follows: Lalchand Pusharam Galot with one management share and 349 ordinary shares; Mohanlal Pusharam Galot with one management share and 349 ordinary shares; and Galot Limited with 700 ordinary shares.
 113. The bench further held that the sole director of Manchester Outfitters Limited was Mohanlal Pusharam Galot, who also held the position of Governing Director.
 114. The three judges further noted that, at incorporation, both Lalchand Pusharam Galot and Mohan Galot were directors of the company. The court further held that Article 10 of the Articles of Association provided that Lalchand was to serve as Governing Director, and, so long as he remained in that position, he retained control over the company and all other directors, who were bound to act in conformity with his directions regarding the management of the company's business.
 115. The said Article empowered him to appoint or remove any director, save for a permanent director, and such appointment or removal was to be effected in writing under his hand.
 116. According to the decision of the three Judges of the High Court, Article 10 further stipulated that, upon the death of Lalchand, or in the event of his incapacity or absence from the country, Mohan would automatically assume the position of Governing Director without the necessity of convening a meeting of shareholders or directors. The court held that upon the demise of Lalchand on 10th March 1995, Mohan duly assumed the position of Governing Director by operation of law and the Articles of Association.
 117. It is also not in dispute that the said Mohan Galot passed away on 18th June 2025. Prior to his demise, it is asserted that he appointed four directors, namely, Avin Galot, Rita Galot, Pushpinder Singh Mann and Rajeev Modi, by letters dated 12th April 2024. The four are said to have independently consented to their appointment on 16th May 2024. These changes were subsequently reflected in the CR12 of the 1st Plaintiff obtained on 24th October 2024.
 118. The appointment of the four as directors by Mohan has, however, been challenged by Mr. Narendra Galot, who contends that on 14th May 2024, the High Court, Commercial Division, in HCCOM No. E256 of 2024: Narendra Galot (suing on behalf of the Estate of the Late Lalchand Pusharam Galot) vs Mohan Galot, Jophece Yogo and Manchester Outfitters Limited, issued injunction orders restraining, inter alia, the appointment of directors of the 1st Plaintiff. It is his case that any consents or changes lodged thereafter were in contempt of Court and thus null and void.
 119. To buttress his position, Mr. Narendra annexed an application filed in the High Court seeking an order of stay of the Special General Meeting of Manchester Outfitters Limited scheduled for 18th May 2024, or any other date, pending determination of his application. The High Court, on 14th May 2024, granted temporary injunctive orders staying the special general meeting of the 1st Plaintiff which were subsequently extended by consent on 17th June 2024.
 120. It is also on record that Mr. Narendra instituted HC Petition No. E027 of 2024: Narendra Galot vs Registrar & Mohan Galot & 5 Interested Parties, wherein he sought, by an application dated 29th



November 2024, orders restraining the four impugned directors from holding themselves out or acting as directors of Manchester Outfitters Limited, pending determination of the application. The two applications have not been determined by the High Court.

121. It is trite that once a director dies, the office is vacated and any shares held by him are transmitted to his personal representatives under the law of succession. Questions of succession of directorship or appointment of new directors thereafter have to be determined in accordance with the Articles of Association and the rights of shareholders under Company Law, by the High Court.
122. This Court is mindful that the three-Judge bench in HCCC No. 55 of 2012 was seized of the very issues of directorship and shareholding of Manchester Outfitters Limited, and that its findings were intended to bind related disputes. The doctrine of *res judicata*, codified under Section 7 of the [Civil Procedure Act](#), dictates that once a competent court has determined a matter directly in issue, the same cannot be reopened between the same parties or those claiming under them.
123. Moreover, as a court of concurrent jurisdiction, this Court lacks the mandate to sit on appeal, review, or otherwise re-open the findings of a bench of equal or superior composition. Indeed, this court's jurisdiction is limited to determining disputes relating to environment and land, and not directorship and shareholding of companies.
124. This court appreciates that the demise of Mr. Mohan Galot raises legitimate questions touching on the future directorship of the 1st Plaintiff. Mr. Narendra Galot himself has acknowledged that such questions are already the subject of pending proceedings in HCCOM No. E256 of 2024 and Petition No. E027 of 2024.
125. The legal consequences of his demise, including succession of directorship, or appointment of directors by shareholders, will be resolved by the High Court in those matters. Any pronouncement by this Court on the same would risk creating parallel and potentially contradictory decisions, a mischief which the law abhors.
126. This position is consistent with that adopted by the Registrar of Companies, as evidenced by the letter dated 2nd September, 2025, issued following a complaint lodged by Mr. Narendra concerning the increase in share capital and the appointment of four directors and a company secretary.
127. In that correspondence, the Registrar observed that the principal issues in Petition No. E027 of 2024 related to the appointment of directors after the April 2024 decision, and accordingly resolved to await the Court's determination on the matter. It is also pertinent that the High Court has before it a contempt application dated 19th February 2025 in Civil Case No. E256 of 2024, in which questions of share capital and shareholding remain pending determination.
128. For these reasons, and in the interests of judicial comity, this Court shall confine itself to the issues framed for determination in this cause, namely, the proper representation of the 1st Plaintiff in these proceedings, and whether the withdrawal of the suit on 14th July 2025 was lawful.

Legal Representation of the 1st Plaintiff company

129. In the present matter, the firm of George Gilbert Advocates has had the conduct of these proceedings on behalf of the 1st Plaintiff since 21st February 2020, when it filed a Notice of Change of Advocates taking over from the firm of Kenyatta Odiwuor & Company Advocates. It is not in dispute that the said firm was instructed by the late Mohanlal Galot, who at the time was the sole bona fide director of the 1st Plaintiff as held by the High Court in HCCC No. 55 of 2012.



130. The Court must now consider the question of the capacity of Mr. Narendra Galot to appoint a different counsel on behalf of the 1st Plaintiff after the demise of Mr. Mohan Galot.
131. It was argued that Mr. Narendra Galot holds a Certificate of Confirmation of Grant indicating that 25% of the shares in Manchester Outfitters Limited are to be shared between three heirs, Lalita Devi Lalchand Galot, Pradeep Lalchand Galot and Narendra Lalchand Galot.
132. As per the ruling in HCCC No. 55 of 2012, this includes one management share which is held by the Estate. It is uncontended that by a letter dated 19th February 2025, Mr. Narendra, through the firm of Kaka Kamau & Co. Advocates, requested the Board of Directors of Manchester Outfitters Limited to register the beneficiaries of the Estate of Lalchand Pusharam Galot as shareholders in accordance with the grant.
133. By a letter dated 3rd March 2025, Jophece Yogo, the 1st Plaintiff's Company Secretary, indicated that he would requisition a board meeting to discuss the matter of transmission of shares and requested personal contacts of the concerned individuals.
134. The Directors of the 1st Plaintiff, however, declined or failed to register the said co-beneficiaries. Mr. Narendra thereafter instituted HC Miscellaneous Application No. E514 of 2025, seeking rectification of the register of members of Manchester Outfitters Limited so as to replace the late Lalchand Pusharam Galot with Lalita Devi Lalchand Galot, Pradeep Lalchand Galot and himself as joint shareholders. That suit remains pending determination.
135. Section 92(3) of the *Companies Act*, 2015, is explicit that a person becomes a member of a company only upon entry of his or her name in the register of members. The Court of Appeal in *Clement Muturi Kigano vs Kibera Development Company Limited* [2019] KECA 183 (KLR) affirmed this position when it held that:-
- “Registration confers title. Without registration, an applicant is not the holder of a share or a member of the company: the share has not been issued to him. No person can be a shareholder until he is registered.”
136. That being the case, Mr. Narendra remains unregistered as a shareholder of the 1st Plaintiff, and has asked the High Court to issue a directive for his registration as a shareholder. It is not for this court to make that determination. That is the exclusive preserve of the High Court.
137. Regarding the document marked as NG4, it appears to be an invitation dated 25th December 2024 for Mr. Narendra to participate in the company's management. The specific role was not delineated in the letter. It stipulated that Mr. Narendra was required to respond within seven days, after which it would be presumed that he had no interest in the company's management affairs.
138. Avin Galot presented board minutes dated 4th September, 2025, which clarified that Mr. Narendra was to be engaged to support the daily management of the business from January 2025. No evidence was presented by any party to confirm that he actually assumed the position of “team leader” or any such management position.
139. The question as to representation of the 1st Plaintiff similarly arose in *Manchester Outfitters Limited vs Galot & 4 others; Galot (Defendant to the Counterclaim); Galot (Plaintiff to the Counterclaim); Galot & 7 others (Interested Parties)* [2024] KEHC 11005 (KLR).



140. In a ruling delivered on 16th September 2024, Justice Mugambi upheld the determination of the three-judge bench and reaffirmed that only Mohan Galot, whom the Court unequivocally found to be the sole director and Governing Director, had authority to instruct legal representation for the company.
141. Consequently, the resolution signed by the 3rd and 4th Defendants purporting to instruct counsel was declared null and void ab initio, having no legal validity or consequence.
142. Justice Mugambi further held that the firm of George Gilbert Advocates had legitimacy, by reason of proper instructions, to proceed with the matter as counsel on record for Manchester Outfitters Limited.
143. In the present matter, the firm of George Gilbert Advocates has had conduct of these proceedings since 21st February 2020, when it filed a Notice of Change of Advocates taking over from the firm of Kenyatta Odiwuor & Company Advocates. It is not in dispute that the said firm was instructed by the late Mohanlal Galot, who at the time was the sole bona fide director of the 1st Plaintiff.
144. Article 13 of the 1st Plaintiff's Articles of Association sets out the circumstances under which the office of a director shall be vacated, and acts of such a director. It further provides that:
- “Any act done in good faith by a Director whose office if vacated as aforesaid shall be valid unless prior to the doing of such act written notice shall have been made in the Directors' Minute Book stating that such Director has ceased to be a Director of the company.”
145. Section 133(1) of the *Companies Act* codifies a similar principle, providing that the acts of a director are valid even if it is later discovered that the appointment of the director was defective, the director was disqualified from holding office, the director had ceased to hold office or the director was not entitled to vote on the relevant matter.
146. In these circumstances, no party in this matter has raised any question as to the validity of Mohan Galot's directorship nor has it been alleged that he acted in bad faith in appointing the firm of George Gilbert Advocates to represent the 1st Plaintiff in these proceedings. The said appointment being unchallenged, remains valid. In fact, High Court did hold that the firm of George Gilbert Advocates was validity appointed to act for the 1st Plaintiff.
147. On the claim by Mr. Havi that instructions issued by Mohan Galot to George Gilbert Advocates lapsed upon his death, this court is guided by the doctrine of perpetual succession. A company has a separate legal personality from its shareholders. This principle was emphatically affirmed in the seminal decision of *Salomon-Vs.-Salomon & Co Ltd* [1897] AC 22 where it was stated as follows:
- “The company is in law a completely different person from the [shareholders] and, although it may be that after incorporation the business is exactly the same as before, and the same people are managers, and the same hands received the benefits, the company is not by law the agent of the [shareholders] or trustee for them. The [shareholders], as members, are also not liable in any form or form, except to the extent and in the manner provided by law.”
148. As stated above, a company, once incorporated, acquires separate legal personality distinct from its members and directors. It continues in existence despite changes in membership or the death of its directors. Thus, instructions given to an advocate are instructions of the company, not of the individual director personally.
149. Therefore, when a director dies, it is that office that becomes vacant, pending succession of the Estate of the deceased director. However, the company remains in existence, and the validity of corporate acts



performed during his tenure, including appointment of advocates and other service providers, are not undone by his death.

150. It follows therefore that instructions given to counsel by a duly authorised director during his lifetime, like in this case, remain binding on the company until lawfully revoked by the company's decision-making structures. No evidence was adduced to show that such a decision has been made in respect to these proceedings.
151. In conclusion, this Court finds that the firm of George Gilbert Advocates is properly on record for the 1st Plaintiff, having been validly instructed by the late Mohan Galot in his capacity as the sole bona fide director of the company, notwithstanding his demise.
152. Conversely, the instructions purportedly issued to Havi & Company Advocates by Mr. Narendra Galot and the resultant Notice of Change of Advocates, are declared a nullity for want of authority, not having emanated from any duly appointed director or bona fide decision-making office or body of the 1st Plaintiff.

Whether this suit was lawfully withdrawn on 14th July 2025

153. The remaining issue concerns the effect of the notice of withdrawal of the suit filed on 14th July 2025 by the firm of Havi & Company Advocates. Having already found that the said firm lacked authority to represent the 1st Plaintiff, it follows that all acts undertaken by the said firm in these proceedings, including the purported notice of withdrawal of the suit, are null and void ab initio.
154. Even assuming that the firm of Havi & Company Advocates had proper instructions, the law is clear that the notice of withdrawal filed on 14th July 2025 could not, in the circumstances of this case, take effect.
155. Order 25 of the Civil Procedure Rules provides for withdrawal, discontinuance and adjustment of suits as follows:

“ 1. At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.

2.

(1) Where a suit has been set down for hearing it may be discontinued or any part of the claim withdrawn, upon the filing of a written consent signed by all the parties.

(2) Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.”

156. The Court of Appeal in *Beijing Industrial Designing & Researching Institute vs Lagoon Development Limited* [2015] KECA 365 (KLR distilled these provisions into three scenarios:

“The above provision presents three clear scenarios regarding discontinuance of suits or withdrawal of claims. The first scenario arises where the suit has not been set down for



hearing. In such an instance, the plaintiff is at liberty, at any time, to discontinue the suit or to withdraw the claim or any part thereof. All that is required of the plaintiff is to give notice in writing to that effect and serve it upon all the parties. In that scenario, the plaintiff has an absolute right to withdraw his suit, which we agree cannot be curtailed.

The second scenario arises where the suit has been set down for hearing. In such a case, the suit may be discontinued or the claim or any part thereof withdrawn by all the parties signing and filing a written consent. In this scenario, the right of the plaintiff is circumscribed by the requirement that he must obtain the written consent of all the other parties.

The last scenario arises where the suit has been set down for hearing but all the parties have not reached any consent on discontinuance of the suit or withdrawal of the claim or any part thereof. In such eventuality, the plaintiff must obtain leave of the court to discontinue the suit or to withdraw the claim or any part thereof, which is granted upon such terms as are just. In this scenario too, the plaintiff's right to discontinue his suit is circumscribed by the requirement that he must obtain the leave of the court. That such leave is granted on terms suggests that it is not a mere formality."

157. The instant suit had been scheduled for hearing on 16th and 17th July 2025. Accordingly, the applicable procedure was under Order 25 Rule 2, which required either the filing of a written consent signed by all parties or an application for leave of the court.
158. As was emphasized by the court in WEMA Foundation Trust Company Limited vs County Government of Nairobi & another (Environment & Land Case 356 of 2017) [2022] KEELC 13306 (KLR), once a suit has been set down for hearing, a party must either obtain the consent of all parties or move the court for leave to withdraw:

“However, under Order 25 Rule 2 (that is where the suit has been set down for hearing), the Plaintiff's right to withdraw or discontinue ought to be fettered or is curtailed. A plaintiff wishing to invoke the right to discontinue a suit or withdraw a claim must seek the sanction and endorsement of the court. The court may reject it altogether or allow it on terms. In those circumstances a responsible plaintiff ought to move court for leave or endorsement. Where the party fails to act responsibly then the offended party or the court can recall the withdrawal for review and setting aside as the Court of Appeal did in the Beijing Case (supra).”

159. No written consent was filed in this matter, nor was any application made to this Court for leave to withdraw the suit, the same having been set down for hearing. The Notice of Withdrawal dated 14th July 2025 was therefore of no legal effect and is not binding upon the parties.
160. In the result, and for the reasons set out above, the Court makes the following orders:
 - i. It is hereby declared that the firm of George Gilbert Advocates is properly and lawfully on record for the 1st Plaintiff, having been duly appointed by the late Mohan Galot in his capacity as the sole director of the company.
 - ii. The firm of Havi & Company Advocates is found to have been irregularly appointed, and the Notice of Change of Advocate and the Notice of Withdrawal of Suit, both dated 14th July 2025, are hereby declared null and void ab initio and of no legal effect.
 - iii. This suit shall be fixed for hearing on a priority basis.
 - iv. Each party shall bear its own costs.



DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 2ND DAY OF OCTOBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Kenyatta for 4th Defendant

Ms. Awiti holding brief for George Gilbert for Plaintiff

Mr. Kaka for 2nd and 3rd Defendant

Mr. Ouma for 1st Defendant

Mr. Havi for Plaintiff

Court Assistant: Tracy

