



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**MISC APPLN NO. E1031 OF 2024**

**BETWEEN**

**NARENDRA GALOT .....**  
**APPLICANT**

**AND**

**MOHAN GALOT .....** **1<sup>ST</sup>**  
**RESPONDENT**

**MANCHESTER OUTFITTERS LTD .....** **2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

**Background and Introduction**

1. This Ruling determines a Notice of Preliminary Objection dated 18<sup>th</sup> January 2025 raised in response to the application dated 18<sup>th</sup> December 2024. The objection is anchored on four principal grounds; that the application is *sub judice*, that the applicant lacks *locus standi* to institute the proceedings, that the court lacks jurisdiction to entertain matters falling under **Article 162 of the**

**Constitution** and finally that the application is procedurally defective, having not been supported by a plaint.

2. I have considered the objection together with the written submissions in support and in opposition to the same.

### **Analysis and Determination**

3. The applicant contends that the preliminary objection as brought raises factual disputes, particularly regarding the applicant's legal interest in the company, which would require scrutiny of the CR12 and the company's Memorandum and Articles of Association. He also argues that determining the *sub judice* claim would necessitate a factual comparison of pleadings in related suits. For these reasons, it is his case that the issues raised are not purely legal and therefore cannot be resolved through a preliminary objection.
4. This argument, in my view, misapprehends the legal threshold for a preliminary objection. As laid out in the landmark decision of **Mukisa Biscuit Manufacturing Co Ltd V West End**

**Distributors, [1969] EA 696**, a preliminary objection must be founded on a pure point of law which ***has been pleaded or which arises by clear implication out of pleadings***, and capable of disposing of the suit if upheld. The objections raised herein meet this standard.

5. This is because the CR12 and the Company's constitutional documents are statutory records, not subject to evidentiary dispute, at least not in this case. The documents speak for themselves, their contents are presumed accurate and they can be judicially noticed without evidentiary scrutiny. Their relevance is in establishing the applicant's legal standing, which is a threshold legal issue.
6. Similarly, the *sub judice* objection involves a legal comparison of pleadings and reliefs sought in the respective suits. This exercise does not require factual investigation but rather a legal assessment of whether the suits share substantially similar parties, subject matter and causes of action.
7. Accordingly, the preliminary objection is properly framed and ripe for determination.

- 8.** On the substantive objection, the 1<sup>st</sup> respondent argues that the applicant's attempt to obtain substantive declarations and orders through a miscellaneous application is procedurally flawed. The objection is premised on the fact that the applicant's status as a shareholder and director of the company is a matter of active dispute. In the respondent's view, the resolution of such contested rights necessitates a properly instituted suit.
- 9.** Jurisprudence on this point is unequivocal on the procedural limitations of miscellaneous applications. These applications are designed to address straightforward, non-contentious matters, typically of a procedural nature. They are not intended to serve as substitutes for properly instituted suits, nor can they be used to seek substantive reliefs unless anchored in a substantive suit supported by appropriate pleadings.
- 10.** Substantive claims such as declarations of rights, appointment of directors, or shareholder disputes, as raised in the application dated 5<sup>th</sup> December

2024, must be grounded in a suit that clearly articulates the cause of action and frames the legal and factual issues for determination (See for instance the decisions in **Rockland Kenya Ltd V Commissioner General of KRA & Another, (2020) eKLR** and **Whitmore Investment Limited V County Government of Kirinyaga & 3 Others, (2016) eKLR**).

**11.** Such an irregularity cannot be dismissed as a mere technicality. It strikes at the very heart of the Court's jurisdiction. As affirmed by the Court of Appeal in **Scope Telematics International Sales Ltd V Stoic Company Ltd & Another, [2017] eKLR**, where a party seeks substantive reliefs without the support of a plaint or proper pleadings, the application is deemed to be "totally incurably defective." Accordingly, on this ground alone, the preliminary objection succeeds and the application must be struck out.

**12.** I could also briefly comment on the remaining preliminary grounds. While the pleadings in **Milimani HCC No. 268 of 2024: Narendra Galot V Mohan Galot and Manchester**

**Outfitters Limited** have not been availed for comparison with the present application, I take note of the submission that the said suit was withdrawn. In the absence of the pleadings, the Court is unable to conclusively determine whether the present application offends the *sub judice* rule. However, if the withdrawal is confirmed, then the objection on that ground may not be sustainable.

- 13.** Regarding the issue of *locus standi* to bring the present application on behalf of a deceased shareholder, I note that the application dated 5<sup>th</sup> December 2024 is brought pursuant to **Sections 780 and 782 of the Companies Act**. These provisions contemplate that such an application may only be made by a member of the company. The applicant asserts that he is a co-administrator of the estate of Lalchand Pusharam Galot and that he holds a management share by way of transmission in the paid-up share capital of the 2<sup>nd</sup> respondent. However, this assertion is vehemently denied by the respondents.
- 14.** Whether or not the applicant holds such a share is a contested factual issue that will require evidentiary proof. Nonetheless, the legal position

is settled that an applicant can only invoke the jurisdiction of the court under the cited provisions if they are a shareholder or director of the company. Without such status, the applicant lacks the requisite standing to seek reliefs under the Companies Act.

- 15.** In the case of a deceased's estate, the position is as was held in **Mbogo & Another V Registrar of Companies; Roberty Njoka Muthara (Interested Party), [2021] KEHC 51 (KLR)**, Majanja J pronounced himself as follows:

***“The 1<sup>st</sup> Applicant and the persons, she purports to represent are not members of the company as they admit that the deceased shareholders’ shares have not been transmitted to them. They therefore do not have any right to be members of the Company or exercise the rights of members which include the right to elect directors in accordance with the Articles of Association. The***

***appointment of directors is a preserve of the shareholders and since the Applicants and the persons they represent are not shareholders they cannot purport to appoint directors.”***

**16.** I fully align with this reasoning. Until and unless the applicant demonstrates that the shares have been lawfully transmitted to him, he lacks *locus standi* to bring the application.

### **Disposition**

**17.** For the reasons set out above, the Notice of Preliminary Objection dated 18<sup>th</sup> January 2025 is meritorious and accordingly succeeds. Consequently, the application dated 5<sup>th</sup> December 2024 is hereby struck out. In view of the nature of the dispute and the relationship between the parties, I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI  
THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUGAMBI**  
**JUDGE**

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