



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 2247 OF 2007

MOHAN GALOT.....PLAINTIFF

VERSUS

GANESHLAL PUSHRAM GALOT.....1ST DEFENDANT

PRAVIN GALOT.....2ND DEFENDANT

RAJESH GALOT.....3RD DEFENDANT

(CONSOLIDATED WITH CIVIL SUIT NO 49 OF 2009)

MOHAN GALOT.....PLAINTIFF

VERSUS

PRAVIN GALOT.....1ST DEFENDANT

RAJESH GALOT.....2ND DEFENDANT

GANESH GALOT.....3RD DEFENDANT

KEVIN GALOT.....4TH DEFENDANT

PRADEED GALOT.....5TH DEFENDANT

NARENDRA GALOT.....6TH DEFENDANT

RULING

1. On 22/8/2017, the plaintiff brought a notice of motion dated 14/8/2017 seeking to vacate, set aside and/or vary the directions issued in this suit on 12/2/2012 staying the proceedings in this suit pending the hearing and determination of Nairobi **High Court Civil Case Number 55 of 2012**, formerly **Civil Case Number 63 of 2009; Manchester Outfitters Limited v Pravin Galot and 4 others** (hereinafter referred to as **Civil Case Number 55 of 2012**). The application was supported by an affidavit sworn by the plaintiff on 14/8/2017.

2. The plaintiff contended that the said stay order was issued on the assumption that the parties would take steps to expedite the hearing and determination of Civil Case Number 55 of 2012 but there had been undue delay in the disposal of the said case. He added that arising from a complaint lodged against the bench constituted to hear Civil Case No 55 of 2012, the three judges directed that the case be stayed pending the outcome of the complaint pending before the Judicial Service Commission. He contended that in both this suit and in Nairobi ELC Case Number 49 of 2009 which has been consolidated with this suit, the issue in dispute is occupation of Land Reference Number 7022/7 and Manchester Outfitter Limited is not a party in the two suits. He added that since the year 2012, Civil Case Number 55 of 2012 has not been heard, largely due to delay occasioned by the defendants. The applicant further stated that the dispute in Civil Case Number 55 of 2012 relates to shareholding and directorship of Manchester Outfitters Limited. He urged the court to vacate the stay order. The application was opposed by the defendants.

3. The application was canvassed through written submissions dated 14/11/2017. Counsel for the applicant submitted that the application for review was informed by the need to bring litigation to an end. He urged the court to invoke its powers under Sections 2A, 2B, 3A and 63 of the Civil Procedure Act and Article 50 of the Constitution and grant the prayers sought in the application. Counsel argued that the unexpected delay in prosecuting Civil Case Number 55 of 2012 is sufficient reason for the court to invoke its review powers under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.

4. On the issue of *res-judicata*, counsel for the applicant submitted that the stay order in respect of which he seeks a review is not a final determination as far as the proceedings are concerned and is a matter that can be revisited. On the objection based on the form of the notice of motion, counsel submitted that the court is empowered under Article 159(2) of the Constitution to dispense justice without undue regard to technicalities. Counsel urged the court to grant the application.

5. In written submissions dated 20/11/2017, counsel for the respondents argued that the application was *res-judicata* because the plaintiff had brought a similar application through a notice of motion dated 24/1/2014 and the same was heard and determined by the court on 23/7/2015. Counsel added that the plaintiff had concealed this fact when he brought the present application. Counsel further argued that Order 45 Rule 6 of the Civil Procedure Rules forbids the filing of an application for review of an order made in exercise of review jurisdiction. He urged the court to dismiss the application.

6. I have considered the application together with the rival submissions. I have also gone through the court record before me. Two key questions fall for determination in this application. The first question is whether the application is *res-judicata*. The second question is whether the application satisfies the criteria for review under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. I will deal with the two questions in that order.

7. A perusal of the court record reveals that on 28/1/2014, the plaintiff brought a notice of motion dated 24/1/2014 in which he sought the following orders:

a. The application be certified urgent

b. Item number 1 of the Order made herein on 12th February 2013 be and is hereby reviewed and set aside

c. The costs of this application be provided for

8. The application dated 24/1/2014 was premised on the following three grounds:

a. The plaintiff has discovered new and important matter or evidence, which was not within his knowledge or could not be produced by him at the time when the Order of 12th February, 2013 was made.

b. The order of 12th February, 2013 was made on the mistaken and erroneous representations by the defendants apparent on the face of the record.

c. There are other sufficient reasons to warrant the review and setting aside of the order of 12th February, 2013.

9. In a ruling delivered on 23/7/2015, Mutungi J dismissed the application, observing thus:

“ I have reviewed the record of proceedings before me on 19/12/2012 and my ruling on directions and I am satisfied there is no way HCCC No. 55 of 2012 can be divorced from the proceedings in the instant suit. In my ruling, I appreciated that the various suits are intrinsically intertwined and that the determination of HCCC No. 55 of 2012 would perhaps serve to unlock some of the issues.”

10. A reading of the issues raised before Mutungi J in the application dated 24/1/2014 reveals that in the present application, the court is invited to revisit the same matters that were considered and determined by Mutungi J in the ruling rendered on 23/7/2015. In my view, Section 7 of the Civil Procedure Act forbids that. I therefore agree with the respondent that the application under consideration is *res-judicata* and should fail on that note. I should hasten to add that whereas I agree that the plaintiff has legitimate concerns about the delay occasioned by the prolonged stay, I do not think the proper forum for redress is a second review application. The proper recourse is to fast track the hearing of Civil Case Number 55 of 2012.

11. The second question is whether the applicant has satisfied the criteria for review. This court's jurisdiction to review its orders is exercised within the framework under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. That jurisdiction is exercised on well-established principles. Review jurisdiction is exercised on three grounds: (i) upon discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order was made; or (ii) on account of some mistake or error apparent on the face of the record; or (iii) on account of any sufficient reason.

12. The reason put forth in seeking a review in this application is that there has been inordinate delay in the disposal of Civil Case Number 55 of 2012. The applicant is a party to Civil Case Number 55 of 2012. He has every right to move the court in Civil Case Number 55 of 2012 and secure a quick disposal of the case. He has not explained why he cannot pursue that avenue. Secondly, parties in this consolidated cause and in Civil Case Number 55 of 2012 conceded prior to the issuance of the stay order that a determination of Civil Case Number 55 would have bearings on all the suits itemized in the inventory filed in Civil Case Number 55 of 2012. Acknowledging this fact, the parties in Civil Case Number 55 of 2012 acceded to the following consent orders:

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

2. 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.

3. That the matter be mentioned for compliance and giving further directions on 23rd March, 2012.

13. The totality of the foregoing is that the present application does not disclose sufficient ground which would make this court relook at the rationale which informed the court's decision to stay the proceedings herein. The issue of directorship of Manchester Outfitters (East Africa) Limited which was considered to be key to the resolution of the dispute in this suit is still pending determination in Civil Case Number 55 of 2012. Consequently, it is the finding of this court that the criteria for review has not been satisfied by the applicant.

14. In light of the above reasons, the plaintiff's notice of motion dated 14/8/2017 is declined. The plaintiff shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF OCTOBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Miano holding brief for Mr Mungai advocate for the Plaintiff

Mr Kamau advocate for the defendant

June Nafula - Court Clerk