



Galot & 7 others v Inspector General of the National Police Service, the National Police Service & 8 others (Civil Appeal 130 of 2020) [2023] KECA 185 (KLR) (17 February 2023) (Judgment)

Neutral citation: [2023] KECA 185 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 130 OF 2020
MSA MAKHANDIA, J MOHAMMED & HA OMONDI, JJA
FEBRUARY 17, 2023**

BETWEEN

**MOHAN GALOT 1ST APPELLANT
RAJIV MOHDI 2ND APPELLANT
POSHPINDER SINGH MANN 3RD APPELLANT
JOPHECE YOGO 4TH APPELLANT
GALOT INDUSTRIES LTD 5TH APPELLANT
MANCHESTER OUTFITTERS LTD 6TH APPELLANT
KING WOOLLEN MILLS LTD 7TH APPELLANT
MOHAN MEAKIN LTD (NOW LONDON DISTILLERS KENYA
LTD) 8TH APPELLANT**

AND

**INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE, THE
NATIONAL POLICE SERVICE 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT
CHIEF MAGISTRATE'S COURT AT NAIROBI 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT
GALOT LIMITED 6TH RESPONDENT
PRAVIN GALOT 7TH RESPONDENT
RAJESH GALOT 8TH RESPONDENT**



(An Appeal from the Ruling/Orders of the High Court at Nairobi (Makau, J.) dated 27th February 2020 in Constitutional Petition No. 18 of 2019)

JUDGMENT

1. The appellants herein, being dissatisfied with part of the ruling and order of Makau (J) on February 27, 2020 appeal against part of the said decision. The appellants had lodged a petition in the High Court on May 23, 2020 concurrently with an application seeking conservatory orders to stay the many criminal cases commenced against the 1st to 4th appellants, their servants, agents and family members; they alleged that these were a threat and violation of their Constitutional rights by the conduct of the 1st, 2nd and 3rd respondents in collusion with and at the instance of the 7th to 9th respondents. Their contention being that the criminal charges stemmed from false complaints lodged by the 7th to 9th respondents with 1 to 3rd respondents actuated by malice.
2. The 7th to 9th respondents herein by a Notice of Motion dated May 27, 2019 sought orders to be enjoined as interested parties to the proceedings in the High Court, the basis being that they were complainants in the criminal cases; and that any orders issued in the proceedings would impact on their rights and interests.
3. The appellants opposed the application for joinder, arguing that the 7th to 9th respondents had no locus to present the application for joinder as they were neither directors nor shareholders of the company and that the application was incompetent and an abuse of the court process and that the court did not have jurisdiction to discharge, vary and/or set aside its orders of March 23, 2019 under the application before court.
4. The 4th and 5th respondents also filed grounds of objection dated May 30, 2019, saying the applicants therein were not directors of the 5th to 8th appellants, therefore had no locus, and did not meet the requirements for joinder as an interested party.
5. The 7th and 8th respondents maintained that the appellants had made several allegations against them, including claims of collusion to defraud the 1st appellant of his investment, and causing the disappearance of files in the company's registry which acts the appellants termed as criminal acts.
6. That these allegations were repeated throughout the petition and the affidavit in support of the said petition, so the 7th and 8th respondents were necessary parties to the proceedings in the High Court as the appellants had made allegations which they could only respond to by being enjoined in the proceedings as interested parties.
7. That the 7th and 8th respondents were listed in all the charge sheets relating to the criminal case (which were the subject of the petition) as complainants and as such, were victims of the appellants' alleged offences, thus clothing them with a legitimate interest in the proceedings before the High Court, because the outcome would in one way or the other affect them; and that their application for joinder met all requirements for joinder as interested parties.
8. By its ruling dated February 27, 2020, the trial court having carefully considered the parties' pleadings and arguments, was satisfied that they had demonstrated that the 7th and 8th respondents, Pravin Galot, Rajesh Galot and Narendra Galot had an identifiable stake or legal interest in the proceedings before the court and were allowed to be enjoined in the proceedings as interested parties.



9. Aggrieved by the decision of the trial court, the appellants filed the memorandum of appeal challenging the decision on 14 grounds of appeal, which we need not reproduce as the appellants have collapsed them into two issues. One, that the trial court erred in holding that the 7th and 8th respondents are interested parties with a legitimate legal interest in the petition, and second that the trial court erred in holding that the prosecutor in criminal proceedings is the complainant and not the State.
10. The appellants submit that the 7th to 9th respondents are not shareholders or directors of the 5th to 8th appellants and as such lacked locus to be complainants and that they had not demonstrated that the 3rd respondent was unable to respond to the issues raised in the petition and that their joinder was to create confusion and scuttle the proceedings.
11. Drawing from the definition in Black's Law Dictionary and Rule 2 of The Constitution Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, as to the meaning of an 'interested party', the appellants contend that the 7th to 9th respondents did not satisfy the key principles for admission as interested parties and that their joinder would not result in complete settlement of issues before the court and that the respondents have no stake in the petition before the High Court.
12. In arguing that the 7th to 9th respondents do not have a clear identifiable interest, the appellants refer to the Supreme Court's pronouncements in *Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR* where it highlighted the key elements that must be satisfied by a party seeking to be enjoined in proceedings as an Interested Party, stating that:
 - ' Enjoinment is not as of right, but is at the discretion of the Court hence, sufficient grounds must be laid before the Court, on the basis of the following:
 - i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the Intended Interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.'

The appellant also submits that the 7th to 9th respondents do not have a clearly identifiable interest in the petition in the High Court as their entry to the proceedings would have been as directors or shareholders in the 5th to 8th appellant company.
13. The appellants however concede that the issue of directorship and shareholding of the 6th respondent company, which formed the basis on which the impugned criminal proceedings were instituted, is still pending determination in Nairobi HCCC No 55 OF 2019 Manchester Outfitters Limited v Pravin Galot & Others.
14. The appellants also argue that drawing from the second limb of the tests laid out in the Muruatetu case (supra), the 7 to 9 respondents did not demonstrate that the 3rd respondent herein, being the Prosecutor of the criminal cases subject matter of the Petition was under any disability in discharging



his Constitutional duties in representing their interests in the matter before the High Court just as he was doing before. Further, neither have they shown the prejudice they would suffer if they were not enjoined in the proceedings, or that the submissions they intended to make would be relevant and distinct from the submissions of the Department of Public Prosecutions (DPP) or any other party.

15. On the second ground, the appellants are emphatic that they do not dispute the position that all criminal proceedings are commenced and initiated by the 'Republic' against a particular person or authority or legal entity and point out that the Petition is not aimed at stopping the DPP from carrying out prosecution neither does it challenge the decision of the DPP to prosecute them. Rather, the Petition sought various declarations on the threat and violation of their Constitutional rights in a manner that amounted to an abuse of the process of the court.
16. They contend that the DPP allowed the 7th to 9th respondents to take over the conduct of the proceedings in the High Court in contravention of Article 157 (10) and (11) of the Constitution, yet those proceedings can be conducted without the assistance of the 7th to 9th respondents.
17. The 7th to 9th respondents submit that in the petition in the High Court, the appellants made several adverse allegations against them and as such they are necessary parties to the proceedings in the High Court as they needed to respond to the alleged outlandish allegations leveled against them and could only do so by being enjoined in the proceedings as interested parties.
18. The 7th to 9th respondents also submit that they are listed in all the charge sheets as the complainants and are victims of the 1st to 4th appellants alleged offences and as such, they have a legitimate interest in the proceedings before the High Court, as the outcome of the proceedings will affect them.
19. In determining this appeal, the critical issue in our view is who is an interested party; and are the 7th to 9th respondents interested parties as such? This appeal turns on whether the learned Judge exercised his discretion properly in allowing the respondents to be enjoined as interested parties. Before this Court can interfere with such discretion, this Court must be satisfied that the learned Judge misdirected himself in some matter and as a result arrived at a wrong decision as per Madan J in *United India Insurance Co Ltd East African Underwriters (Kenya) Limited (1985) EA 898*
20. The core of the court's power to join a party to any proceedings as held in *Hamisi Yawa & 36,000 Others v Tsangwa Ngala Chome & 19 Others [2018]eKLR* is to bring on board a necessary party for purposes of determining the real issues in dispute. This joinder is not an automatic right, but one granted upon the exercise of the court concerned. The court must be satisfied that,
 - i. The intended party has a personal interest/stake in the matter in question and the interest is clearly identifiable.
 - ii. The intended interested party's presence would enable court to resolve all matters in dispute.
 - iii. The intended party would suffer prejudice in case of non-joinder.
 - iv. The joinder of the intended party will not vex the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleading.
21. This Court has the power under Rule 10 (2) Order 1 of the Civil Procedure to grant the order for joinder. This Court in construing the application of this Rule in *IMK V MWM & Another [2015] eKLR* stated, quoting with approval an excerpt from *Sakar's Code of Civil Procedure (11th Ed Reprint,*



011, Vol 1P 887 which states, ‘the section should be interpreted liberally and widely and should not be restricted merely to parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.’

22. This Court was in agreement with the above sentiment and further that the said order contemplates an application for joinder here proceedings are still pending before court. Sakar’s Code expresses the view that an application for joinder can only be filed in pending proceedings.
23. In the case of *Trusted Society of Human Rights Alliance Mumo Matemo & 5 Others (2014) eKLR* the Supreme Court of Kenya defined an interested party as:

‘ One who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.’

Further, the appellants concede that the issue of directorship/shareholding, and how it relates or impact on the proceedings before the High Court is a substantive issue which is yet to be determined on merits, and would have a ripple effect on the determination of the petition. We take note that the proceedings before the High Court in Petition Number 183 of 2019 were triggered by the appellants’ petition dated May 18, 2019 and supported by the affidavit of the 1st appellant, making several adverse allegations against the 7th to 8th respondents. We note that the 7th to 9th respondents are mentioned as complainants, adverse allegations have been made against them, they would need to respond to the said allegations of their own personal knowledge, and the outcome of these proceedings will likely affect them. It is not lost to us that the 7th to 9th respondents are complainants in the criminal proceedings, and we are persuaded that their inclusion in the High Court proceedings was proper and the appellants cannot claim that the 7th to 9th respondents have no stake in the High Court proceedings.

24. In our view the inclusion of the concerned respondents in the matter before the High Court will not in any way prejudice the proceeding or the parties, and will infact afford the court an opportunity to hear the various perspectives of the concerned parties which in turn will enable the Court to conclusively determine the matter. We find that they clearly have a stake and or interest in the proceedings.
25. It is thus our considered view that the trial Judge was alive to the principles of joinder and sufficiently explained why the 7th to 9th respondents were necessary parties for the effectual and complete adjudication of the claim.
26. We hold that this appeal lacks merit and there is no reason whatsoever to interfere with the finding made by the High Court. The appeal is thus dismissed with costs to the 7th to 9th respondents.

Dated and Delivered at Nairobi this 17th day of February, 2023.

ASIKE - MAKHANDIA

.....

JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL



H. A. OMONDI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

