



REPUBLIC OF KENYA



**Galot & 7 others v National Police Service & 8 others (Civil Application
E415 of 2021) [2022] KECA 525 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KECA 525 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E415 OF 2021
RN NAMBUYE, W KARANJA & J MOHAMMED, JJA
MAY 13, 2022**

BETWEEN

**MOHAN GALOT 1ST APPLICANT
RAJEEV MODI 2ND APPLICANT
PUSHPINDER SINGH MANN 3RD APPLICANT
JOPHECE YOGO 4TH APPLICANT
GALOT INDUSTRIES LIMITED 5TH APPLICANT
MANCHESTER OUTFITTERS 6TH APPLICANT
KING WOOLLEN MILLS LIMITED 7TH APPLICANT
LONDON DISTILLERS KENYA LIMITED 8TH APPLICANT**

AND

**NATIONAL POLICE SERVICE 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT
CHIEF MAGISTRATES COURT AT NAIROBI 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT
GALOT LIMITED 6TH RESPONDENT
PRAVIN GALOT 7TH RESPONDENT
RAJESH GALOT 8TH RESPONDENT
NARENDRA GALOT 9TH RESPONDENT**



(Being an application for stay pending appeal from the Orders of the High Court at Nairobi (J. A. Makau, J.) delivered on 18th November, 2021 in Petition No. 183 of 2020)

RULING

1. Mohan Galot and 7 Other applicants have moved this Court under Rule 5(2)b of the *Court of Appeal Rules* vide a Notice of Motion dated November 25, 2021 seeking in the main an order that: -

“Pending hearing and determination of the intended appeal from the decision of the superior court made on November 18, 2021 by Hon. Mr. Justice J. A. Makau in NRB HC Pet No. 183 of 2020, Mohan Galot & Others vs Inspector General of The National Police Service & Others recalling, vacating and setting aside the interim conservatory orders made on 23rd May, 2019, this Honourable Court be pleased to restrain the 4th respondent from proceeding with the hearing of Nrb Milimani Criminal Case No. 1554 of 2012, Nrb Milimani Criminal Case No. 1555 of 2012, Nrb Milimani Criminal Case No. 482 of 2014, Nrb City Court Criminal Case No. 276 of 2018, Nrb Milimani Criminal Case No. 2374 of 2018 and Nrb Milimani Criminal Case No. 95 of 2019.”

They also pray for costs of this application. The motion is premised on fifteen grounds on its face and supported by the affidavit of Mohan Galot sworn on 25th November, 2021.

2. The brief facts culminating in this application can be set out as follows. The applicants were charged with criminal proceedings before several courts as listed above following complaints lodged by Pravin Galot (7th respondent), Rajesh Galot (8th respondent) and Narendra Galot (9th respondent) in what would appear to be a tussle of directorship of the 5th to 8th applicants.
3. In a bid to stay the hearing of the said criminal proceedings, the applicants instituted Nairobi HC Petition No. 183 of 2020: Mohan Galot & Others vs Inspector General of the National Police Service and others whereby they challenged the propriety or otherwise of the said charges. Along with the petition, they filed an application seeking interim conservatory orders staying the said criminal proceedings while awaiting the determination of the petition itself. The petition and the application fell for hearing before the Hon, J. A. Makau J. The learned Judge on 25th May, 2019 granted interim conservatory orders and stayed the hearing of the criminal proceedings. From the orders annexed to the notice of motion issued on 23rd May 2019, it is clear that the interim orders were granted pending the hearing of the application inter partes. In the same order, the respondents were granted 14 days to file their responses with a mention date fixed on 17th June, 2019 “for further orders”.
4. It would appear, however, that after considering the responses filed by the respondents as directed, the learned Judge decided “suo motu” to vacate his earlier orders of stay before hearing both parties pursuant to Rule 25 of the Mutunga Rules which gave the court jurisdiction to vacate such orders.
5. Aggrieved by the move by the learned Judge, the applicants herein applied for the recusal of the learned Judge from hearing the petition through an application dated 7th October, 2020 claiming that the learned Judge was biased in the manner he had handled the matter. In a lengthy ruling dated November 18, 2021 running to 36 pages, the learned Judge dismissed the application in its entirety. It is that ruling that has given rise to the notice of appeal on which this application is predicated.
6. In opposition to the application, the 7th, 8th and 9th respondents filed affidavits outlining in detail the history and circumstances surrounding the matter. They have opposed the application and averred



that this is just another attempt to delay the hearing of the cases the applicants are seeking to stop. They have urged us to dismiss this application as the same lacks merit.

Submissions were filed by the 6th respondent namely, Galot Limited; the applicants and also the 7th, 8th and 9th respondents.

7. At the virtual hearing of the application the applicants were represented by Learned counsel Mr. Tiego, while Mr. George Gilbert, Mr. Omondi, Mr. Kaka appeared for the 6th, 7th, 8th and 9th respondents respectively. The office of the Director of Public Prosecutions (3rd respondent) also filed written submissions but did not appear at the plenary hearing. Highlighting the submissions, Mr. Tiego emphasised that after the learned Judge declined to recuse himself, he ought not to have made orders that the petition be transferred to another Judge as this amounted to effectively recusing himself from the matter. According to Mr. Tiego, the learned Judge should then not have proceeded to vacate the orders he had given earlier. He urged that the appeal is arguable and cited the fact that the application was not heard *inter partes* before the orders were vacated, an arguable point.
8. Counsel for the 6th respondent supported the application. On the nugatory aspect counsel reiterated that if the criminal proceedings are not stopped and the appeal succeeds, then the same will have been rendered nugatory. On his part, Mr. Omondi maintained that the appeal raises no arguable issues; that the learned Judge had jurisdiction to vacate the orders in question *suo motu* under Rule 25 of the *Mutunga Rules* and that the learned Judge was informed by the depositions raised by the 7th and 8th respondents in paragraphs 35 to 36 of their affidavit. He stated that the learned Judge had not recused himself and he was therefore in order when he transferred the matter to another Judge. He urges us to dismiss the application. Mr. Kaka on his part, urged that the criminal charges have been pending in court for a long time and the applicants have been abusing the court process by filing application after application. He emphasised that the learned Judge had not recused himself and sending the file to another Judge cannot be construed to mean that he had recused himself.
9. We have considered the notice of motion before us along with the rival affidavits and submissions filed by the parties along with the relevant law. In determining this application, we shall confine ourselves to the narrow path on whether the applicants have demonstrated the 2 principles on arguability and the nugatory aspect as required of all applications under Rule 5(2)b of the rules of this Court. (See [Stanley Kangethe Kinyanjui vs Tony Ketter & 5 others](#) [2013] eKLR). In doing so, we must eschew making any comments on the merit or otherwise of the charges before the subordinate courts, which we have been called upon to stay. All we are required to consider is whether the applicant has demonstrated that he has an arguable appeal and whether the intended appeal will be rendered nugatory if the stay or injunctive orders sought are not granted.
10. We start by observing and appreciating the fact that the impugned ruling was in respect of only 2 prayers, to wit, that the learned Judge recuses himself from further presiding over the petition and that the file be placed before the Hon. Chief Justice to appoint another Judge to handle the petition. The learned Judge dismissed both prayers and there is nothing positive to stay in that respect. The issue of restraining the 4th respondent from proceeding with the hearing of the criminal charges was actually not canvassed before the learned Judge.
11. In our view, the only question relating to that issue is whether the learned Judge had jurisdiction to recall the orders *suo motu* or not. Is that an arguable issue? We agree with the learned counsel for the respondents that Rule 23 and 25 of the *Mutunga Rules* are explicit on the issue and we do not glean any arguability on that issue.
12. As to whether the learned Judge could make orders on the matter after recusing himself, the ruling is crystal clear. The learned Judge never recused himself from hearing the matter. Recusal is explicit, and



express and cannot be construed or inferred from the circumstances of the matter. Sending the file to another Judge is procedural and did not amount to recusal by the learned Judge.

13. This is one of the rare cases where the Court dismisses the application for stay of execution upon non-arguability of the appeal. We are not persuaded that the intended appeal raises any issues worth engaging the mind of this Court in the intended appeal. As this application fails to satisfy the principle on arguability, we need not get into the second limb of the nugatory aspect. We find this application totally devoid of merit and dismiss it with costs to the 3rd, 6th, 7th, 8th and 9th respondents who participated in the application.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MAY, 2022.

R. N. NAMBUYE

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

