



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OUKO, (P), NAMBUYE & KOOME, JJA)**

**CIVIL APPLICATION NO. 41 OF 2017**

**BETWEEN**

**MANCHESTER OUTFITTERS LIMITED…… APPLICANT**

**AND**

**PRAVIN GALOT ……..……..……1ST RESPONDENT**

**RAJESH GALOT ……..2ND RESPONDENT**

**GANESH GALOT…….……..3RD RESPONDENT**

**KEVIN GALOT …….……4TH RESPONDENT**

**MANCHESTER OUTFITTERS**

**(EAST AFRICA) LTD……..……..5TH RESPONDENT**

*(Being an application for stay of further proceedings pending the judgment, hearing and determination of an intended appeal from the ruling and orders made by Justices F.A. Ochieng, E.K. Ogola and J. Kamau*

*on the 12th June, 2015 in HCCC No. 55 of 2012)*

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***CONSOLIDATED WITH***

**CIVIL APPEAL (APPLICATION) NO. 130 OF 2020**

**BETWEEN**

**MOHAN GALOT.....1ST APPLICANT**

**RAJEEV MODI.....2ND APPLICANT**

**POSHPINDER SINGH MANN.....3RD APPLICANT**

**JOPHECE YOGO.....4TH APPLICANT**

**GALOT INDUSTRIES LIMITED.....5TH APPLICANT**

**MANCHESTER OUTFITTERS LIMITED.....6TH APPLICANT**

**KING WOOLLEN MILLS LIMITED.....7TH APPLICANT**

**MOHAMN MEAKIN KENYA LIMITED now**

**LONDON DISTILLERS KENYA LIMITED.....8TH APPLICANT**

**AND**

**INSPECTOR GENERAL OF THE**

**NATIONAL POLICE SERVICE.....1ST RESPONDENT**

**THE DIRECTORATE**

**OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT**

**THE CHIEF MAGISTRATES COURT AT NAIROBI.....4TH RESPONDENT**

**THE ATTORNEY GENERAL.....5TH RESPONDENT**

**AND**

**GALOT LIMITED.....6TH RESPONDENT**

**PRAVIN GALOT.....7TH RESPONDENT**

**RAJESH GALOT.....8TH RESPONDENT**

**NARENDRA GALOT.....9TH RESPONDENT**

*(Being an application for stay of proceedings pending appeal from the Ruling and Orders of the High Court at Nairobi (J.A. Makau,J.) on the 27th February, 2020 in HC Constitutional Petition No. 183 of 2019)*

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***CONSOLIDATED WITH***

**CIVIL APPEAL (APPLICATION) NO. 375 OF 2018**

**BETWEEN**

**MANCHESTER OUTFITTERS LIMITED.....APPLICANT**

**AND**

**PRAVIN GALOT.....1ST RESPONDENT**

**RAJESH GALOT.....2ND RESPONDENT**

**GANESH GALOT.....3RD RESPONDENT**

**KEVIN GALOT.....4TH RESPONDENT**

**MANCHESTER OUTFITTERS**

**(EAST AFRICA) LTD.....5TH RESPONDENT**

*(Being an application to strike out the record of appeal from the Ruling of the High Court at Nairobi (F.A. Ochieng, E.K. Ogola and J. Kamau, JJ) dated 1st June 2015 in HCCC No.55 of 2012 formerly Civil Case No. 63 of 2009)*

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## RULING OF THE COURT

The right to a fair trial is listed in **Article 25** of the Constitution as one of those rights and fundamental freedoms that cannot be limited and every person has the right to have any dispute involving him or her decided in a fair and public hearing, ensuring always that justice is not to be delayed. If parties and their counsel adhered to these values and principles, in addition to their duty of assisting the courts to further the overriding objective, the courts, for their part, would achieve just and timely determination of disputes by employing efficient use of the scarce judicial and administrative resources. But that is not the reality in many instances and this dispute demonstrates how parties and their counsel take advantage of the court procedures and processes to delay the determination of disputes. We can affirm that today case backlog and delay are the greatest challenges facing our Judiciary. The backlog in the Court of Appeal, for instance, has grown from 4,000 to 7,000 cases in the last two years. Although there are many factors for this, we entertain no doubt that blatant abuse of the processes of the Court where parties do not want to have a key dispute determined but instead circumvent it with interlocutory appeals contributes to a large extent to this state of affairs.

From the submissions made before us in this matter, it appears that there are 23 cases, both civil and criminal, pending before the various levels of court, all about who the legitimate directors and shareholders of Manchester Outfitters Limited and its subsidiaries are. That is the issue at the heart of Nbi. H.C.C.C. No. 55 of 2012 (formerly H.CC.C. No. 63 of 2009), which has been pending hearing for the last 11 years. It is, in our view, such a simple question that ought to have been resolved much earlier and expeditiously to avoid the confusion now being witnessed in the running of the companies not to mention the expense and time. That single question has been sidestepped and instead parties have engaged courts in determining numerous and unnecessary applications. All the parties, without exception, as shall be apparent, have contributed to this state of things.

Appreciating the need for taking charge of its processes through a strategic case management that ensures that its registries are not converted to parking lots, the Court listed all the applications involving this dispute that are pending before it. Four such applications, 41 of 2017 Manchester Outfitters Ltd V. Pravin Galot & 6 Others; 375 of 2018, Manchester Outfitters Limited Vs Pravin Galot & 5 Others; 355 of 2019 Manchester Outfitters Limited Vs. Pravin Galot & 5 Others; and 130 of 2020 Mohan Galot & 7 Others Vs. Inspector General of the National Police Service & 8 Others were identified. Civil Appeal Nos. 375 of 2018 and 130 of 2020 are substantive appeals but with applications filed within them. Save for No. 355 of 2019 which was withdrawn, the rest were heard on 15th July, 2020. The registry confirmed that within these matters are pending a total of 10 applications.

Due to the prevailing Covid-19 situation, directions were given that the applications would be determined on the basis of pleadings, written submissions and cited authorities. The applications were heard back to back with the Court taking the decision to render this one ruling in respect of all the applications as the applications are related to the same subject matter and for a complete flow of the history of the dispute.

**(1) CIVIL APPEAL NO. 41 OF 2017.**

Acknowledging the need to resolve the dispute in Nbi. H.C.C.C. No. 55 of 2012 (formerly H.CC.C. No. 63 of 2009) expeditiously and with a measure of finality, at least in the High Court, the Honourable the Chief Justice empaneled a bench of three Judges. The initial bench, Musinga (as he then was), Kimondo & Ogola, JJ. gave directions that the action be listed for hearing for 3 consecutive days, to determine the issue of the directors and shareholders of Manchester Outfitters Limited. They clarified in the directions that any other issue not related to these would have to await its determination; and further that;

> **"…regarding the issue of (legal) representation, we shall deal with the same in the course of the hearing because it is intertwined with the issue of shareholding and directorship."**

When the subsequently constituted bench (Ochieng, Ogola and Kamau, JJ.) was set to hear the case *de novo*, a notice of preliminary objection was taken out on the very question of representation that the first bench had directed to be argued in the main suit. The court appears to have reviewed that order and allowed the preliminary objection to be canvassed through written submissions but ultimately arrived at the same decision.

Essentially, the objection was that the firm of M/s Havi & Company Advocates ought to be restrained from representing the applicant on the grounds that M/s Havi & Company Advocates had irregularly taken over the case from M/s Rachier & Amollo & Co. Advocates.

In their ruling rendered on 12th June, 2015 the learned Judges expressed their concern over the manner the issue of representation was being treated. We quote them *in extenso* due to the relevance, importance and the trajectory that decision assumed. They said that;

> **"24. What is not clear, however, is how all the parties in this matter have proceeded in this matter despite the Ruling of Justice Muga Apondi aforesaid. Clearly, there was an element of acquiescence by all the parties, on the issue. It is however, noted that M/s Havi & Co. Advocates have disputed the alleged illegality on their part, and have insisted that they are properly on record for the Plaintiff. It is not the firm of M/s Havi & Company Advocates that was found at fault by Justice Muga Apondi's Ruling. It was M/s Rachier & Amollo Advocates. Indeed M/s Havi & Company Advocates have submitted that on 15th July, 2009, M/s Majanja Luseno & Company Advocates filed a document titled "Notice of Change of Advocates". Mr. Havi submitted that the document indicated that the said advocates had been appointed to act for the Plaintiff. It did not state that they were replacing M/s Rachier & Amollo Advocates. We would not wish to comment further, at this stage, on Mr. Havi's submission in this regard since his position is yet to be determined. However, with that kind of submissions Mr. Havi has placed his firm in a position where this court cannot strike it out from representing the Plaintiff, without hearing his firm on the matter. Perhaps that is why on 14th February, 2012 there was a consent on how the proceedings were to take place. On that day, Mr. Arwa, from the firm of M/s Rachier & Amolo Advocates, was on record for the Plaintiff. On that day also, parties consented to a three**
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> **(3) judge bench to be appointed by the Chief Justice to determine the issue of directorship.**

**25. However, on 24th May, 2012 Mr. Havi appeared for the Plaintiff alongside M/s Majanja & Luseno Advocates. There were again directions issued based on the consent of the parties. None of the parties appeared to have been uncomfortable with Mr. Havi's appearance for the Plaintiff.**

**26. On 23rd July, 2012 Mr. Havi appeared again for the Plaintiff alongside M/s Arwa, Osundwa, Kibe and Miss**

**Ng'ania. On that day the court issued directions on issues to be dealt with, being the issues of directorship and shareholding of Manchester Outfitters Limited. On the issue of representation of the Plaintiff the court said as follows:-**

***"regarding the issue of representation, we shall deal with the same in the course of the hearing because it is intertwined with the issue of shareholding and directorship."***

**27. With the above order or direction of this court on the issue of representation, the court has clearly expressed itself. That order was an order of the three (3) Judge bench. It was an order arrived at after careful consideration by the bench.**

**28. It must be noted, however, that there is no order of this court which has barred M/s Havi & Company Advocates from representing the Plaintiff. However, what may appear to be valid issues have been raised against M/s Havi & Company Advocates continued appearance herein for the Plaintiff. Those issues require a proper hearing, and it is the wisdom of this court, as recorded on 23rd July 2012, that the issue will be determined in the cause of the hearing.**

**29. Finally, this bench hastens to note that in a matter such as before the court, if a decision is made today on representation of a party, and depending on the decision reached, the case may already have been decided by default, because one of the lawyers for the Plaintiff appears to be in complete agreement with the Defendant's lawyers on virtually all the issues framed to be determined by the court. In our considered view, justice would not be served in the matter if a decision were made on the issue of representation at this stage…..**

**…….**

**33. The upshot is that the Preliminary Objection on points of law dated and filed in court on 29th April 2014 fails with costs in the cause".**

After this ruling the applicants moved this Court by filing Civil Application No. 41 of 2017. In it alone there are three applications;

**a) Notice of Motion for Stay of Further Proceedings**

After being overruled as stated above, the applicant took a motion on notice praying that an order be issued to stay further proceedings in HCCC No. 55 of 2012 pending the lodging, hearing and determination of an intended appeal against the aforesaid ruling of the three judges. By an *ex parte* order issued on 1st July, 2019, this Court granted those orders effectively staying further proceedings in HCCC No. 55 of 2012 to this day.

**b) Notice of Motion to review or set aside *ex parte* orders**

In opposing the application, the Attorney General argued that the *ex parte* orders of stay were a result of a clear abuse of the process of the Court, misrepresentation and concealment of material fact; that they went against the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of the civil disputes; that the application is premised upon an incompetent appeal, hence the applications to review, set aside or strike it out with costs.

Similarly. the application was opposed by the 6th respondent who implored the Court to exercise its discretionary power to set aside the orders issued on 1st July, 2019, and in addition strike out the applicant's application dated 7th March, 2017 in its entirety as the same is an abuse of the processes of the Court; that the proper recourse is to fast track the hearing of HCCC No. 55 of 2012 as it will answer the question of directorship of Manchester Outfitters Limited.

We turn to consider, first the application for stay of further proceedings of HCCC No. 55 of 2012 and remind ourselves that under **Rule 5(2)(b)** of the Court's rules, the Court can order a stay of execution, issue an injunction or grant an order of stay of any further proceedings. Whether it is an application for stay of execution, proceedings or an injunction, the considerations remain constant; whether the appeal or intended appeal is arguable and whether it will be rendered nugatory if the orders sought are not granted. The Court in **Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others** (2013) eKLR has set out in great detail what it considers before granting any of the orders under **Rule 5(2)(b)**. For instance, it declared that an applicant must satisfy both the arguability of the appeal as well as its nugatory aspects; that in considering whether an appeal will be rendered nugatory, the court must bear in mind that each case must depend on its own facts and peculiar circumstances; that it will be sufficient if a single bonafide arguable ground of appeal is raised; that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous; that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible, whether damages will reasonably compensate the party aggrieved.

On the arguability of the appeal, we note that the orders of 12th June, 2015 that are being challenged in the appeal merely reiterated the earlier directions that were taken on 23rd July, 2012 by consensus of all counsel that the issue of representation be canvassed in the cause. Without expressing any firm view, another bench of three Judges in the court below in a subsequent order made on 14th March, 2017 appear

to have resolved the question of representation by directing that at a *de novo* trial, there will be only two sides, **"Mohan Galot and other persons seeking to prove that they hold shares (directly or indirectly) in the plaintiff company be deemed to be the applicants and Pravin Galot and other persons opposing the claim by Mohan Galot be deemed as respondents."**

It would also appear that Mr. Havi is no longer involved in the proceedings in question given the high turnover of counsel. The focus seems to have shifted to replacement of the firm of Tiego & Co. Advocates, from the numerous notices of change of advocate in a way and manner that borders professional misconduct. It is inconceivable that one can represent both sides of a dispute in an adversarial system. We also note that the application for stay of proceedings was filed nearly 2 years after the decision sought to be challenged in Civil Appeal No. 375 of 2018. For these reasons and in view of our decision on the competency of the appeal, we are convinced that the appeal is not arguable. Because the issue of representation being so closely linked to the core question of the legitimate directors is to be determined, in any case by the trial court in the course of hearing the case, the appeal cannot thereby be rendered nugatory.

The application for stay of proceedings fails and is dismissed with costs. Accordingly, the interlocutory orders issued by this Court on 1st July, 2019 are vacated. With that, the notices of motion of 7th March, 2017 for stay of proceedings in HCCC No. 55 of 2012 and that of 15th July, 2019 for the setting aside of those orders are disposed of.

**c) Notice of Motion for Contempt of court**

In a notice of motion dated 24th January, 2020, Pravin Galot has moved the Court and prayed that Mak'Ogonya T.T Tiego be joined in these proceedings as a contemnor and both him and Mohan Galot be committed to civil jail for violating the orders issued by the Court on 1st July, 2019. In the application, it has been alleged that the contemnors, being fully aware that by its order of 1st July, 2019, the Court had stayed further proceedings in HCCC No. 55 of 2012 pending the hearing and determination of Civil Appeal No. 375 of 2018; that despite that, the contemnors in blatant disregard made an application in that cause whose effect was to proceed with the hearing of the action contrary to the aforesaid orders. The contemnors in response maintained that the *ex parte* orders were made in their absence and in the absence of the advocate who was then on record for Mohan Galot; that Mak'Ogonya T.T Tiego, Advocate was not a party to the proceedings; that the two applications made after the *ex parte* orders did not constitute contempt; that contempt was not proved to the standard required; that other parties have also been filing applications in the same cause without being cited for contempt; and that in view of these factors, the application for contempt has been brought in bad faith and intended to intimidate the contemnors.

We have considered these arguments as well as the submissions and cited case law by both sides. Because contempt of court proceedings are quasi- criminal in nature, the power to commit one for contempt is one to be exercised with great care and only as a last resort. It follows that, before a person can be punished for disobeying a court order it must be demonstrated to the required standard that the person deliberately and willfully acted in a manner that breached the order. Similarly, it must be proved that the terms of the order alleged to have been violated was clear and unambiguous. See: **Republic vs. Ahmad Abolfathi Mohammed & Another,** Cr. App. No. 2 of 2018 and **Jihan Freighters Ltd vs. Hardware & General Stores Ltd (**2015) eKLR.

It is by the applications dated 15th July, 2019 and 30th October, 2019 that it is claimed the contemnors violated the orders of this Court staying proceedings in HCCC No. 55 of 2012. In the former, the contemnors applied to the very Court whose orders are alleged to have been disobeyed pleading that the orders staying proceedings be set aside on the grounds that they were not present when the order was made; and that the order was obtained through mischief and misrepresentation. In the second application, the contemnors asked the Presiding Judge to consider appointing a single Judge instead of three judges to hear HCCC No. 55 of 2012 on a day-to-day basis until conclusion.

Can it be said that the two applications had the effect of contravening the orders staying further proceedings in the High Court? It is not in doubt that, apart from filing the two applications, no proceedings within the true sense of **Rule 5(2)(b)** took place. Judicial proceedings are driven by persons who exercise judicial functions by hearing and making legal determinations. An order of stay of further proceedings is generally speaking, directed to the court. It would have been contempt if the contemnors sought and were heard on the issue that was stayed, the issue of representation.

Here, after the Hon. The Chief Justice expressed the dilemma in constituting a bench of three Judges due to shortage of judges and asked the parties to consider if the matter could be heard by a single judge in the High Court, the contemnors merely sought directions from the Presiding Judge based on this for a hearing by a single Judge, to obviate further delay in a matter that had been pending at that time for over 10 years.

Likewise, the contemnors did not commit any act of contempt by moving this Court to vacate its orders of stay. The proceedings that were stayed were those before the court below and not before this Court.

In the result, we find no substance in the application for contempt dated 24th January, 2020 and accordingly dismiss it with costs.

**(3) Civil Appeal No. 375 of 2018**

i. **Two Notices of Motion for striking out Civil Appeal No. 375 of 2018**

**ii. Motion to direct that HCCC No. 55 of 2012 do proceed immediately for hearing before one judge,**

**iii. Motion for directions for the hearing of Civil Appeal No. 375 of 2018**

iv. **Notice to withdraw one motion for striking out the appeal**

Having obtained an *ex parte* order staying further proceedings, Manchester Outfitters Limited (the appellants) lodged this appeal on 8th October, 2018, contending, in the main, that it was erroneous for the learned judges of the High Court to impose counsel on a party; that Manchester Outfitters having appointed an advocate to represent it in the cause, it was not open to court to retain an advocate without instructions.

Brought within that appeal are two applications filed by Mohan Galot and Galot Limited both of which seeking that the appeal be struck out. Galot Limited has applied, in addition, leave to be joined in the appeal. The third application is a strange one in which Mohan Galot is asking us to direct the Deputy Registrar of the High Court;

> **"a) to ensure that HCCC No. 55 of 2012 do proceed immediately for hearing before one judge,**
>
> **b) to immediately issue a seven days notice to the parties to appear before the presiding judge for purposes of fixing a priority date for the hearing of HCCC No. 55 of 2012, and**
>
> **c) that the 1st to the 3rd respondents or any other party acting on their behalf or under their instructions be barred from filing any application(s) whatsoever derailing the hearing of HCCC No. 55 of 2012 and more particularly touching on the issue of representation".**

The fourth application has been filed by the firm of Gikera & Vadgama Advocates who had come on record for Galot Limited and seeks the withdrawal of the notice of motion dated 31st July, 2019, filed by the firm of Tiego & Co. Advocates, complaining that the firms of Tiego & Co. Advocates and Maumo & Co. Advocates had no instructions to represent Galot Limited; that Galot Limited passed a resolution appointing the firm of Gikera & Vadgama Advocates to represent it in these proceedings; and that the filing of any documents by both firms after 23rd October, 2019 are irregular and ought to be expunged from the Court record.

Of course, both Mohan Galot and Galot Limited have opposed this application. Indeed, by a letter dated 15th November, 2019, Mohan Galot denied that Galot Limited passed any resolution instructing Gikera & Vadgama Advocates in these or other proceedings. He reaffirmed the company's instructions to prosecute the motion for striking out. With that, Maumo & Co. Advocates filed a notice to come on record again for Galot Limited.

However, in the submissions drawn and filed by the firm of Gikera & Vadgama, Galot Limited, is depicted as insisting that it has expressed the desire to withdraw the application; and that the other parties have not objected to that intention. At the same time, in another set of submissions filed on its behalf by George Gilbert Advocates, the same Galot Limited expresses support for the notice filed by Gikera & Vadgama also on its behalf to withdraw the application for striking out. Citing the Supreme Court in **Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others** [2014] eKLR, George Gilbert Advocates insists that a party's right to withdraw a matter before the court cannot be taken away.

We consider this application along with the first two applications. Our simple answer to this absurdity of back and forth game on representation that is clearly intended to cause confusion and delay, is that this Court will not let parties, assisted by counsel to abuse its process. We decline to be drawn in the determination as to who has whose instructions. That is indeed the main question to be determined by the court below in HCCC No. 55 of 2012, which some of the parties are determined to keep in abeyance indefinitely. To allow the withdrawal of the application, as we have been urged, by a firm that did not file it in face of a vicious contestation, will be to overstep our jurisdiction. The application is a violation of our **Rule 52** and also contrary the cited **Nicholas Kiptoo Arap Korir Salat** Case.

But even if we were to allow the withdrawal of the application, that would not terminate a similar application by Mohan Galot. We decline the invitation to mark as withdrawn the application by Galot Limited dated 20th June, 2019.

In the first application, Galot Limited has complained that it was not served with the notice of appeal; and that it was also left out as a party in the appeal when Manchester Outfitters lodged this appeal yet it was a party directly affected by the appeal having participated in the proceedings in the court below. The applicants have argued also that, though the impugned ruling was rendered on 12th June, 2015 and the notice of appeal filed within time on 25th June, 2015, the record of appeal was lodged on 15th October, 2018, hopelessly out of time by over 2 years; that the appeal ought to have been lodged 60 days from 25th June, 2015; that the certificate of delay dated 30th August, 2018 was irregular for not disclosing the date on which the appellant's advocates learnt that the typed proceedings were ready for collection; and by misrepresenting that the proceedings were collected on 4th June, 2018.

Galot Limited has, throughout the proceedings in the High Court and even before this Court, been a central party. Its omission in this appeal is either inadvertent or deliberate. Under **Rules 77** and **90 (2)** the appellant was bound to serve the notice of appeal on **"all persons directly affected by the appeal"** and copies of the memorandum and record of appeal on **"such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may appoint".**

Galot Limited is accordingly a necessary party.

Under **Rule 82,** an appeal is instituted by lodging the record of appeal within 60 days of the date the notice of appeal was filed. Although there is no notice of appeal on record, it is common factor that it was filed on 25th June, 2015, while the record of appeal was lodged on 15th October, 2018, nearly 3 years later. The appellant has attributed the delay to the court's failure to supply it with copies of the proceedings and ruling. It relies on the certificate of delay issued on 30th August, 2018 in which the Registrar certified that the proceedings and ruling were collected on 4th August, 2018.

In computing the time within which the appeal is to be instituted, the time certified by the registrar as having been taken to prepare and

deliver to the appellant copy will be excluded. But according to the proviso to **Rule 82** for a party, like the appellant here, to rely on a certificate of delay, it must demonstrate, that it applied for copies of the proceedings and ruling in the superior court within thirty days of the date of the decision against which it is desired to appeal; and that its application for such copy was in writing and a copy of it was served upon the respondent.

By **Rule 84**;

> **"A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time".**

The appellant has not controverted the assertion that the letter bespeaking copies of the proceedings and ruling was not copied to the respondents. The appellant has also failed to prove that the letter to the Registrar was written or sent within 30 days of the impugned ruling. The Registrar has, in the certificate, tactfully avoided making reference to any letter from the appellant seeking these copies. Finally, even assuming that the copies were collected by the appellant on 4th June, 2018 and excluding that period, no explanation was proffered for a further delay of nearly 4 months. The Court was never moved by an application for enlargement of time under **Rule 4**.

We come to the conclusion that this application has merit and accordingly we allow it and order the striking out with costs of Civil Appeal No. 375 of 2018.

**(4) Civil Appeal No. 130 of 2020**

While all the above applications and Civil Appeal No. 375 of 2018 have been parked in this Court for close to 2 years, Mohan Galot, Manchester Outfitters Limited, Galot Industries Limited and five other persons and companies petitioned the High Court on 21st May, 2019 claiming that some of the parties in the dispute, in collusion with persons then employed by the office of the Attorney General conspired to falsify the record of certain companies including Manchester Outfitters Limited and purporting to appoint strangers as directors of those companies; that, instead the applicants were arrested and charged with various offences, such as forgery of an official document contrary to **section 351** of the Penal Code; uttering a false document contrary to **section 353** of the Penal Code; perjury contrary to **section 108(1)(a)** as read with **section 110** of the Penal Code and false swearing contrary to **section 114** as read with **section 36** of the Penal Code in CM Cr. Case Nos. 1554 of 2012, 155 of 2012 482 of 2014, 276 of 2018, 2374 of 2018 and 95 of 2018.

In the petition, the applicants sought a declaration that the decision to arrest and charge them was a violation of their constitutional right to dignity and the fair administrative action; and that the criminal proceedings amounted to an abuse of the process of the court and using the criminal justice system for the objective of obtaining civil remedies contrary to the Constitution. They asked that the charge sheet be brought before the court for purposes of being quashed by an order of *certiorari*; that an order of prohibition be issued to stop the trial and proceedings against the applicants; and that an order of mandamus be issued to compel the respondents to arrest and institute criminal action against some of the respondents for committing perjury.

On 27th May, 2019 three individuals, Pravin Galot, Rajesh Galot, Narendra Galot and Galot Limited applied to be joined in the proceedings; and that temporary orders of stay issued on 23rd May, 2019 be discharged, varied or set aside. Makau, J granted the prayer for joinder but dismissed the latter plea. The appellants were aggrieved and instituted Civil Appeal No. 130 of 2020. In the meantime, they have brought an application under **Rule 5(2)(b)** of the Court of Appeal Rules seeking that proceedings in the petition be stayed pending the hearing and determination of this appeal, (Civil Appeal No. 130 of 2020) as well as HCCC No. 55 of 2012.

Having considered the replying affidavits, grounds of opposition and written submissions, we shall once again apply the strictures of **Rule 5(2)(b)**. We entertain serious doubt that the appeal is arguable, considering that all the court did was to include in the cause all those who have all along been involved in this protracted dispute, the interested parties. The petition itself makes reference to the interested parties as the persons who influenced their prosecution.

We have also not been told how the appeal will be rendered negatory if we do not stay proceedings in the High Court. It is as strange as it is baffling that the appellants have now joined the chorus of those determined to delay the determination of HCCC No. 55 of 2012 by applying that it be stayed as this appeal is heard and determined.

This application must fail. We dismiss it with costs.

**(5) Civil Application No. 355 of 2019**

By application dated 15th November, 2019 the firm of Odera Were Advocates applied for orders of stay of further proceedings in High Court Civil Case No. 430 of 2012 pending the hearing and determination of Civil Appeal No. 375 of 2018 before this Court. In response to this, the firm of Tiego & Co Advocates filed a notice of motion dated 18th May, 2020 to strike it out.

The two applications were set to be heard on 15th July, 2020. However, by two letters dated 18th May, 2020 and 7th July, 2020, the firm of Odera Were Advocates expressed the desire to have the application for stay of further proceedings marked as withdrawn with no orders as to costs.

Pursuant to that, and there being no objection, save for costs, the application was allowed and we order that the motion dated 15th November, 2019 be marked as withdrawn with costs under **Rule 52** of the Court of Appeal Rules. With that withdrawal, the motion for striking out was spent.

**(6) Conclusion**

In this ruling we have consolidated, considered and disposed of 10 applications in total. We emphasize that this Court will not allow its processes to be used in schemes that are intended to frustrate the just and expeditious conclusion of cases. We also reiterate that counsel on both sides of the dispute have contributed immensely to the delay extending to 11 years in resolving the solitary issue in Nbi. H.C.C.C. No. 55 of 2012 (formerly H.CC.C. No. 63 of 2009). Court delay is costly – to the parties and to the society as a whole. It is the combined responsibility of the parties, their advocates and the courts to ensure disputes are resolved in a more efficient and cost-effective manner. Parties and their counsel, but counsel, particularly being officers of the court, must never be seen to deliberately prolong the cases they have the conduct of indefinitely, by resorting to delaying tricks and tactics. If all courts took active case management seriously, instances like these will be checked and reduced. It is only by being vigilant that backlog and delay can be effectively addressed.

Based upon the inherent authority of every court to control its process and ensure those persons who come before it conform to its rules, the court will dismiss or strike out claims which are frivolous, vexatious or brought in abuse of its process.

All counsel in this dispute will greatly assist their clients if they can drop the side shows and focus on HCCC No. 55 of 2012. Those are our views and orders.

**Dated and delivered at Nairobi this 6th day of November, 2020.**

**W. OUKO, (P)**

**JUDGE OF APPEAL**

**R. N. NAMBUYE**

**JUDGE OF APPEAL**

**M.K. KOOME**

**JUDGE OF APPEAL**

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

*Signed*

***DEPUTY REGISTRAR***