



**Manchester Outfitters Limited & 2 others v Galot Holdings Limited & 3 others (Environment & Land Case 358 of 2012) [2025] KEELC 586 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 358 OF 2012  
OA ANGOTE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**MANCHESTER OUTFITTERS LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
MOHAN GALOT ..... 2<sup>ND</sup> PLAINTIFF  
GALOT LIMITED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**GALOT HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
MANCHESTER OUTFITTERS (EA) LIMITED ..... 2<sup>ND</sup> DEFENDANT  
PRAVIN GALOT ..... 3<sup>RD</sup> DEFENDANT  
RAJESH GALOT ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant/Applicant has filed a Notice of Motion application dated 11<sup>th</sup> November 2024 pursuant to Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya. The 1<sup>st</sup> Defendant has sought for the following orders:
  - a. There be stay of proceedings in Nairobi ELC case No. 358 of 2012, pending the hearing and determination of Civil Appeal No. COACA/ E825/2024.
  - b. Costs of this application be provided for.
2. The application is supported by the grounds on its face and by the Supporting Affidavit sworn by Pravin Galot, the Director of the 1<sup>st</sup> Defendant Company, dated 11<sup>th</sup> November 2024.



3. Pravin Galot deponed that on 19<sup>th</sup> September 2024, the court delivered a ruling in this case, which reinstated the suit and directed that the matter be mentioned on 13<sup>th</sup> November 2024 for the parties to confirm the filing of their trial bundles and to set a hearing date.
4. It was deposed by the 1<sup>st</sup> Defendant's Director that the 1<sup>st</sup> Defendant is aggrieved by this ruling and has since filed Civil Appeal No. COACA/E825/2024 challenging the decision on various legal grounds, including that the reinstatement of the suit is contrary to the principles of res judicata, undermining the finality of the court's earlier rulings. The deponent asserted that the appeal raises substantial and arguable points of law with a high probability of success.
5. The 1<sup>st</sup> Defendant's Director stated that if the proceedings in this matter continue, the 1<sup>st</sup> Defendant will be forced to undergo a trial on issues that have already been determined, leading to unnecessary expenditure of resources and time, and causing substantial and irreparable harm to the 1<sup>st</sup> Defendant. He asserts that the continuation of these proceedings would also compromise the integrity of the appeal process.
6. He deponed that no court should act in vain and a stay of proceedings will be in the interest of this court, not only in saving valuable judicial time but also to ensure that this court does not proceed in vain, in the event that the appellate court upholds the appeal.
7. Pravin Galot argued that no prejudice will be caused to the Respondents that cannot be compensated by way of costs if the stay is granted. He urged that the subject matter of the suit is ownership of immovable property that is not being wasted away during the time taken to determine the appeal, and that if the appeal is ultimately found to be without merit, the Respondents will still be afforded an opportunity to ventilate their case before the Environment and Land Court.
8. Pravin Galot also swore a Replying Affidavit as the 3<sup>rd</sup> Defendant dated 12<sup>th</sup> November 2024. He deponed that it is in the interest of justice and judicial efficiency that the proceedings in the lower court be stayed pending the determination of the appeal, and that the stay will ensure that the appeal is not rendered nugatory.
9. He averred that the 1<sup>st</sup> Defendant stands to suffer substantial loss in the sum of Kshs. 675,000,000 if this court decides against them while the appeal is pending and that the grant of stay of proceedings will serve the purpose of preserving the subject matter of the appeal.
10. The 4<sup>th</sup> Defendant, Rajesh Galot, a director of the 1<sup>st</sup> Defendant supported the application vide a Replying Affidavit sworn on 19<sup>th</sup> November 2024. He asserted that the 1<sup>st</sup> Defendant's application satisfies the principles for the stay of proceedings and should be allowed, and that there is already an appeal filed at the Court of Appeal, Civil Appeal No. E825 of 2024 and a record of appeal has also been filed.
11. Rajesh Galot deponed that the 1<sup>st</sup> Defendant has also made an application for stay of these proceedings before the Court of Appeal and that on 14<sup>th</sup> November 2024, the Appellate court certified the 1<sup>st</sup> Defendant's stay application urgent and gave directions on hearing. He contends that the certification by the Court of Appeal is sufficient cause for this court to grant stay of further proceedings in deference to the Court of Appeal.
12. The 4<sup>th</sup> Defendant further stated that one of the issues for determination before the Court of Appeal is the application of the doctrine of res judicata, which provides sufficient cause to stay these proceedings. He urges that if the 1<sup>st</sup> Defendant's appeal succeeds, then this court will automatically be bound and will not be able to make any further step.



13. The 4<sup>th</sup> Defendant averred that he was aggrieved that in its ruling, the court took an overly liberal approach in interpreting “sufficient reason” as the interpretation adopted by the Judge blurred the line between review and appeal. According to the 4<sup>th</sup> Defendant, the issue of what amounts to sufficient reason as a ground for review is a matter of public interest and concern, and the appeal filed before the Court of Appeal presents the court of Appeal an opportunity to settle the issue once and for all.
14. Mr. Rajesh Galot contended that there is no prejudice that the Plaintiff will suffer that cannot be compensated by way of costs, should the order of stay be granted, as the subject matter of this suit is immovable property that is not being wasted away during the time taken to determine the appeal. He also deponed that grant of stay in these proceedings will serve the critical purpose of preserving the subject matter of the appeal.
15. The Plaintiff opposed the application vide a Replying Affidavit dated 17<sup>th</sup> November 2024 and sworn by Pushpinder Singh Mann, a Director of the Plaintiff. He deponed that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are directors and shareholders of the 1<sup>st</sup> Defendant company and therefore any response to this application by the other Defendants is a response by the Applicant.
16. The Plaintiff asserted that on the date this application was filed, a similar application was filed at the Court of Appeal, seeking similar orders. They contend that the Applicant is therefore playing ping pong and gambling with the court. The Plaintiff’s Director further argued that this application is sub judice and is an abuse of court process.
17. Pushpinder Singh Mann averred that after a long and unwarranted delay, this matter was commenced by an order of the High Court which noted that HCCC No. 55 of 2012 had caused a delay in 23 other connected matters including this suit, and that the court therefore ordered that this suit proceed without any further delay.
18. The Plaintiff asserted that the decision made by this court, which is the subject of the appeal, is not a final decision and the main suit is awaiting hearing and determination; that the decision of this court is reversible by the Court of Appeal, and therefore, the appeal will not be rendered nugatory in any way, and that any loss incurred can be compensated by way of costs and damages.
19. According to the Plaintiff, the appeal challenges a decision that is as a result of an exercise of discretion by this court; that the Applicant/ 1<sup>st</sup> Defendant has not shown that the discretion was exercised whimsically and there is therefore no arguable Appeal and that noting the pendency of the hearing and determination of the main suit, any party dissatisfied with the outcome still has a recourse to appeal.
20. According to the Plaintiff’s Director, the Applicant has not demonstrated any exceptional circumstances that warrants a grant of the orders of stay of proceedings as sought. He asserts that this application was filed on 11<sup>th</sup> November 2024 and seeks to appeal against the decision rendered on 19<sup>th</sup> September 2024. It is his contention that the application was therefore not brought timeously and no explanation has been rendered for the said delay.
21. Counsel for both parties filed submissions and a list of authorities which I have considered.

### **Analysis and Determination**

22. This court has considered the application, the responses and the submissions. The following issues are for this court’s determination:
  - i. Whether this application is sub judice.
  - ii. Whether this court should grant orders of stay of proceedings.



23. This suit was commenced via a Plaint dated 19<sup>th</sup> June 2012 seeking a declaration that Land Reference No. 24092 (Grant No. I.R. (79398) was fraudulently transferred from the 1<sup>st</sup> Plaintiff to the 1<sup>st</sup> Defendant by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The Plaintiffs also sought for an order to reverse the transfer and to compel the 1<sup>st</sup> Defendant to re-transfer the suit property to the 1<sup>st</sup> Plaintiff. The Plaintiffs simultaneously filed an application seeking to restrain the Defendants from dealing with the property.

24. The doctrine of sub judice is prescribed in Section 6 of the *Civil Procedure Act* as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

25. The elements that must exist for the principle of res sub-judice to apply are set out in the Republic vs. Registrar of Societies - Kenya & 2 Others Ex-Parte Moses Kirima & 2 Others [2017] eKLR where the court held that:

“...Therefore for the principle to apply certain conditions precedent must be shown to exist: First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed...”

26. The court in Edward R. Ouko vs Speaker of the National Assembly & 4 Others [2017] eKLR further held that:-

“This then leads me to the issue whether the said principles apply to this case. For the doctrine to apply the following principles ought to be present:

- (1) There must exist two or more suits filed consecutively.
- (2) The matter in issue in the suits or proceedings must be directly and substantially the same.
- (3) The parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title.
- (4) The suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

27. The concept of sub judice acts to bar a court from trying a matter that is in one way or another before another court of competent jurisdiction by way of a previously instituted suit as long as it is between the same parties canvassing under the same title. Its rationale was expressed by the Supreme Court in Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties [2020] eKLR which stated thus;

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a



multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

28. The Plaintiff has argued that the application herein is sub-judice as a parallel application has been filed at the Court of Appeal in Civil Appeal E825 of 2024 Galot Holdings Ltd v. Manchester Outfitters Limited & 5 others. It is not in dispute that the 1<sup>st</sup> Defendant has filed Civil Appeal E825 of 2024, challenging the ruling of this court delivered on 19<sup>th</sup> September 2024.
29. This court has perused the application that was filed in the Court of Appeal annexed to the Plaintiff’s Replying Affidavit. It is clear that the parties in Civil Appeal E825 of 2024 are identical to the parties in this suit. Further, the issue before the Court of Appeal is identical to the one before this court, which is whether an order of stay of proceedings in ELC Case No. 358 of 2012 at the Environment and Land Court should issue pending the hearing and determination of Civil Appeal No. COACA E825 of 2024.
30. The application before this court and the Court of Appeal were filed on 11<sup>th</sup> November 2024. It is therefore indistinguishable as to which matter was filed first. Suffice to say that the two applications are similar, and filed in two different courts with competent jurisdictions.
31. Indeed, the filing of an application for stay of proceedings both in this court and the Court of Appeal does not only offend the doctrine of sub judice, but is an abuse of the court process. Considering that Order 42 of the Civil Procedure Rules allows a party to file an application for stay of proceedings either in this court or the Court of Appeal, it does not allow the filing of the application in both courts.
32. To the extent that the Defendants have filed a similar application in the Court of Appeal, I find the application dated November 11, 2024 to be unmeritorious. The application is struck out with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**O. A. Angote**

**Judge**

In the presence of;

Ms Awiti holding brief for George Gilbert for Plaintiff

Mr. Ouma for 1<sup>st</sup> Defendant

Mr. Kaka for 3<sup>rd</sup> Defendant

Mr. Kaka for 2<sup>nd</sup> Defendant

Mr. Kaka for Kenyatta for 4<sup>th</sup> Defendant

Court Assistant: Tracy

