



Manchester Outfitters Suiting Division Ltd Now Called King Woollen Mills Ltd & another v Standard Chartered Financial Services Ltd & another (Petition (Application) 6 of 2016) [2024] KESC 10 (KLR) (12 April 2024) (Ruling)

Neutral citation: [2024] KESC 10 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) 6 OF 2016
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
APRIL 12, 2024**

BETWEEN

MANCHESTER OUTFITTERS SUITING DIVISION LTD NOW CALLED KING WOOLLEN MILLS LTD 1ST PETITIONER

GALOT INDUSTRIES 2ND PETITIONER

AND

STANDARD CHARTERED FINANCIAL SERVICES LTD 1ST RESPONDENT

A.O. GREGORY & C.D CAHIL 2ND RESPONDENT

(Being an application for contempt of the Orders of this Court issued on 13th June 2017 and 5th July 2018 and declaration of improper conduct by Counsel)

Supreme Court emphasizes the need for competent pleadings and adherence to court orders.

The Supreme Court of Kenya dismissed an application alleging contempt of court and improper representation in ongoing disputes over the directorship and shareholding of Galot Industries Ltd. The court reaffirmed that its prior ruling in which it held that representation by a specific firm of advocates was binding unless set aside and it clarified that the issue of directorship and shareholding must first be resolved by the High Court. The application was deemed procedurally incompetent and an abuse of the court’s processes.

Reported by John Ribia

Civil Practice and Procedure - applications before the Supreme Court - whether the Supreme Court could be moved by reference to the Civil Procedure Rules - whether the Supreme Court could issue an order when moved by an application that was incompetent and not properly before the Supreme Court - Supreme Court Act (cap 9B) section 28(1)(c), 28(4), and 28 (5); Supreme Court Rules, 2011 (cap 9B, Sub Leg) rules 57, and 58.

Advocates - change of advocates - change of advocates where there was a court order barring it till determination of a pending matter - whether a party could change advocates when there was a binding Supreme Court order that



specified representation until the resolution of a related dispute in a lower court - whether the change of advocates by the party would constitute contempt of court.

Brief facts

The second petitioner, Galot Industries Ltd, was embroiled in disputes concerning its directorship and shareholding, pending determination in High Court Civil Case No. 298 of 2009. A previous ruling by the Supreme Court (June 13, 2017) had directed that M/S Havi & Co. Advocates represent the second petitioner in the matter before the Supreme Court until the High Court resolved the directorship issue. Despite this, the firm of M/S Ogello & Awiti Advocates purported to file a Notice of Change of Advocates, replacing M/S Havi & Co. Advocates.

The petitioners filed a Notice of Motion seeking to commit two individuals, Pravin and Rajesh Galot, to prison for contempt of court orders. They also sought declarations of improper conduct against several advocates and an expedited resolution of the directorship and shareholding dispute in the High Court.

Issues

- i. Whether a party could change advocates when there was a binding Supreme Court order that specified representation until the resolution of a related dispute in a lower court.
- ii. Whether the change of advocates by the party could constitute contempt of court.
- iii. Whether the Supreme Court could be moved by reference to the Civil Procedure Rules.
- iv. Whether the Supreme Court could issue an order when moved by an application that was incompetent and not properly before the Supreme Court.

Held

1. The applicant would be represented by M/S Havi & Company Advocates in the instant petition until the issue of directorship and shareholding was resolved by the High Court. The dispute as to the valid directors and shareholders of the applicant was at the time still live before the High Court in HCCC No. 430 of 2012. Further, the issue of the applicant's directors and shareholders was directly tied to what would constitute its authorized representation.
2. The firm of Ogello and Awiti Advocates filed a Notice of Change of Advocates dated October 23, 2023 on the instructions of Mohan Galot replacing the firm of M/S Havi & Co. Advocates. The matter of the applicant's directorship and shareholding was still live and pending before the High Court. It was unclear how the firm of M/S Ogello & Awiti Company Advocates came on record and purported to file a Notice of Change of Advocates to take over from the firm of M/S Havi & Company Advocates notwithstanding the clear order resolving the issue of representation pending determination of the issue as to directorship and shareholding aforesaid. M/S Ogello Awiti & Company Advocates was therefore not properly on record and could not lawfully file any pleadings on behalf of the applicant for the obvious reason that the issue of directorship and shareholding of the applicant was yet to be resolved.
3. Civil Procedure Rules did not apply to the Supreme Court.
4. Whereas orders directing the High Court to expeditiously determine the issue of directorship and shareholding of the applicant would not otherwise be prejudicial to any party, the incompetence of the Motion in all other regards would preclude the Supreme Court from issuing such an order.
5. Counsel was cautioned that a Motion such as the instant one ought never to find its way into this apex court. It was simply a misguided venture based on no more than misunderstanding of our processes and extension of bad blood between the parties.

Application struck out.

Orders

Pravin Galot and Rajesh Galot were awarded the costs of the Motion, as assessed by the court of Kshs. 20,000/- which shall be met by the firm of M/S Ogello Awiti & Company Advocates.



Citations

Cases

1. Rai , Jasbir Singh & 3 others v Tarlochan Singh Rai & 4 others Petition No 4 of 2012; [2014] 2 KLR 253 — (Followed)
2. Republic v Ahmad Abolfathi Mohammed & another (Criminal Application 1 of 2018; [2018] KECA 820 (KLR)) — Explained

Canada

Carey v Laiken ([2015] SCC 17) — (Explained)

Statutes

1. Civil Procedure Rules, 2010 (cap 21, Sub Leg) — order 9 rule 9 — (Interpreted)
2. Supreme Court Act (cap 9B) — section 28(1)(c), (4), (5) — (Interpreted)
3. Supreme Court Rules, 2011 (cap 9B, Sub Leg) — rules 57, 58 — (Interpreted)

Advocates

Ms. Addah Awiti and Mr. George Gilbert for 2nd Petitioner/Applicant

Mr. Kenyatta Odiwuor for Mr. Pravin Galot

Mr. Kaka Kamau for Mr. Rajesh Galot

RULING

1. Recalling that a dispute arose as to which firm of advocates between M/S Gikera & Vadgama Advocates and M/S Havi & Company Advocates was duly appointed to represent Galot Industries (the applicant); and that Ojwang, SCJ (as he then was) by a ruling dated 13 June 2017, issued orders certain *inter alia* by stating that: -
 - a. I disallow the application by M/S Gikera & Vadgama Advocates.
 - b. I allow the firm of Havi & Company Advocates to represent the 2nd petitioner, subject to the High Court- determining- and until the High Court determines-the valid directors of Galot Industries Limited (2nd petitioner).
 - c. ...”Further, the foregoing was affirmed by a five (5) Judge Bench of this Court by a ruling dated February 6, 2019; and
2. Upon perusing the Notice of Motion dated 27 October 2023 and lodged on 1 November 2023 by the applicant under sections 28(1)(c),(4) and (5) of the [Supreme Court Act](#), and rules 57 and 58 of the [Supreme Court Rules](#) 2011 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. Pravin Galot And Rajesh Galot be committed to prison for a term of one (1) year custodial sentence without the option of a fine for contempt of the orders of the Honourable Court issued on 13 June 2017 and 5 July 2018, respectively.



- e. This Honourable Court be pleased to issue an order declaring the conduct of Odera Were Advocate, Kaka Kamau Advocate And Kenyatta Odiwuor Advocate, for blatantly advising and allowing themselves to purport to represent the 2nd petitioner under the sole control of Pravin Galot and Rajesh Galot and contrary to existing Court orders, is inconsistent with the demeanour and practice of an advocate.
 - f. This Honourable Court be pleased to issue an order for the expeditious hearing and determination of the shareholding and directorship of the 2nd petitioner in HCCC No 298 of 2009- Ganeshlal Galot & 3 Others v Mohan Galot & 6 others.
 - g. This court be please to issue such other orders as it shall deem just.
 - h. Costs.
3. Upon considering the grounds in support of the Motion, the supporting affidavit and further affidavit sworn by Mohan Galot on 27 October 2023 and 25 November 2023, respectively, as well as the applicant's submissions dated 27 October 2023 to the effect that; Mohan Galot describes himself as the Founder, Governing Director, Principal Shareholder and Chairman of the applicant; that this court pronounced itself vide its rulings dated 13 June 2017 and 6 February 2019 on the issue of the applicant's representation; that pursuant to the instructions of Mohan Galot, the firm of M/S Ogello & Awiti Advocates filed a Notice of Change of Advocates dated 23 October 2023 taking over from the firm of Havi & Company Advocates; that the issue of the applicant's directorship and shareholding is still pending in HcccNo 298 of 2009 - Ganeshlal Galot & 3 others v Mohan Galot & 6 others; that therefore, Pravin Galot and Rajesh Galot had no right/authority to appoint other firms of advocates to represent the applicant in other suits before the superior courts below, and that by their conduct they are in contempt of this court's orders; and
 4. Noting the applicant's assertion that a court order is binding against the party to whom it is addressed until, and unless, it is set aside; that an act of contempt being an affront to judicial authority, should be punished, as appreciated in *Republic v Ahmad Abolfathi Mohammed & Another*, SC Petition No 39 of 2018; [2019] eKLR; that the three elements of civil contempt, according to the Canadian case of *Carey v Laiken*, 2015 SCC 17 are that the order in question must be unequivocal, the alleged contemnor must have actual knowledge of the order, and the alleged contemnor must have intentionally disregarded the order; that the said test having been satisfied in this case, this court should find Pravin Galot and Rajesh Galot in contempt of its orders and commit them to prison; that this Court should also find the conduct of Odera Were Advocate, Kaka Kamau Advocate and Kenyatta Odiwuor Advocate, of appearing for the applicant in other matters before the other superior courts, as being inconsistent with the demeanor and practice of an advocate; and
 5. Taking into account the replying affidavit sworn by Rajesh Galot on 24 November 2023 and his written submissions of even date, the tenor of which is that, the applicant herein is actually Mohan Galot who is a stranger to the proceedings, and therefore the instant Motion is unsustainable; this court having determined the issue of the applicant's representation in the instant petition, any other firm of advocates coming on record for the applicant had to first obtain leave of this court under order 9 rule 9 of the *Civil Procedure Rules* or obtain their predecessor's consent; the order in question, was not served upon Rajesh Galot; in any event, he had not appointed any advocate to represent the applicant in the instant petition; that he was still one of the applicant's directors in view of the pending suit HCCC No 298 of 2009 - Ganeshlal Galot & 3 others v Mohan Galot & 6 others; that the elements of civil contempt had not been established by the applicant; and that the Motion lacks merit and ought to be dismissed; and



6. Considering Pravin Galot's replying affidavit sworn on November 24, 2023 and his written submissions of even date reiterating this court's decision on the applicant's representation and the grounds advanced by Rajesh Galot; further, urging that it was not open for the firm of Ogello Awiti & Company Advocates to act for the applicant let alone file the instant Motion; that, granting the prayers against the firms of Odera Were Advocates, Kaka Kamau Advocates and Kenyatta Odiwuor Advocates would be tantamount to condemning the said firms unheard; that this Court's ruling delivered on 13 June 2017 did not extend to every other dispute that the applicant would/may be embroiled in; the ruling did not bar Pravin Galot and Rajesh Galot from discharging their mandate as the applicant's directors; that Pravin Galot only participated in appointing advocates to act for the applicant in other matters before the other superior courts below; and he had not, therefore, acted in disobedience of this court's orders; and that the Motion is fatally defective; and
7. Having considered the totality of the Motion and the submissions put forth, we now opine as follows:
 - i. By a ruling delivered on June 13, 2017, this Court allowed the firm of M/S Havi & Company Advocates to represent the applicant, subject to, and until the High Court determines the valid directors and shareholders of the applicant. This was informed by the fact that a dispute as to the valid directors and shareholders of the applicant was at the time still live before the High Court in HCCC No 430 of 2012. Further, the issue of the applicant's directors and shareholders was directly tied to what would constitute its authorized representation.
 - ii. Central to the determination of the instant Motion is the interpretation of the said ruling. The ruling relates to the present petition and does not apply to every other dispute before other Courts that involve the applicant. The said ruling is categorical that the applicant would be represented by M/S Havi & Company Advocates in this petition until the issue of directorship and shareholding is resolved by the High Court. In that connection, we note that the firm of Ogello & Awiti Advocates filed a Notice of Change of Advocates dated October 23, 2023 on the instructions of Mohan Galot replacing the firm of M/S Havi & Co Advocates.
 - iii. It is evident that the matter of the applicant's directorship and shareholding is still live and pending before the High Court. The parties accede as much. Therefore, cognizant of our ruling of 13 June 2017, it is unclear to us how the firm of M/S Ogello & Awiti Company Advocates came on record and purported to file a Notice of Change of Advocates to take over from the firm of M/S Havi & Company Advocates notwithstanding the clear order resolving the issue of representation pending determination of the issue as to directorship and shareholding aforesaid. M/S Ogello Awiti & Company Advocates is therefore not properly on record and cannot lawfully file any pleadings on behalf of the applicant for the obvious reason that the issue of directorship and shareholding of the applicant is yet to be resolved.
 - iv. Having so stated, we must state that the Motion before us is also baffling as reference has been made to the applicability of the Civil Procedure Rules to the issues before us. Counsel ought to know that those rules do not apply to proceedings before this court.
 - v. One of the prayers in the Motion is that we should make orders directed at the High Court to expeditiously determine the issue of directorship and shareholding of the applicant. While such an order would not otherwise be prejudicial to any party, the incompetence of the Motion in all other regards would preclude us from issuing such an order.
 - vi. In the circumstances, we decline to consider the Motion and as such, it is struck out with a caution to Counsel that a Motion such as the present one ought never to find its way into this



apex court. It is simply a misguided venture based on no more than misunderstanding of our processes and extension of bad blood between the parties.

- vii. On the question of costs, taking into account the principles set down in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No 4 of 2012; [2014] eKLR, and noting the fact that there are several pending cases touching on the applicant's directorship and shareholding in the superior courts below and which ought to be resolved first, and further noting this court's ruling of 13 June 2017 on representation, we are inclined to condemn the firm of M/S Ogello Awiti & Co Advocates to meet the costs of Pravin Galot and Rajesh Galot in this Motion. That firm ought to have known better before engaging in the time wasting and frivolous conduct of filing the present Motion.

8. Consequently, and for the reasons aforesaid, we make the following Orders:

- i. The Notice of Motion dated 27 October 2023 and filed on 1 November 2023 is struck out.
- ii. Pravin Galot and Rajesh Galot are awarded the costs of the Motion, as assessed by the Court of Kshs 20,000 which shall be met by the firm of M/S Ogello Awiti & Company Advocates.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF APRIL, 2024.

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

That I certify this as a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

