Manchester Outfitters Limited v Galot & 5 others; Galot Limited & another (Interested Parties) (Civil Case 55 of 2012) [2025] KEHC 11485 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11485 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

COMMERCIAL AND TAX

CIVIL CASE 55 OF 2012

FG MUGAMBI, J

JULY 31, 2025

BETWEEN

MANCHESTER OUTFITTERS LIMITED ..... PLAINTIFF

AND

PRAVIN GALOT ..... 1ST DEFENDANT

RAJESH GALOT ..... 2ND DEFENDANT

GANESH GALOT ..... 3RD DEFENDANT

KEVIN GALOT ..... 4TH DEFENDANT

MANCHESTER OUTFITTERS (EA) LTD ..... 5TH DEFENDANT

MOHAN GALOT ..... 6TH DEFENDANT

AND

GALOT LIMITED ..... INTERESTED PARTY

PUSHARAM GALOT ..... INTERESTED PARTY

RULING

Background and Introduction

1. Before the Court is the Notice of Motion application dated 25th February 2025, filed by the 2nd interested party. The application is brought pursuant to Articles 10(1)(b), 10(2)(a) and (c), 25(c), 27(1), 47(3)(b), 50(1), and 159(2)(b) and (e) of *the Constitution* of Kenya; Sections 1A, 1B, 3, 3A, and 63(e) of the *Civil Procedure Act*, Cap 21 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.

2. The applicant seeks my recusal from further hearing and determination of the present matter. Additionally, he prays that the matter be referred to the Presiding Judge of the Commercial and Tax Division for purposes of reallocation to a different judge and that costs of the application be provided for.

3. The application is premised on the grounds set out on the face of the Motion and is supported by an affidavit sworn by Narendra Galot. The 1st 2nd and 5th defendants, as well as the 1st and 2nd interested parties collectively support the application for recusal on the basis that the Court has demonstrated conduct indicative of bias, lack of impartiality, and a departure from the principles of fairness and judicial independence in its handling of the proceedings.

4. They contend that the Court has consistently declined to hear or grant applications brought by the applicant and the other defendants, while readily allowing those made by Mohan Galot. They further contend that preliminary objections raised by the applicant in the present suit were not heard in limine, whereas similar objections in a related matter (HCCC No. E1031 of 2024) were given priority and scheduled for hearing.

5. They also take issue with the Court having declined to determine a jurisdictional challenge raised by the 2nd interested party, contrary to binding decisions of the superior courts requiring such objections to be resolved as threshold issues.

6. The parties contend that the Orders issued by this Court in HCCC No. 430 of 2012 and HCCC No. E1031 of 2024, which were allegedly unrelated to the present matter, have had a bearing on these proceedings and reflect partiality in favour of Mohan Galot.

7. According to these parties, the cumulative effect of the Court's conduct has led to a perception of partiality and has eroded the parties' confidence in receiving a fair and impartial hearing. On these grounds, they urge that I recuse myself from further conduct of the matter in the interest of justice and judicial integrity.

8. The application is opposed by the plaintiff and the 1st defendant in the counterclaim on the grounds that the 2nd interested party has no locus standi to bring the application and that the same is a delay tactic to ensure that the hearing of the matter is scuttled.

Analysis and Determination

9. The application was canvassed by way of written submissions, which I have duly considered alongside the application and the responses thereto. It is not in dispute that this Court issued previous directions to the effect that, in the interest of orderly case management, no application shall be filed without prior leave of the Court. The present application was filed without such leave, contrary to those directions.

10. Ordinarily, this would render the application liable to striking out. However, given that the application raises issues touching on the integrity of the proceedings and the impartiality of the Court, striking it out on procedural grounds would occasion a grave injustice and would not serve the ends of justice. Accordingly, in the broader interest of justice and fair hearing, I shall proceed to consider the application on its merits.

11. The first preliminary issue raised by the respondents is that the applicant lacks locus standi to file the present application, as he is not a substantive party to the proceedings. The respondents contend that the joinder of the applicant was granted for a limited purpose, namely, to resolve the question of the directorship and shareholding of Manchester Outfitters Limited (MOL), and that, upon

determination of that issue through the Ruling of 11th April 24 the applicant ceased to have a role in the proceedings.

12. In response, the applicant maintains that he was duly enjoined in these proceedings as an interested party and, by virtue of that status, he possesses locus standi to participate fully in the proceedings, including filing applications. He asserts that, as a party recognized by the Court, he is entitled to a fair and impartial hearing. The applicant argues that the respondents' claim that he is a non-party and thus lacks standing to bring the present application is without legal foundation.

13. It is well established that the power to join parties to a suit is grounded in the Court's discretion, as provided under Order 1 Rule 10(2) of the Civil Procedure Rules. The primary objective of such joinder is to enable the Court to effectually and completely adjudicate upon all issues in question. However, it is equally clear that a party may be joined for a specific and limited purpose, and such joinder does not confer an automatic or unrestricted right to participate in all aspects of the proceedings.

14. In support of their contention, the respondents have annexed to their replying affidavit an application dated 26th January 2017, which sought the joinder of all individuals asserting claims as directors and shareholders of MOL. Pursuant to directions issued in that context (at page 63 of the respondents' annexures), the applicant was enjoined in these proceedings.

15. A review of the plaint filed in 2009 confirms that the applicant was not prior to then named as a party to the original suit. Moreover, the applicant has not denied these specific averments and has not furnished any evidence to demonstrate that he ever filed a statement of defence or otherwise actively pleaded in these proceedings.

16. In the circumstances, I am inclined to agree with the respondents that the applicant lacks locus standi to bring the present application. His joinder was for a defined and now concluded purpose, and he has no continuing right to move the Court in the broader context of these proceedings, at least not to partake of and procure substantive orders.

17. That said, and in the event that I am mistaken on this legal conclusion, I shall, in the interest of justice and finality, proceed to determine the substance of the application on its merits, so as not to allow a procedural objection to thwart substantive adjudication of the issues raised.

18. The legal principles governing the recusal of a judge from a matter are well established in jurisprudence. The guiding standard is that of a reasonable apprehension of bias assessed from the perspective of a fair-minded and informed observer.

19. The East African Court of Justice, in Attorney General of Kenya V Prof. Anyang' Nyong'o & 10 Others, EACJ Application No. 5 of 2007, adopted the objective test as follows:

> "We think that the objective test of 'reasonable apprehension of bias' is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair-minded and informed member of the public, that the judge did not (or will not) apply his mind to the case impartially? Needless to say, the litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court, however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair-minded and informed about all the circumstances of the case."

20. This test has been embraced by the Supreme Court. In Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others, Petition No. 4 of 2012 [2013] eKLR, Ibrahim J. articulated the principle as follows:

> " The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable."

21. Similarly, in Philip K. Tunoi & Another V Judicial Service Commission & Another, [2016] eKLR, the Court of Appeal adopted the formulation laid down in Porter V Magill [2002] 1 All ER 465, where the House of Lords held:

> " The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

22. In Galaxy Paints Co. Ltd V Falcon Guards Ltd, [1999] eKLR, the Court of Appeal emphasized the need to balance the appearance of justice with the duty of judges to preside over cases before them. The Court stated:

> " Although it is important that justice must be seen to be done, it is equally important that judicial officers should discharge their duty to sit, and do not, by acceding too readily to suggestions of bias, encourage parties to believe that by seeking disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour."

23. Further, in Rachuonyo & Rachuonyo Advocates V National Bank of Kenya Ltd, [2021] eKLR, Majanja J. (as he then was) reaffirmed the applicability of the Porter V Magill test as adopted by the Court of Appeal and the Supreme Court. Lastly, the Court of Appeal in Kalpana H. Rawal V Judicial Service Commission & 2 Others, [2016] eKLR acknowledged the constitutional and institutional sensitivity surrounding recusal applications:

> " An application for recusal of a judge is a necessary evil. On the one hand, it calls into question the fairness of a judge who has sworn to do justice impartially in accordance with *the Constitution*, without fear, favour, bias, affection, ill-will, prejudice, political, religious, or other influence. In such an application, the impartiality of the judge is called into question and his independence is impugned. On the other hand, the oath of office notwithstanding, the judge is too human, and above all, *the Constitution* does guarantee all litigants the right to a fair hearing by an independent and impartial judge."

24. It equally bears emphasis that a judge has a constitutional obligation to hear and determine matters duly allocated to them, except where disqualification is warranted by law. This duty arises from the principle of judicial independence and impartiality, and is anchored in *the Constitution* which vests judicial authority in the Judiciary to be exercised by courts and tribunals established thereunder.

25. Article 159(1) of *the Constitution* mandates that judicial authority shall be exercised by the courts in accordance with *the Constitution* and the law. Consequently, a judge has a duty not to recuse themselves on unsubstantiated grounds, lest they abdicate the constitutional responsibility to dispense justice and risk encouraging forum-shopping or undermining public confidence in the judicial process.

26. As the Supreme Court observed in Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others, [2013] eKLR, "a judge has a duty to sit and determine all matters allocated to him or her unless disqualified." Recusal must therefore be guided not by personal discomfort or speculative apprehension, but by established legal thresholds of actual or reasonably perceived bias.

27. What emerges from the authorities I have cited is that the threshold for recusal is not met merely by dissatisfaction with the outcome of a ruling or by adverse procedural decisions. The decisive test is whether a fair-minded and informed observer, aware of all relevant facts, would reasonably apprehend that the judge may not bring an impartial mind to the resolution of the dispute. It is this objective standard that the Court must apply in determining the present application.

28. The applicant contends that this Court delivered a ruling on 25th July 2024 in which it set aside interim orders for stay of the present proceedings that had earlier been granted on 8th July 2024, allegedly without affording him a hearing.

29. However, this assertion is not borne out by the record. It is not in dispute that the applicant's application for stay, together with the respondents' responses and the written submissions of all parties, had been duly filed and were properly on record at the time the ruling was rendered.

30. The right to be heard does not necessarily translate into a right to an oral hearing. Where parties have been given a fair and reasonable opportunity to present their case through written submissions, and such submissions are duly considered by the court, the requirement of fair hearing under Article 50(1) of *the Constitution* is met.

31. In exercising its discretion to manage proceedings efficiently and fairly, this Court, having reviewed the pleadings and submissions on record, proceeded to deliver an ex tempore ruling. The court explicitly referred to the issues raised, including the question of material non-disclosure, and made its determination based on the full record before it.

32. The discretion of a court to determine how proceedings are conducted is an integral component of judicial case management, as codified under Sections 1A and 1B of the *Civil Procedure Act* and the overriding objective. The absence of oral highlighting of submissions does not in my view, amount to a denial of the right to be heard, especially where no party was barred from filing or relying on their submissions.

33. The applicant, having been given a fair opportunity to present his case in writing, cannot now claim to have been shut out of the proceedings merely because the Court exercised its discretion not to invite oral arguments.

34. The applicant further concedes that he did not prefer an appeal against the ruling he now takes issue with. Instead, he has chosen to file the present application seeking my recusal. It is a well-established principle that where a party is aggrieved by a judicial decision, the proper recourse lies in an appeal or review, not in the recusal of the judge who rendered the decision.

35. The judicial system provides structured appellate mechanisms to address alleged errors in judgment, and litigants cannot be permitted to circumvent this process by casting aspersions on the impartiality of a judge merely because they are dissatisfied with a ruling. To allow such a practice would undermine the integrity of judicial proceedings and erode public confidence in the administration of justice.

36. Notably, the fact that this Court had initially granted the applicant interim orders for stay is, in itself, indicative that the Court was not predisposed against him. That the subsequent ruling was unfavourable to the applicant does not, without more, constitute evidence of bias. In any event, it is

noteworthy, and indeed raises concern, that the applicant waited nearly seven (7) months to raise the issue of alleged bias through the present recusal application. This unexplained delay undermines the bona fides of the complaint in the absence of any appeal against the said decision.

37. The applicant further contends that on 15th November 2024, this Court declined to refer the present matter to Honourable Mr. Justice Visram Aleem Alnashir, before whom a related matter, HCCC No. 430 of 2012, was pending. The applicant asserts that this Court improperly held that the orders issued on 11th October 2024, directing that all disputes relating to MOL, its associated companies, and related individuals be handled by one Judge, did not apply to the present matter.

38. This allegation remains unsubstantiated. The applicant has not placed on record any formal application or correspondence evidencing a request to have the matter before me transferred to Justice Visram. On the contrary, the record, as reflected at pages 160–161 of the respondents' annexures, clearly shows that directions were issued by Honourable Mr. Justice Alfred Mabeya, on 30th April 2024, stating as follows:

    i. That this suit be dealt with and determined without any further delay and in terms of the Court of Appeal orders in Commercial Appeal No. 375 of 2018, which order has not been varied or set aside;

    ii. That the peremptory issue identified by the Court of Appeal in the said appeal having now been determined as directed, all other 20/30 suits involving these parties amounting to 23 in the Division shall proceed accordingly;

    iii. <u>That this matter is now allocated to Honourable Lady Justice Dr. Mugambi for hearing and determination</u>

    iv. <u>That the matter be mentioned before the said Judge on 7th May 2024 for further directions.</u> (emphasis mine)

    v. In the meantime, the motion dated 27th April 2024 is marked as overtaken by events."

39. These and other subsequent directions affirm that the allocation of this matter to me was not arbitrary but was the result of a formal administrative decision rooted in express directions issued by the then Presiding Judge of the Commercial and Tax Division. The assignment of the matter followed the established internal mechanisms for the management and distribution of cases within the Division. I did not act suo motu, nor did I arrogate to myself jurisdiction over this and other related matters in disregard of due process. To suggest otherwise is to ignore the structured nature of judicial administration and to unfairly impute impropriety where none exists.

40. Indeed, the parties have, at various points, separately acknowledged that, pursuant to the aforementioned directions, other matters involving MOL and related parties have since been referred to this Court by the Presiding Judge and other Judges within the Division. This has been undertaken as part of a broader judicial case management strategy aimed at consolidating the approximately twenty-three related matters to ensure consistency and to avoid the risk of conflicting decisions within the Division.

41. Accordingly, the allegation that this Court improperly retained the matter or failed to transfer it lacks factual or legal basis. It does not, in the circumstances, give rise to a reasonable apprehension of bias that would warrant recusal.

42. The applicant further alleges that on 19th February 2025, this Court issued an order declining to determine a jurisdictional challenge, instead holding that the challenge would be subsumed in the

course of the substantive hearing. The order in question arose from an application dated 18th February 2025, which, as the record reflects, was filed on the eve of the scheduled hearing of the matter.

43. The applicant submits that the said application raised a jurisdictional question which ought to have been addressed as a preliminary issue. I would agree with the applicant on the general principle that a question touching on the jurisdiction of the Court ought, where properly raised, to be determined in limine, as it goes to the root of the Court's authority to entertain the matter. Jurisdiction is a foundational issue and should, as a matter of judicial prudence, be resolved at the earliest opportunity.

44. The Black's Law Dictionary (8th Ed), defines judicial jurisdiction as: "the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it." It is necessary to examine whether the application dated 18th February 2025 indeed raised a jurisdictional issue in the legal sense. The application sought the following reliefs:

    i. That this Honourable Court be pleased to order Mr Mohan Galot to appear before it in person or virtually on such a date and time as the court will determine to confirm and update the court on the measures he has put in place as the chairman of the board and the governing director of the Plaintiff to protect the employees, creditors, guarantors and assets of the Plaintiff and ensure that the Plaintiff does not collapse as a going concern.

    ii. That in the alternative, and if Mr Mohan Galot is unable toto appear before this court on medical grounds, Mr Narendra Galot, as Plaintiff's management shareholder under clause 5(ii) of its Memorandum of Association, to appear before it in person or virtually on such a date and time as the court will determine to confirm and update the court on the measures he has put in place as the chairman of the board and the goveming director of the Plaintiff to protect the employees, creditors, guarantors and assets of the Plaintiff and ensure that the Plaintiff does not collapse as a going concern.

45. From the foregoing, it is evident that the application did not, in substance or form, question the Court's jurisdiction to hear and determine the matter. Rather, it sought case management directions concerning the internal affairs of the plaintiff and its leadership. No express prayer was made challenging the competence of the Court or raising a jurisdictional bar. The characterization of the application as one raising a jurisdictional challenge is therefore misplaced.

46. Accordingly, while I affirm the principle that jurisdictional objections ought to be addressed in limine, I find that the Court's decision to defer the determination of the application dated 18th February 2025 did not amount to a refusal to determine jurisdiction, nor does it provide any basis for a reasonable apprehension of bias.

47. I would reiterate that candour and full disclosure are imperative obligations placed upon parties who appear before the Court, particularly in applications seeking discretionary relief. This duty becomes even more critical where the facts are plainly discernible from the court record and the nature of the reliefs sought is clear and unequivocal. Having considered the nature of the prayers and the timing of the application, I issued the following directions:

> " It is neither in the interest of justice nor proper management of this case that an application is brought in the course of the hearing and way after this matter has been certified ready for hearing. Interference with the hearing has already begun through prosecuting this or any other application whatsoever adds to the already inordinate delay that has befallen this matter. I have reviewed the application. It shall be subsumed in the course of the hearing. I therefore decline to grant leave to the applicant to prosecute this application at this time."

48. The rationale underlying my directions was clear and consistent with the continuing imperative to proceed to the substantive hearing and determination of the issues in dispute between the parties. This imperative has repeatedly been emphasized by the Court of Appeal and is well known to the parties herein.

49. In its ruling dated 6th November 2020 in Civil Appeal Application No. 130 of 2020, the Court of Appeal firmly addressed the conduct of the parties and underscored the importance of avoiding tactics that delay the resolution of long-pending litigation. The Court observed:

> "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 the cases...We also reiterate that Counsel on both sides have contributed immensely to the delay extending to 11 particularly years In resolving the solitary issue in Hccc No. 55 of 2012...Counsel, being officers of the Court, must never be seen to be 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 processes 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 Court process... It is 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.....All counsel in this dispute will greatly assist their cllents if they can drop the side shows and focus on Hccc No.55 of 2012. Those are our views and orders."

50. This guidance from the appellate court speaks directly to the conduct of the present proceedings and reinforces the need for focused and expeditious resolution of the substantive issues in dispute. As the applicants themselves have acknowledged, the Court afforded them an opportunity to raise and canvass the concerns underlying their application during the course of the hearing, rather than allow further delay to be occasioned by interlocutory processes.

51. In the circumstances, the decision by the Court to defer the application to the hearing, consistent with principles of case management and appellate guidance, cannot reasonably be construed as demonstrating bias. This ground, too, fails to meet the objective test for recusal.

52. The applicant also raises the complaint that this Court issued orders in HCCC No. 430 of 2012 which, in their view, had far-reaching consequences on the present matter, and had the effect of upsetting orders that have been in force for over twelve (12) years. This is notwithstanding a previous ruling that the two matters were unrelated and should be handled separately by different judges. I have already addressed the context in which matters relating to MOL were referred to this Court.

53. It bears reiterating that the administrative order issued by the Presiding Judge, directing the transfer of not only this suit but several other related matters, was part of a judicial case management initiative aimed at ensuring consistency in the handling of interconnected disputes. Such administrative actions, grounded in sound judicial practice, do not constitute evidence of bias or partiality.

54. Further, the applicant's allegation that the orders in HCCC No. 430 of 2012 had "far-reaching consequences" on this matter is vague and unsupported. The fact that a ruling may have procedural or substantive implications does not, without more, demonstrate bias. The law does not presume impartiality to be lost merely because a judicial officer presides over multiple related matters or

issues binding decisions. The complaint, therefore, falls short of the threshold required to establish a reasonable apprehension of bias.

55. By and large, in my analysis, the reasons advanced by the applicant in support of the recusal application pertain to decisions made by this Court in the exercise of judicial discretion in the course of administering justice. Any party aggrieved by such decisions has recourse to the appellate process. However, mere dissatisfaction with one or more rulings whether individually or cumulatively, does not, and cannot, amount to proof of bias. Judges are routinely called upon to make determinations that may not favour one party, but this, in itself, does not equate to a lack of impartiality.

56. Having carefully considered the grounds raised, I find that no good or legally sustainable basis for recusal has been demonstrated. I am not persuaded that a reasonable and informed observer, properly apprised of the full context and procedural history of this matter, would conclude that I am biased or that I have failed in my constitutional obligation to administer justice impartially and fairly.

57. On the contrary, the circumstances of this case are truly exceptional and warrant judicial notice. This matter has languished in the court system for nearly sixteen (16) years since its institution, a delay that is both inordinate and prejudicial to the fair and expeditious administration of justice.

58. Despite its age, the substantive hearing only commenced in 2025, further evidencing the degree of procedural stagnation that has plagued the case. The prolonged delay cannot be attributed to the ordinary pace of litigation but has been significantly compounded by the conduct of the parties, particularly through a litany of interlocutory applications.

59. Notably, the record also reflects at least six (6) separate applications for recusal, each targeting different judges seized of the matter at various stages. In addition, multiple complaints have been filed with the Judicial Service Commission, seeking the removal of judicial officers who have presided over the case. While a party has the right to seek redress where genuine concerns arise, the cumulative effect of these tactics suggests a pattern of conduct aimed less at securing justice and more at frustrating the judicial process. Such conduct strikes at the heart of the constitutional imperative under Article 159 of *the Constitution*, which requires that justice shall not be delayed and that it shall be administered without undue regard to procedural technicalities.

60. In my considered view, when assessed objectively, the facts presented in this application would not lead a reasonable and fair-minded observer, properly informed of all the circumstances and history of the matter, to apprehend bias or impropriety on the part of this Court in the exercise of its judicial functions.

61. The threshold for recusal is not grounded in the subjective perception of a litigant, but rather in the reasonable apprehension of bias assessed through the lens of an informed and impartial observer. The material before the Court discloses no such apprehension.

Disposition

62. The upshot of this is that I find no merit in the application and the same is dismissed. Given the nature of the application, I make no orders for costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 31 ST DAY OF JULY 2025.

F. MUGAMBI

JUDGE