



Joseph Ngigi t/a Joe Ngigi & Co. Advocate Formerly Ngaywa Ngigi & Kibet Advocates v Xplico Insurance Company Limited (Miscellaneous Civil Cause 8 of 2020) [2022] KEHC 459 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL CAUSE 8 OF 2020
MM KASANGO, J
MAY 26, 2022**

BETWEEN

JOSEPH NGIGI T/A JOE NGIGI & CO. ADVOCATE FORMERLY NGAYWA NGIGI & KIBET ADVOCATES APPLICANT

AND

XPLICO INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Joseph N. Ngigi, the advocate seeks one prayer of the application dated 1st April, 2021. By that prayer the applicant seeks:-

“That the honourable court be pleased to issue an order consolidating this matter with Kiambu High court Misc. No. 14 of 2020, Kiambu High Court Misc. 15 of 2020, Kiambu High Court Misc. No. 16 of 2020 and Kiambu High Court Misc. No. 48 of 2020.”

2. In support of that prayer, the advocate deponed that he was instructed by Xplico Insurance Company Limited(the client) to act in certain matters. This is what the advocate deponed:-

“That the judgment Debtor herein instructed the applicant, to act for the insured Defendant in Kiambu CMCC No. 247 of 2018, Mary Wanjiku Jomo vs. Laurine Joy Adhiambo, Simon Peter & Anor, Gatundu PMCC No. 385 Of 2018 Peter Muchiri Njuguna vs. Boniface Mbugua & Peninah Njoki Mbugua, Kiambu CMCC No. 270 of 2018 Thomas Mukuna vs. Jane Wairimu & Gabriel Munene, Gatundu Pmcc No. 267 of 2018 Ruto Kipkemoi Peter vs. Samuel Mungai & Gatundu PMCC No.294 Of 2018 Peter Wanyiri Njambi (minor suing through next friend Rose Njambi Kamonye) vs. Boniface Mbugua And Peninah Njoki Mbugua.



That thereafter, the judgment debtor failed to pay legal fees, thereby necessitating the filing of Advocate-Client Bill of Cost in Kiambu High Court Misc. Applications No. 08 of 2020, 014 of 2020, 015 of 2020, 016 of 2020 and 048 of 2020 of which judgment was entered on 18th March, 2021 for a total sum of (Kshs.621,598.00) and the application herein obtained a decrees to that effect (annexed and hereto marked 'JNN-1' is a true copy of the said decrees)

That the applicant has been unable to execute the decrees obtained and is unaware of the judgment Debtor's ability to satisfy the decrees due to the fact that the Defendant may have transferred, hidden and/or sold most of its properties and assets capable of satisfying the decree."

3. The client though served with the application did not file opposition to the same.

ANALYSIS

4. The advocate was instructed by the client, an Insurance firm, to act for its insured. Those are the matters reproduced above. The advocate taxed his Advocate/client Bill of costs and thereafter obtained judgment for the amount taxed. It is those matters where judgment has been obtained against the client that the advocate craves the orders for their consolidation.
5. There is no doubt that this Court has power to consolidate suits. In the case *Selecta Kenya Gmbh & Co. Kg vs. Chase Bank Kenya Limited & 2 Others* (2018) eKLR had this to say on the principals to be considered by a court when such an application is under consideration:-

"That the principles to consider were amply set out in the case of; Nairobi ELC Suit No. 1000 of 2012 Joseph Okoyo vs Edwin Dickson Wasunna (2014) eKLR, which cited with approval the case in Mombasa HCCC No. 992 of 1994 Nyati Security Guards and Services vs Municipal Council Of Mombasa wherein the factors were enumerated as follows:-

"the situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-

- (a) Some common question of law or fact arises in both or all of them; or
- (b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
- (c) For some other reason it is desirable to make an order for consolidating them."

17. That similarly in the Petition No. 14 of 2013 Law Society of Kenya vs Center for Human Rights And Democracy and 12 others (2014) eKLR, Supreme Court observed follows:-

"The essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it."

6. My consideration of the above principles is that the matters sought to be consolidated cannot be consolidated. This is because the matters relate to diverse matters where the insured requested the advocate to represent its insured. Although undoubtedly those matters will raise similar question in law, that is execution of the judgment they however do not arise from the same or series of transaction.



More importantly, however, they cannot be consolidated because they were determined once judgment was entered. There is no issue of law or fact outstanding to be determined in those matters.

7. The advocate may have sought the consolidation on the basis that, he in execution of the judgment he obtained the advocated is seeking to cross examine the directors of the client in all those matters to determine what property that the client (a corporation) owns and if such property can satisfy the decree: See Order 22 Rule 35 of the *Civil Procedure Rules*. Even if that is the basis of seeking consolidation once the advocate does find through such cross examination property which can be the subject of execution in one file all he needs do is proceed to execute on the property or properties in all the other matters. It is not desirable in my view for matters to be consolidated when there is no issue of law or fact to be determined. This is the position in this matter, that the only outstanding issue is the execution of the judgment entered in all the mattes sought to be consolidated. Accordingly, there is no merit in the prayer for consolidation.

Determination

8. The prayer for consolidation of suits Kiambu High Court Misc. No 14 of 2020, Misc. No. 15 of 2020, Misc. No. 16 of 2020 and Misc. No. 48 of 2020 is declined and dismissed. There shall be no order as to costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For applicant : - Kerini HB Mr. Ngigi

For Respondent : - No appearance

RULING delivered virtually.

MARY KASANGO

JUDGE

