



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 504 OF 2016

NATIONAL HOSPITAL INSURANCE FUND.....PLAINTIFF

VERSUS

BASELINE ARCHITECTS LIMITED.....DEFENDANT

RULING

1. This Ruling is on the plaintiff's application for the consolidation of this case and the case of **REBMAN AMBALO MALALA T/UJENZI CONSULTANTS Vs. NATIONAL HOSPITAL INSURANCE FUND BOARD of MANAGEMENT Hccc No. 25 of 2016**.
2. It is the plaintiff's contention that the rights and reliefs claimed, together with the factual positions taken by the parties in the 2 cases were the same.
3. Furthermore, the 2 cases were said to be in relation to the same subject matter, which is the **"SPECIALISED MEDICAL CENTRE of EXCELLENCE"**.
4. Therefore, the plaintiff believes that the consolidation of the 2 cases would save judicial resources and would also avoid any possibility of the courts arriving at different decisions on the same issues.
5. It is common ground that the National Hospital Insurance Fund Board of Management had decided to build the Specialized Medicial Centre of Excellence. In order to actualize the project, NHIF contracted **BASELINE ARCHITECTS LIMITED** as the project Architects, whilst **REBMAN AMBALO MALALA** Trading As **UJENZI CONSULTANTS** were appointed as the project Quantity Surveyors.
6. Therefore, the subject matter of the two cases is the same contract.
7. According to the plaintiff, both the cases were ready for trial, and both of them raise the same legal issues.
8. The main legal issues, as understood by the plaintiff, is the assertion that the Contract was illegal. Therefore, the plaintiff insists that the defendant cannot benefit from the said contract.
9. Of course, I appreciate that if the contract which is the subject matter bringing together the developer, the Quantity Surveyor and the Architect was illegal or unlawful, the court could not enforce it.
10. I also appreciate the fact that it is possible for one court to be persuaded that the contract was illegal or unlawful, whilst another court could come to a different conclusion.

11. Obviously, if the courts came to conclusions which were either inconsistent or contradictory, that would deal a serious blow to the confidence which the Judiciary ought to enjoy, for it to be deemed a dependable custodian of justice.

12. Therefore, it is advisable to consolidate 2 or more cases which were pending before the court if;

a) The same questions of law or of fact arose from the said cases; or

b) The reliefs or remedies claimed arose from the same transaction or a series of inter-connected transactions.

13. The consolidation of cases would then remove the possibility of inconsistent or contradictory decisions.

14. And because more than one case would be handled as if it were one case, that would expedite the trial, thus saving judicial time.

15. In a nutshell, the consolidation of cases is a useful tool to achieve expedition in the disposal of cases. It also serves to cut the costs and expenses which parties would otherwise have incurred if each case was heard separately.

16. In answer to the application, the Respondent submitted that the issues that arose from the 2 cases were completely different.

17. Having given due consideration to the particulars of the two cases I noted as follows;

a) In this case, NHIF seeks the setting aside of an Arbitral Award.

b) The existence of the Final Arbitral Award is confirmation that the arbitral tribunal had determined the matters in issue between NHIF and Baseline Architects.

c) The law governing the setting aside of arbitral awards is very specific and may not be expanded by either the parties or by the court.

d) The only relief sought in this case is the setting aside of the arbitral award.

e) Meanwhile, in Hccc No. 25 of 2016, the Quantity Surveyor is claiming Kshs. 1.3 Billion. That claim is founded upon Fee notes Nos. 5 and 6.

f) The NHIF has denied the claims in Hccc No. 25 of 2016.

g) Both parties in Hccc No. 25 of 2016 acknowledge that NHIF had challenged the jurisdiction of an arbitrator to determine the dispute between them.

h) In contrast, the dispute between NHIF and Baseline Architects had already gone through arbitration. In effect, the parties had agreed that the arbitrator had the requisite jurisdiction.

18. In the circumstances, the disputes in the 2 cases have followed completely separate procedures, which do not walk in tandem.

19. The only issue that is common to the cases, is the contention made by **NHIF**, that the contract was illegal.

20. Meanwhile, the arbitrator has already held that the contract between **NHIF** and Baseline Architects was Valid and Binding.

21. On the issue as to whether or not the contract was in breach of public policy, the arbitrator was persuaded that the Architects were properly and legally procured and commissioned by **NHIF**.

22. Therefore, if the 2 cases were to be consolidated that would imply that NHIF was being afforded a second opportunity to re-open the very same issues which had already been determined by the arbitrator.

23. The re-opening of issues which had already been determined by the arbitrator would be an affront to the finality bestowed on Final Arbitral Awards.

24. I therefore find that it would be most inappropriate to consolidate the 2 cases.

25. The application dated 30th January 2017 is dismissed, with costs to the respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 27th day of March 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Muyuri for the Plaintiff

Ameyo for the Defendants

Mr. C. Odhiambo, Court clerk.