



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 404 OF 2011

1. ROCHAMAN INVESTMENT LTD
2. TRADECOM HOLDINGS LTDPLAINTIFFS

VERSUS

DANIEL GICHURU NJUGI (t/a Gichuru & Gichuru,Advocates) DEFENDANT

R U L I N G

1. This ruling concerns **prayer D** of the **notice of motion dated 9th December 2011** in which the Defendant seeks transfer of this suit to the High Court at Machakos for hearing and disposal. The main case for the transfer sought is that there is a related suit pending before the High Court at Machakos, being **Machakos HCCC No. 226 of 2011**.

2. The present suit is between former clients (Plaintiffs) and their erstwhile advocates (Defendant). The cause of action is founded upon alleged professional negligence of the Defendant in connection with a certain transaction (sale/purchase of land). It is pleaded in the plaint that the Plaintiffs lost the entire purchase price paid, and related outgoings, on account of the Defendant's alleged professional negligence. The Plaintiffs seek to recover these losses from the Defendant. The Defendant has filed defence denying liability.

3. The Machakos case is by the present Defendant against the vendor in the transaction in which he acted for both the Plaintiffs herein (as purchasers) and the vendor, and also against other persons. The cause of action there is founded on fraud. The relief sought is a refund effectively of all the monies now claimed by the Plaintiffs in the present suit.

4. Indeed the two suits are related in that they are both founded on the same transaction that resulted in the loss to the Plaintiffs (the Nairobi suit) and possibly to the Defendant (the Machakos suit).

5. But the causes of action are distinct and different. The Nairobi suit is founded upon an advocate's alleged professional negligence. It is alleged that the Defendant was in breach of the professional duty of care that he owed to his clients (the Plaintiffs) to search the title of the property that the Plaintiffs were purchasing in order to ascertain that it was indeed registered in the name of the proposed Vendor. The Machakos case on the other hand is founded upon the alleged criminal fraud and conduct of a vendor and other persons.

6. It appears to me that the Nairobi suit can properly and expeditiously proceed here in Nairobi without any necessity to cross-refer it with the Machakos suit. Indeed, bringing the two suits together

would in my view bring no expedition to disposal of the suit, but would instead just muddle up the issues and therefore impede expeditious disposal of either or both suits.

7. I am therefore not persuaded that it is in the interests of justice to transfer this suit to Machakos. Prayer D of the notice of motion dated 9th December 2012 is therefore refused with costs to the Plaintiff. It is so ordered.

DATED AT NAIROBI THIS 13TH DAY OF MARCH 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 16th DAY OF MARCH 2012