



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL SUIT NO. 161 OF 2007**

**ALLAN GEORGE NJOGU.....1<sup>ST</sup>**  
**PLAINTIFF**  
**RESIDENCES COMPANY LIMITED.....2<sup>ND</sup>**  
**PLAINTIFF**  
**VERSUS**  
**NATIONAL BANK OF KENYA**  
**LTD.....DEFENDANT**

**RULING**

This is an application by way of Chamber Summons taken out under the provisions of Order XI Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks orders that the suit herein be consolidated with Eldoret HCCC. No. 95 of 2003 and that the costs of the application be in the cause. The application is grounded on the grounds that the two suits arise from a series of the same transaction and the same and similar questions of law and facts are involved in both suits.

The affidavit in support of the application is sworn by J. M. KISUNA who is the defendant’s Branch Manager at Eldoret. He swears that whereas the plaintiff herein is a limited liability Company the plaintiff in Eldoret HCCC. No. 95 of 2003, now sought to be consolidated with this case, is a director of the plaintiff in Eldoret HCCC. No. 95/2003. He adds that the plaintiff in Eldoret HCCC. No. 161/2007 was accorded banking facilities and other financial accommodations and when required to offer security for the same he offered properties Eldoret Municipality Block 6/111 owned by one Agnes Wamboi Kamau and another Uasin Gishu/Kimumu/79 registered in the name of the plaintiff in Eldoret HCCC. No. 95/2003 and hence the issues that arise are best heard and determined if both suits are consolidated. Mr. Tororei Counsel for the applicant submitted that the suits ought to be consolidated as the cause of action arose out of the same transaction.

In the Replying Affidavit sworn by Allan George Njogu Kamau it is admitted that he is the plaintiff in Eldoret HCCC. No. 95 of 2003 and a director of the Plaintiff in Eldoret HCCC. No. 161/2007. He attacks the application as being ill conceived malicious and baseless and denies that any money was advanced to the Company plaintiff in HCCC. No. 161 of 2007 and it was he who borrowed money as in HCCC. No. 95/2003. He states that the suits are radically different with dramatically different questions of law and facts and are therefore not suitable for consolidation. Learned Counsel Mr. Kimani submitted that the issues in the two suits are different and further that Eldoret HCCC. 95/2003 is partly heard and only the defence has to give its case while Eldoret HCCC. No. 161/2007 is not even ready for hearing.

I have considered the application. A perusal of the pleadings in both cases brings me to the conclusion that all the issues for determination the law and facts are exactly the same in both cases. The parties are related as director and company and one is the guarantor of the other as borrower. If the facts ended at that point these two cases would be perfect candidates for consolidation. However, it was alleged and it was not denied that Eldoret HCCC. 95/2003 is partly heard whereas Eldoret HCCC. No. 161/2007 is not ready for hearing. Consolidating the cases at those differing points of their prosecution would cause prejudice to some party and hence short of starting the hearing of Eldoret HCCC. No. 95/2003 de novo any consolidation would not serve the ends of fair trial and justice. For that reason alone this application is refused.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF DECEMBER 2010.**

**P. M. MWILU**

**JUDGE**

**In the presence of:-**

Advocate for the Applicants  
Advocate for the Defendant  
Court Clerk

**P. M. MWILU**

**JUDGE**