



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(MILIMANI COMMERCIAL COURTS) Civil Case 604 of 2004**

**APA INSURANCE .....PLAINTIFF**

**VERSUS**

**C. W. WANJHIA CO. ADOVOCATES.....DEFENDANT**

**RULING**

Chamber Summons dated 22/10/08 is brought under Sections 3A Civil Procedure Act and Order XI rule 1 and 2 Civil Procedure Act. Orders sought are the consolidation of suits No.Nairobi HCC No.604 of 2004 and CMCC No.1176 of 2007 and that the proceedings be conducted in suit Number HCC No.604 of 2004.

The application is based on the ground that the two suits are substantially the same subject matter and involved substantially the same parties. In HCC No.604 of 2004 A.P.A. Insurance Ltd. has sued for damages against C.W. Wanjihia & Co. Advocates and in CMCC 1176/2007 the plaintiff is C. W. Wanjihia & Co. Advocates suing A.P.A Insurance for costs.

The application is opposed. The grounds of opposition are that the application is fatally defective and ought to be dismissed, it is misconceived, frivolous and an abuse of court process. One of the cases in the magistrate's court and the point of law raise din CMCC No.1176 of 2007 is completely different from the issues of law herein.

I have read the affidavit filed by the applicant and sworn by Elizabeth Koskei. The consolidation is based on the main ground that the parties are the same and both deal with the relation of profession services rendered and costs of the advocate.

The authority relied upon that of Mount Kenya Sundries Ltd. & Another versus Kenya Ports Authority & Another, sought consolidation of two suits. The court found that the pleadings of the other suit sought to be consolidated were not attached to the application and therefore the application was dismissed.

In this case, I am of the view that the information contained in the affidavit explains the issues involved in the two suits. The other authority Nyati Security Guards and Services Ltd versus Municipal Council of Mombasa, the court pointed out that the grounds upon which consolidation may be ordered namely:-

- (i) Some question common of law or fact in both or all of them, or
- (ii) The rights or reliefs claimed are in respect of the same transaction or services transactions or
- (iii) For some other reason it is desirable to make or order consolidation.

In that case the court said that the suits to be consolidated should be in the same court.

In this application, it is my view that the two matters arise out of the same series of transactions relating to the performance of legal services by an advocate to his client. They arise out of same services, transactions and the parties are the same.

For purpose of consolidation, that is to save time and costs and effort and a multiplicity of suits, the two suits ought to be consolidated notwithstanding that they are in two different courts.

I allow the application and grant orders as prayed with costs in the cause.

Read, signed and delivered at Nairobi this 27<sup>th</sup> day of November, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**

The Deputy Registrar is directed to arrange for the two court files to be transferred to the High Court Registry and to be consolidated with this file.

**JOYCE N. KHAMINWA**

**JUDGE**