



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 125 of 2005**

**THE DEVCON GROUP LIMITED .....PLAINTIFF**

**V E R S U S**

**UNIVERSITY OF NAIROBI .....DEFENDANT**

**R U L I N G**

I have before me an application by chamber summons dated 5<sup>th</sup> October, 2006. It seeks, under Order 11 of the Civil Procedure Rules (the Rules), consolidation of this present suit with two others, Milimani HCCC No. 13 of 2005 and Milimani HCCC No. 225 of 2004. Under rule 1 of that Order, where two or more suits are pending in the same court, in which the same or similar questions of law or fact are involved, the court may either, upon the application of one of the parties, or of its own motion, at its discretion, and upon such terms as may seem fit, order a consolidation of such suits. Ultimately, the purpose of consolidation is to expedite hearing and disposal of the suits.

The application has been made by the Plaintiff in the present suit, THE DEVCON GROUP LIMITED. It is the defendant in the other two suits. The Defendant in the present suit, UNIVERSITY OF NAIROBI, is not a party in those other suits. The plaintiff in HCCC No. 13 of 2005 is MOHAWK LIMITED and in HCCC No. 225 of 2004 it is LANDMARK HOLDINGS LIMITED.

The Defendant in the present suit has opposed the application (grounds of opposition dated 10<sup>th</sup> January, 2006) upon the ground that there are no similar questions of law or fact in the three suits. The plaintiff in HCCC No. 13 of 2005 has also opposed the application (grounds of opposition dated 11<sup>th</sup> November, 2006) upon the main ground that HCCC No. 13 of 2005 is not pending as judgment was delivered therein and decree issued. The plaintiff in HCCC No. 225 of 2004 has also opposed the application (grounds of opposition dated 3<sup>rd</sup> November, 2006) upon the main ground that there are no similar issues of law or fact in the three suits.

I have considered the submissions of the learned counsels appearing. I have also perused the pleadings in the three suits. The present suit, HCCC No. 125 of 2005, arose out of a building contract between the University of Nairobi and the The Devcon Group Limited. The causes of action in the other two suits arose out of sub-contracts between The Devcon Group Limited and the plaintiffs therein. Beyond that, there is no connection whatsoever between the three suits, as there is no privity of contract between the University of Nairobi and Mohawk Limited, or Landmark Holdings Limited. There are no similar issues of law or fact in three suits.

Apart from that, HCCC No. 13 of 2005 is no longer pending; judgment was entered therein on 13<sup>th</sup> July, 2005 and decree issued. The suit is simply not available for consolidation as it is not pending.

There is another issue. It has been conceded that there were two previous related applications herein filed by the Plaintiff. The first one was by chamber summons dated 18<sup>th</sup> May, 2005. It sought an order that the present suit be declared a test suit and HCCC No. 13 of 2005 and HCCC No. 225 of 2004 be stayed pending hearing and determination of the test suit. That application was dismissed with costs on 14<sup>th</sup> June, 2005 for non-attendance. The Plaintiff then filed another similar application by chamber summons

dated 20<sup>th</sup> June, 2005. That application was struck out on 13<sup>th</sup> July, 2005 for being an abuse of the process of the court.

It seems to me that what the Plaintiff herein is seeking to do is delay or otherwise obstruct the course of justice in the other two suits. That cannot be permitted.

In the event, I must refuse the application by chamber summons dated 5<sup>th</sup> October, 2006. It is hereby dismissed with costs to all the other parties. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2007**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2007**