



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 1648 of 2001**

**BARCLAYS BANK (K) LTD.....PLAINTIFF**

**VERSUS**

**SIMON MURUCHI THIGA.....DEFENDANT**

**R U L I N G**

In this application (by chamber summons dated 23<sup>rd</sup> December, 2004) the Defendant seeks consolidation of this suit with Nairobi HCCC 2763 of 1997 (**Nation Newspapers Kenya Limited vs Simon Muruchi Thiga**) so that both may be heard and determined together. The application is brought under Order XI of the Civil Procedure Rules upon the grounds that similar questions of law and fact are involved in both suits; that the issues herein cannot be fairly determined without reference to the other suit; that the cause of action and/or events leading to institution of both suits is the same; and that no party will suffer any prejudice by consolidation.

The Plaintiff opposes the application upon the grounds of objection dated 17<sup>th</sup> February, 2005. Those grounds are that the application is incurably defective, misconceived and incompetent, and that it does not lie at all; that there is no nexus whatsoever between the two suits except that the defendant is common in both; and that the affidavits sworn in support of the application is incompetent and should be struck out.

I have given due consideration to the submissions of the learned counsels appearing. I have also perused the pleadings in both cases. To begin with, no arguments were advanced to support the ground that the application is incurably defective, misconceived and incompetent, or that it does not lie. I find none. I will consider the substantive issue, that is, whether or not these two suits are amenable to consolidation under Order XI. Under 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, and direct that further proceedings in any of such suits be stayed until further order. Both these suits are pending before this division. Are the same or similar questions of law or fact involved in the suits? In HCCC No. 2763 of 1997, Nation Newspapers Limited has sued Simon Muruchi Thiga for KShs.5,583,328/80 upon a newspaper distributorship agreement between them dated 24<sup>th</sup> October, 1995. In HCCC No. 1648 of 2001 Barclays Bank of Kenya Limited has sued Simeon Muruchi Thiga (apparently the same defendant as in the other suit, notwithstanding the different spelling of the first name) for KShs.7,716,519/00 in respect of a secured loan advanced to him together with accrued interest. It is apparent that in the earlier suit, Barclays Bank of Kenya Limited did not feature at all in the contract between Nation Newspapers Limited and Simon Muruchi Thiga. Likewise, Nation Newspapers Limited does appear to feature in the contract between Barclays Bank of Kenya Limited and Simeon Muruchi Thiga giving rise to the latter suit. However, in his defence in that suit the Defendant has mentioned Nation Newspapers Limited and pleaded that Barclays Bank of Kenya Limited irregularly released to them some KShs.2,000,000/00 that Barclays Bank of Kenya had guaranteed. But nothing is pleaded against Nation Newspapers Limited. It appears to me that questions of fact cannot be the same or similar in both suits in spite of this mention of Nation Newspapers Limited in the latter suit. What about questions of law? In HCCC No. 2763 of 1997, issues of ordinary contractual law will be involved. But in HCCC No. 1648 of 2001, the law involved will be that of charges and guarantees.

I am in the event not satisfied that similar questions of law or fact are involved in these two suits. It

will not be expedient for them to be consolidated. I must therefore refuse the application. It is hereby dismissed with costs. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 16<sup>TH</sup> DAY OF JUNE, 2006.**