

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 992 OF 1994

NYATI SECURITY GUARDS & SERVICES LTD. PLAINTIFF

- Versus -

MUNICIPAL COUNCIL OF MOMBASA DEFENDANT

R U L I N G

This case is partly heard. During the hearing on the 17th December 2004 Mr. Kiarie while leading P.W.1 in examination in chief sought to refer to HCCC No. 198 of 1994 (case No. 198/94). Mr. Mutubia for the defendant objected. Mr. Kiarie contended that this case had been consolidated with HCCC No. 198/94 which contention Mr. Mutubia discounted. I adjourned the hearing to peruse HCCC No. 198/94 which I have done along with the proceedings in this case. There is no order for consolidation.

On 14th January 2004 when this case came up for mention Mr. Kiarie orally applied to consolidate it with HCCC No. 198/94. Mr. Mutubia had no objection to the oral application for consolidation but opposed the consolidation itself. While conceding that the two suits arise from the same agreement between the parties Mr. Mutubia argued that the application was being made too late in the day this case having been partly heard. He also argued that to grant the order for consolidation will deny the defendant the defence of abuse of the process of the court in that the plaintiff instead of amending the plaint in HCCC No. 198/94 it filed this suit.

Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.

The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-

1. some common question of law or fact arises in both or all of them; or
2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
3. for some other reason it is desirable to make an order for consolidating them.

The circumstances in which suits can be consolidated are broadly similar to those in which parties may be joined in one action. Accordingly, actions relating to the same subject matter between the same plaintiff and the same defendant, or between the same plaintiff and the same defendant, or between the same plaintiff and different defendants or between different plaintiffs and the same defendants may be consolidated.

There are however situations where consolidation is undesirable like where in two action a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counterclaim in the other. The other situation where consolidation is undesirable is where the plaintiffs in two or more actions are represented by different advocates. In such situation the hearing will be longer than take long and the purpose of saving time will be defeated.

In these cases, the plaintiff is the same in both as the defendant is. Admittedly the causes of action arise from the same agreement. There is no doubt that the court has, under Order 11 Rule 1 a discretion to

order consolidation on application or suo moto . Order 11 does not state when the application should be made. Ideally it should be made as soon as possible at any rate before any of the suits is heard. In this case P.W.1 has not completed his evidence in chief. Objection was raised when he was being led on evidence relating to HCCC No. 198/94.

Mr. Kiarie has confirmed that if consolidation is ordered he will not seek to repeat the evidence already adduced but will proceed from where he has reached. I do not see any prejudice that will be caused to the defendant if consolidation is ordered. To the contrary consolidation will save costs and time for both parties. Accordingly I allow the plaintiff's oral application for consolidation and order that this case be and is hereby consolidated with HCCC No. 198/94.

DATED this 20th day of January 2004.

D.K. Maraga

Ag: JUDGE