



**REPUBLIC OF KENYA**  
**1 METCHEM E A LTD V JOSEPH KARUGA KOINANGE**  
**High Court of Kenya at Nairobi December 20, 2000**  
**Milimani Commercial Courts**  
**T Mbaluto, Judge**  
**Civil Case No 821 of 1996**

December 20, 2000 T Mbaluto delivered the following ruling. This application has been brought under sections 3A and 63(e) of the Civil Procedure Act as well as Order XI Rules 1 and 2 of the Civil Procedure Rules for the consolidation of High Court Civil Suit No 821 of 1996 and High Court Winding Up Case No 25 of 1997. The applicant Mr Andres Holzheimer is the 2nd plaintiff in HCCC No 821 and the managing director of Metchem East Africa, the 1st plaintiff in the same suit. The defendant in the suit is Joseph Karuga Koinange, who is a shareholder of the 1st plaintiff in HCCC No 821. Mr Koinange is at the same time the Petitioner in the Winding Up Cause and has named Mr Andres Holzheimer as the respondent in the Petition. The company sought to be wound up is the 1st plaintiff in HCCC No 821 of 1996.

The reasons advanced for seeking to consolidate the two matters are said to be that similar questions of law and fact are involved in both matters which are now pending in this court and consolidation of the matter will avoid duplication of proceedings and multiplicity of suits. Because of those reasons, it is argued that it will be just, convenient and expedient from all the parties involved if the two matters are consolidated and heard as one. Mr Koinange opposes the application on the ground that the two matters which the applicant seeks to have consolidated do not raise the same or similar questions of law or fact.

In my view, even if similar issues of law and fact arose in both matters, there is no provision in our laws for the consolidation of a suit and a winding up cause notwithstanding the fact that the definition of a suit in the Civil

Procedure Act is wide enough to include a winding up cause. I say so because the two types of proceedings are governed by two entirely different legal regimes with regard to both substantive and procedural law and irrespective of the nature of the issues involved, it is simply not feasible to try a suit and a winding up case together. Such a move would in my view create confusion and chaos in the proceedings.

For the above reasons, I am of the opinion that the application to consolidate the two matters is misconceived and must be dismissed with costs. It is so ordered.