



**Jiangxi Water and Hydropower Construction Kenya Limited v  
Infolite Technologies Limited (Miscellaneous Civil Suit 362 of 2025)  
[2025] KEHC 12761 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12761 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL SUIT 362 OF 2025  
BK NJOROGE, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**JIANGXI WATER AND HYDROPOWER CONSTRUCTION KENYA  
LIMITED ..... APPLICANT**

**AND**

**INFOLITE TECHNOLOGIES LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant filed the Notice of Motion dated 8<sup>th</sup> April 2025 seeking the following orders;
  - a. The Court withdraws the suit Nairobi Scomm E17446/2024 – Infolite Technologies Limited v Jiangxi Water And Hydropower Construction Kenya Limited pending before the Small Claims Court at Nairobi and thereafter transfer the same for hearing and disposal before the Chief Magistrates Court at Nairobi.
  - b. Upon withdrawal and transfer of Nairobi SCCOM E17446/2024 Infolite Technologies Limited v Jiangxi Water And Hydropower Construction Kenya Limited to the Chief Magistrates Court at NAIROBI, the court orders that the same be consolidated with MCCOMSU E394/2025 Jiangxi Water And Hydropower Construction Kenya Limited v Infolite Technologies Limited.
  - c. Costs of this application be provided for.

**Background facts**

2. The Application is supported by the Affidavit of Tabitha Okayawho stated that the Respondent has filed a claim at the Small Claims Court in Nairobi SCCOMM E17446/2024 – Infolite Technologies



Ltd v. Jiangxi Water & Hydropower Construction Kenya Ltd, which is set for hearing on 9th April 2025. Given the requirement under Section 34 of the *Small Claims Court Act* that all matters be concluded within 60 days, there is a risk that judgment may be entered in the Small Claims matter without the Applicant's cross-suit and set-off being heard, thereby causing significant prejudice to the Applicant.

3. To safeguard its rights, the Applicant has filed a separate suit before the Magistrates Court [MCCOMSU E394/2025 – Jiangxi Water & Hydropower Construction Kenya Ltd v. Infolite Technologies Ltd] seeking loss of income, general damages for unfair business practice, and breach of confidentiality. These claims exceed the pecuniary jurisdiction of the Small Claims Court, hence could not be raised as a Counterclaim in that forum. The Applicant therefore maintains that unless the present application is allowed, it will be deprived of an opportunity to ventilate its dispute before a Court with proper jurisdiction.
4. In response, the Respondent filed Grounds of Opposition 10<sup>th</sup> May 2025 on the following grounds:
  - a. The Small Claims Court has pecuniary jurisdiction to handle SCCCOMM/E174446/2024 as the amount claimed is less than Kshs. 1 million.
  - b. The Magistrate court has no jurisdiction to handle MCCOMSU/E394/2025 as the same is based on a contract with an arbitration clause.
  - c. The two suits SCCCOMM/E174446/2024 and MCCOMSU/E394/2025 are distinct and arise out of different contracts. The SCCCOMM/E174446/2024 arises out of the Purchase Order dated 9<sup>th</sup> April, 2021 while MCCOMSU/E394/2025 arises out of the agreement dated 29<sup>th</sup> May 2020.
  - d. The agreement dated 29<sup>th</sup> May 2020, which gave rise to MCCOMSU/E394/2025, has an arbitration clause, while the Purchase Order dated 9<sup>th</sup> April 2021, which gave rise to SCCCOMM/E174446/2024, was a verbal contract with no arbitration clause.
  - e. The court cannot refer a matter to a court with no jurisdiction to handle the matter.

#### **Issues for determination**

5. Having considered the submissions by the parties, the Application and the Grounds of Opposition; the Court finds that there is only one issue for determination.
  - a. Whether the Court should withdraw suit NairobiSCCOMM E17446/2024 – Infolite Technologie Limited v Jiangxi Water And Hydropower Construction Kenya Limited pending before the Small Claims Court at Nairobi and transfer the same for hearing and disposal before the Chief Magistrates Court at Nairobi.

#### **Analysis**

6. It was the Applicant's case that the Court withdraws and transfers the suit in the Small Claims to the Magistrate Court and order that the same be consolidated.
7. However, the Respondent contended that the two suits arise out of different contracts and are not therefore related, though they involve the same parties. The SCCCOMM/E174446/2024 arises out of the Purchase Order dated 9<sup>th</sup> April, 2021 while MCCOMSU/E394/2025 arises out of the agreement dated 29<sup>th</sup> May 2020.



8. The transfer of suit is provided for under Section 18 of the *Civil Procedure Act* which reads;

“ 18. Power of High Court to withdraw and transfer case instituted in subordinate court

[1] On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

[a] transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

[b] withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

[i] try or dispose of the same; or

[ii] transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

[iii] retransfer the same for trial or disposal to the court from which it was withdrawn.

[2] Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

9. The Applicant argued that it has filed a suit before the Magistrates Court at Nairobi being MCCOMSU E394/2025 Jiangxi Water And Hydropower Construction Kenya Limited v Infolite Technologies Limited. This is specifically with regard to the amount claimed for loss of income/ profit, general damages for unfair business practice and breach of confidentiality. This places the subject value of the suit beyond the jurisdiction of the Small Claims Court. The said claim before the Magistrates Court exceeds the Pecuniary Jurisdiction of the Small Claimant Court, and hence the Applicant could not file a Counterclaim in the Small Claims Court.

10. It is notable that the Applicant has attached the Complaint dated 17<sup>th</sup> February 2025 before the Magistrates' Court. In the Complaint, the Applicant herein prayed for judgment against the Defendant for;

a. Refund of the amount used in repairs Kshs.1,563,100.

b. The Defendant be ordered to refund the Plaintiff the sum of Kshs,5,220,000 being the amount received on account of substandard works which were wholly condemned.

c. Kshs.9, 000, 000 being interest on the withheld retention money from 9<sup>th</sup> July 2024 until 8<sup>th</sup> April 2025 when the suit was filed.....



11. On the other hand, the Respondent's claim before the Small Claims Court sought the recovery of Kshs.599, 203 for the work done.
12. The jurisdiction of the Small Claims Court under the *Small Claims Court Act* is provided for under Section 12 of the Act and it states;
  12. Nature of claims and pecuniary jurisdiction
    - [1] Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
      - [a] a contract for sale and supply of goods or services;
      - [b] a contract relating to money held and received;
      - [c] liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
      - [d] compensation for personal injuries; and
      - [e] set-off and counterclaim under any contract.
    - [2] Without prejudice to the generality of subsection [1], the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
    - [3] The pecuniary jurisdiction of the Court shall be limited to one million shillings.
    - [4] Without prejudice to subsection [3], the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the Court as the Chief Justice thinks fit.
13. Going by the above provision, it is indeed clear that the Counterclaim exceeds the pecuniary jurisdiction of the Small Claims Act. It is therefore the Court's considered view that it will be against the interest of justice to lock out the Counterclaim on account of the exceeding pecuniary jurisdiction.
14. Therefore, it is only just and fair for both parties to have the suit withdrawn and transferred from the Small Claims Court to the Magistrate's Court.
15. On the issue of consolidation, the principles to consider were amply set out in the case of; Nairobi ELC Suit No. 1000 of 2012 Joseph Okoyo v Edwin Dickson Wasunna [2014] eKLR, which cited with approval the case in Mombasa HCCC No. 992 of 1994 Nyati Security Guards and Services v Municipal Council of Mombasa wherein the factors were enumerated as follows; -
 

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

  - [a] Some common question of law or fact arises in both or all of them; or
  - [b] The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
  - [c] For some other reason it is desirable to make an order for consolidating them.”
16. Are there common questions of law or fact that arise in both or all suits; or are the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions? At Paragraph 5 of the Applicant's plaint dated 17<sup>th</sup> February 2025, the Claim is based on the contract dated 29<sup>th</sup> May 2020. While Paragraph 4 [ii] of the Claim at the Small Claims Court, the Respondent stated that the



claim arose from an agreement in 2020 and an LPO issued in April 2021. The reliefs sought arise from a series of the same transactions.

17. It is also common ground that the Respondent was contracted to supply materials and waterproof the apartment. The Respondent claims that the Applicant declined to pay the Respondent for the waterproofing work for the generator room and guard house, while the Applicant seeks a refund of the amount already paid to the Respondent on account of substandard works. Therefore, the reliefs claimed arise out of the same transaction.
18. In light of the above, the Court concludes that it is indeed desirable to make an order of consolidation of the suits.
19. The court associates itself with the holding in *Petition No. 14 of 2013 Law Society of Kenya v Center for Human Rights and Democracy and 12 Others* [2014] eKLR, where the Supreme Court observed as follows:

“The essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”
20. The Court also notes that the High Court has previously exercised this discretion to transfer a Small Claims suit to the Magistrates Court in *Njoroge v Karimi* [2023] KEHC 21556 [KLR].
21. The Application is hereby allowed. The Court withdraws the suit *Nairobi SCCOMM E17446/2024 – Infolite Technologies Limited v Jiangxi Water And Hydropower Construction Kenya Limited* pending before the Small Claims Court at Nairobi and hereby transfers the same for hearing and disposal before the Chief Magistrates Court at Nairobi. In addition, the two suits will be consolidated.
22. The Respondent resists the transfer citing an Arbitration clause in the contract relating to the matter pending before the Magistrates Court. This Court notes that nothing precludes the Respondent from raising that issue for consideration by this Court, despite the granting of the orders herein. This Court is minded that it should make orders that facilitate the just use of the precious and limited judicial time. Having the rival claims heard by one Court will achieve that objective.
23. As to Costs, the fair order is that the costs of the application will abide the trial in the consolidated suit.

### **Determination**

24. The Applicant’s Application by way of Notice of Motion dated 8th April 2025 is allowed in the following terms;
  - a. The Court withdraws the suit *Nairobi SCCOMM E17446/2024 – Infolite Technologies Limited v Jiangxi Water And Hydropower Construction Kenya Limited* pending before the Small Claims Court at Nairobi and thereafter transfer the same for hearing and disposal before the Chief Magistrates Court at Nairobi.
  - b. Upon withdrawal and transfer of *Nairobi SCCOM E17446/2024 Infolite Technologies Limited v Jiangxi Water And Hydropower Construction Kenya Limited* to the Chief Magistrates Court at Nairobi, the Court orders that the same be consolidated with *MCCOMSU E394/2025 Jiangxi Water And Hydropower Construction Kenya Limited v Infolite Technologies Limited*.
  - c. The costs of this application do abide the pending trial in the consolidated suit.



25. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**NJOROGE BENJAMIN. K.**

**JUDGE**

In the presence of: -

Mr. Eredi for the Applicant

Mr. Odhiambo for the Respondent

Mr. Wabwire - Court Assistant.

