



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO. 25 OF 2016

REBMAN AMBALO

T/A UJENZI CONSULTANTS PLAINTIFF

-VERSUS-

NATIONAL HOSPITAL INSURANCE FUND.....DEFENDANT

R U L I N G

1. Before me is a Notice of Motion application dated 22nd September 2017. It is filed by National Hospital Insurance Fund (NHIF), the Defendant. The Defendants seeks, by that application, the consolidation of this suit with **HCC No. 176 of 2017 PROFESSIONAL CONSULTANTS LIMITED –V- NATIONAL HOSPITAL INSURANCE FUND.**

2. The Defendant premised the Application on the grounds that the contracts between the Defendant and the Plaintiffs in both suits relates to the design and construction of “**Special Medical Center of EXCELLENCE**” on **Plot Number 224968/2** in Karen; that similar questions of Law are involved in both matters; consolidation will save judicial resources and avoid the Court arriving at different decision on the same issue; and consolidation of the suits will expedite the hearing and disposal of those suits. The Defendant also relied on the ground that it advanced similar defences in both matters.

3. Only the Plaintiff in **HCCC 176 of 2017** (hereinafter referred to as Professional & Consultants) filed an Affidavit in opposition. By that Affidavit it was deponed that the Plaintiff Professional Consultants had sued for professional fees for services rendered in respect to the Defendant’s project at **LR No. 224968/2** Karen. Further that Professional Consultants was appointed in accordance with the Association of Consulting Engineers of Kenya (ACEK) Conditions of Engagement and scale of fees. The Professional Consultants claim is largely based on non-payment, by the Defendant, of its professional fees.

ANALYSIS AND DETERMINATION

4. The Court in the case **KENYA ARMED FORCES OLD COMRADES ASSOCIATION REGISTERED TRUSTEES –V- REGISTERED TRUSTEES OF AGAPE FELLOWSHIP CENTRE (2004) eKLR** considered the principle which should guide the Court when considering consolidation of suits and state:

“Where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered”.

5. Is there a common question of law or fact in these two cases? Unfortunately I was unable to trace in the Court file the defence in **HCCC Number 25 of 2016** and **HCCC 176 OF 2017.**

6. Having perused those two plaints it is clear that in HCCC 176 of 2017 Professional Consultants, the Plaintiff, has sued NHIF for non-payment for services rendered for engineering services on the NHIF Project on Plot Number 224968/2 Karen. Similarly the Plaintiff in HCCC 25 OF 2016 Ujenzi Consultants have sued for non-payment, by the Defendant, on their engagement as quantity surveyor in the Defendant’s project at Karen. That is the same project that Professional Consultants were engaged.

7. I do not accept contention of Professional Consultants that the two suits raise different factual, evidential and legal points. I find that there is merit in consolidation of the two suits. In making that finding I am guided by the case **NYATI GUARDS & SECURITY LTD –V- MOMBASA MUNICIPAL COUNCIL HCCC No. 992 of 1994** where the Court held that the basis of ordering consolidations would be:

- i. Some common questions of law or fact arising out of both or all of the matters;
- ii. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series or transaction;
- iii. For some other reasons it is desirable to make an order for consolidation.

8. In these two cases the contracts involved the same project. The claims by both Plaintiff are for non-payment for services rendered. In all probability the Defendant will call the same witnesses in both the claim. And if, as stated by the Defendant which was not denied by the Plaintiff, that the Defendant's defence in both cases are the same then it is desirable that both suits be consolidated. I shall therefore order for consolidation of both suits. The interest of justice will best be served by order that the costs be in the cause.

9. Accordingly the orders of the Court are:

a. HCCC No. 25 of 2016 is hereby consolidated with HCCC 176 of 2017. In that regard the Lead file shall be HCCC 25 OF 2016.

b. The title of this case shall henceforth be as follows:

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI COMMERCIAL DIVISION

MILIMANI LAW COURT

CIVIL CASE NO. 25 OF 2016

AS CONSOLIDATED with CIVIL CASE NO. 176 of 2017

REBMAN AMBALO MALALA T/A

UJENZI CONSULTANT.....1st Plaintiff

PROFESSIONAL CONSULTANTS LIMITED.....2nd Plaintiff

-VERSUS-

NATIONAL HOSPITAL INSURANCE FUND.....Defendant

c. The costs of the Notice of Motion dated 22nd September 2017 shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MARCH, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT