



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO. 651 OF 2012**

**AIRTEL NETWORKS KENYA LIMITED.....PLAINTIFF**

**-VERSUS-**

**PETER WAHINYA MUIRURI..... 1<sup>ST</sup> DEFENDANT**

**ANTHONY OMARIBA OMWENGA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This Ruling is one the **Notice of Motion** dated **30<sup>th</sup> October 2018** filed by **Airtel Networks Kenya Limited** (hereinafter referred to as Airtel). Airtel is the Plaintiff in this matter.
2. Airtel is a telecommunication network which is registered with the Communication Authority of Kenya as a branch of Bharti Airtel International Netherland (BV). It has its offices in Nairobi.
3. **Peter Wahinya Muiruri**, the 1<sup>st</sup> Defendant, was a former employee of Airtel from 1<sup>st</sup> March to 1<sup>st</sup> October 2012. He was employed as the Head of Cash and Banking.
4. By the Notice of Motion before me Airtel seeks an order for consolidation of the case Nairobi HCCC No 1777 of 2018 Peter Wahinya Muiruri vs. Airtel Networks Kenya Limited with this present suit.
5. That application is supported by an affidavit of the Learned Advocate for Airtel, namely Steve Luceno.
6. In that affidavit Airtel stated that this present case was filed seeking, inter-alia for money allegedly obtained and/or siphoned by the 1<sup>st</sup> Defendant whilst he was in the employment of Airtel. Anthony Omariba Omwenga, the 2<sup>nd</sup> Defendant herein was sued as one of the person through whom the 'siphoned' money was channel through. There is judgment for Airtel against the 2<sup>nd</sup> Defendant.
7. There were criminal proceedings against both Defendants in respect to the loss of money suffered by Airtel. The 2<sup>nd</sup> Defendant was convicted while the 1<sup>st</sup> Defendant was acquitted.
8. During the pendency of this suit the 1<sup>st</sup> Defendant filed HCC No. 177 of 2018 Peter Wahinya Muiruri vs. Airtel networks Kenya Ltd.
9. There is no dispute that the case HCCC No 177 of 2018 filed by 1<sup>st</sup> Defendant is closely related to this suit.
10. In HCCC 177 of 2018 the 1<sup>st</sup> Defendant pleads he was employed by Airtel; that he was arrested and prosecuted for the loss of Airtel money; that this present suit was filed by Airtel against him and the 2<sup>nd</sup> Defendant; that Airtel obtained in this present, on 15<sup>th</sup> October 2012, orders which amongst other orders restrained him from transacting with his properties, motor vehicles, bank accounts and shares; and the 1<sup>st</sup> Defendant also pleaded that he was defamed by Airtel by publications made in the newspapers. The 1<sup>st</sup> Defendant then, in his final prayers in that HCCC No. 177 of 2018 sought the following prayers:

***a) Damages for malicious prosecution.***

***b) Kshs. 3,654,353 being interest on funds which were held by Equity bank on the strength of freezing order issued in civil Case***

651 of 2012 Airtel Networks Kenya Limited v Peter Wahinya Muiruri & Another.

c) Kshs. 4,969,51 interest on the deposit on Kshs. 3,200,000.00 paid to Nextgen Office Suits Ltd. From the date of issuance of the freezing order in Civil case Number 651 of 2012 Airtel Networks Kenya Limited v Peter Wahinya Muiruri & Another.

d) Costs of this suit.

e) Interest at Court rates.

f) Any other or further relief that this honourable Court may deem fit to grant in favour of the Plaintiff.

11. It will be seen in the above prayers this present case, that is HCCC 651 of 2012, is integral part of 1<sup>st</sup> Defendant suit HCCC No. 177 of 2018. In view of that very clear indication I find it hard to accept the opposition raised by the 1<sup>st</sup> Defendant to the Notice of Motion that there is no common question of law or fact in the two cases.

12. It is worth referring to a decision of justice G. V. Odunga in the case **REPUBLIC V WATER RESOURCES AUTHORITY (WRA) & GEMS MANAGEMENT LIMITED & OTHERS [2018] eKLR** where he stated thus relying on another decision:

**“HILTON WALTER NABONGO OSINYA & ANOTHER VS SAVINGS & LOAN (K) LIMITED & ANOTHER NAIROBI HCCC NO 274 OF 1998** Ringera, J (as he then was) held that:

*“The whole point of consolidating suits is to enable common questions of law and facts to be tried together in the same forum with a view to saving judicial time and avoiding the possibility of conflicting decisions on the same issues by different Courts. A consolidated trial of two actions results in one common decree and there is no question of abandoning any of the suits.”*

13. I am of the firm view that justice will best be served by hearing the two suits together. The appropriate order is that HCCC No. 177 of 2018 be consolidated and be heard together with this suit. In the consolidated suit HCCC No. 651 of 2012 shall be the lead file.

14. I therefore make the following orders:

a) This suit is hereby consolidated with Nairobi HCCC No. 177 of 2018 Peter Wahinya Muiruri Vs. Airtel Networks Kenya Limited. HCCC No. 651 of 2012 shall be the lead file.

b) An order is hereby issued for the transfer of HCCC 177 of 2018 from the High Court Civil Division to the Commercial & Tax Division of the Milimani Law Courts Nairobi. The Deputy Registrar of this Court shall extract this order to facilitate the said transfer.

c) At the reading of this Ruling, the Court will give a mention date for the Court to confirm the transfer as ordered in (b) above.

d) The costs of the Notice of Motion dated 30<sup>th</sup> October 2018 shall be in the cause of the consolidated suit.

DATED, SIGNED and DELIVERED at NAIROBI this 9<sup>TH</sup> day of MAY, 2019.

MARY KASANGO

JUDGE

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

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

.....FOR THE 1<sup>ST</sup> DEFENDANT

..... FOR THE 2<sup>ND</sup> DEFENDANT