



Development Bank of Kenya Limited v INC Supplies Limited (Commercial Case E099 of 2024) [2025] KEHC 15431 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E099 OF 2024
MN MWANGI, J
OCTOBER 24, 2025**

BETWEEN

DEVELOPMENT BANK OF KENYA LIMITED APPELLANT

AND

INC SUPPLIES LIMITED RESPONDENT

RULING

1. The appellant filed a Notice of Motion application dated 22nd November 2024 brought under the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 11 Rule 3 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all enabling provisions of the law seeking orders that HCCOMMA No. E099 of 2024 and HCCOMMA No. E252 of 2024, both between Development Bank of Kenya v INC Supplies Limited, be consolidated and that upon consolidation, the Court issues appropriate directions for the just disposal of the said Appeals.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Chris Gachiri, the appellant's Principal Legal Counsel. Mr. Gachiri averred that this Appeal was filed vide a Memorandum of Appeal dated 18th April 2024, accompanied by an application dated 26th April 2024. He explained that the Appeal arose from the ex parte discharge of stay of execution orders by Hon. C.K. Cheptoo, which led to irregular and unfair execution against the appellant amounting to Kshs.5,862,143.25. Mr. Gachiri stated that on 30th April 2024, this Court directed that the issues raised in the interim application accompanying the Appeal be canvassed in the first instance before the Trial Court, and an update be provided thereafter. He averred that in compliance with those directions, the appellant filed an Amended Notice of Motion dated 7th June 2024 before the Trial Court, which was subsequently dismissed on 9th August 2024.



3. He stated that being dissatisfied with that Ruling, the appellant filed a second Appeal being HCCOMMA No. E252 of 2024, Development Bank of Kenya v INC Supplies Limited, vide a Memorandum of Appeal dated 3rd September 2024. Mr. Gachiri asserted that this Appeal and HCCOMMA No. E252 of 2024 raise common issues of law and fact, particularly on whether the discharge of the stay of execution orders and the resultant execution were irregular, that they both emanate from the same transaction and Ruling by Hon. Cheptoo, and that they seek similar reliefs, including refund of the decretal sum and the Auctioneer's costs following a declaration that the execution proceedings were irregular. He stated that it is in the interest of justice for the two Appeals to be consolidated to promote judicial economy, avoid duplication of proceedings, and to ensure the just and expeditious determination of the matters.
4. In opposition to the application, the respondent filed a replying affidavit sworn on 26th November 2024 by Mr. Robert Migaode, a Director of the respondent company. He averred that of the both Appeals sought to be consolidated are fatally defective and incompetent for want of leave to Appeal, as the Rulings and Orders from which they arise are not appealable as of right. Mr. Migaode contended that the above notwithstanding, there is no justification for consolidation of the two Appeals, since they concern different issues of law, one relating to the discharge of ex parte orders and the other involving limitation of time, setting aside of the default Judgment and leave to file pleadings out of time.
5. The application herein was canvassed by way of written submissions. The appellant's submissions were filed on 17th January 2025 by the law firm of KOMM Advocates. This Court however notes that although Mr. Odera, learned Counsel for the respondent, informed this Court on 10th March 2025 that the respondent's submissions were dated 4th March 2025, there is no record or evidence of the said submissions having been filed or uploaded on the Case Tracking System (CTS) or placed on the Court record.
6. Mr. Oyando, learned Counsel for the appellant cited the provisions of Order 11 Rule 3 of the Civil Procedure Rules, 2010, and the Supreme Court of Kenya holding in the case of the Law Society of Kenya v Centre for Human Rights and Democracy & 12 others (Petition 14 of 2013) [2014] KESC 29 (KLR) and the case of Arnold Kipkirui Langat v Atticon Limited & 7 others [2021] KEHC 5624 (KLR), and submitted that the principles governing consolidation of suits include that the suits must raise common questions of law and fact, and the reliefs claimed must arise from the same transaction or series of transactions, and that it must otherwise be convenient and just to consolidate them. Counsel maintained that all the above principles have been satisfied, hence it is in the interest of justice to consolidate the two Appeals in order to avoid multiplicity of proceedings and prevent conflicting outcomes. Counsel asserted that no party will suffer prejudice if the Appeals are consolidated. He asserted that consolidation will serve the ends of justice.

Analysis and Determination.

7. I have considered the application herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the respondent and the written submissions by Counsel for the appellant. The issue that arises for determination is whether two Appeals filed by the appellant herein should be consolidated.
8. The jurisdiction of this Court to make an order for consolidation is derived from Order 11 Rule 3 of the Civil Procedure Rules, 2010, which empowers Courts to make such directions as may be necessary for the just, expeditious, and efficient disposal of cases. The Supreme Court in the case of



Law Society of Kenya v Center for Human Rights & Democracy & 12 others (supra), addressed the issue of consolidation of suits and held that -

The essence of consolidation 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 intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.

9. The principles governing consolidation of suits have been settled in various decisions, including the case of Nyati Security Guards & Services Ltd v Municipal Council of Mombasa [2000] eKLR, where the Court in dealing with an application for consolidation of suits held as hereunder -

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

- a. Some common questions of law or fact arises in both or all of them;
 - b. The rights or reliefs claimed in them are in respect of the same transactions;
 - c. For some other reasons, it is desirable to make an order for consolidating them.
10. Consolidation of suits serves as a procedural tool that enables Courts to promote efficiency, prevent duplication of proceedings, and avoid the risk of conflicting decisions where several matters involve related issues. In essence, where two or more suits are pending before the same Court and raise common questions of law or fact, or where the rights or reliefs sought arise from the same transaction, Courts may direct that such suits be heard together. The overarching purpose of consolidation is to save judicial time and resources, ensure consistency in Judgments, and achieve the fair and expeditious determination of disputes.
11. It is evident from the pleadings on record that this Appeal and HCCOMMA No. E252 of 2024 both arise from Rulings delivered by Hon. B. M. Cheloti in MCCOMMSU No. E643 of 2023 on 12th April 2024 and 9th August 2024. Following the filing of this Appeal, the appellant filed a Notice of Motion application dated 26th April 2024 seeking orders to freeze a sum of Kshs.5,862,143.25 held in account number 0100004760648 under the name of Odera Obar & Co. Advocates at Stanbic Bank Kenya Ltd, to be preserved as security pending the hearing and determination of the Appeal. In the alternative, the appellant sought an order compelling the respondent to deposit the said amount, being the decretal sum together with Auctioneer's costs, in Court within seven (7) days.
12. After this Court perused the said application, it directed the parties to first address the issues raised therein before the Trial Court, including the prayer set out in paragraph 4, and thereafter to update this Court on the outcome of the Trial Court's directions. The appellant complied with those directions, and its application was dismissed by the Trial Court in a Ruling delivered on 9th August 2024. Subsequently, the appellant instituted HCCOMMA No. E252 of 2024 to challenge the said Ruling.
13. On perusal of the Memoranda of Appeal filed in both Appeals, it is apparent that each challenges the ex parte discharge of stay of execution orders, which allegedly resulted in an irregular execution against the appellant. Both Appeals call upon this Court to determine whether the lifting of the stay orders and the ensuing execution were irregular, and if they violated the appellant's right to a fair hearing. In light of these circumstances, this Court is of the considered view that the two Appeals stem from the same transaction and judicial process. Therefore, it is evident that there exists a common question of law and fact in this Appeal and in HCCOMMA No. E252 of 2024. Additionally, it is evident that



the reliefs being sought in both Appeals are substantially similar, including the refund of the decretal amount and Auctioneer's fees following the alleged irregular execution.

14. It is clear from the respondent's replying affidavit that save for the contention that the instant Appeal and HCCOMMA No. E252 of 2024 are fatally defective for want of leave to Appeal, the respondent has not substantially opposed the application herein. In this Court's view, this issue does not bar consolidation of the Appeals as it pertains to their competency, therefore, it can appropriately be addressed after their consolidation.
15. In the circumstances, this Court finds that consolidating this Appeal and HCCOMMA No. E252 of 2024 will promote judicial economy, save time and costs, and prevent the risk of conflicting decisions. Further, the respondent has neither alleged nor demonstrated any prejudice that would be occasioned to it by consolidation of the two Appeals. Accordingly, this Court is satisfied that the principles governing consolidation have been met. It is therefore in the interest of justice for this Appeal and HCCOMMA No. E252 of 2024 to be consolidated for purposes of hearing and determination.
16. The upshot is that the instant application is merited. It is hereby allowed. Costs shall abide the outcome of the consolidated Appeals.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 24TH DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Oyando for the appellant/applicant

Ms Muthoni holding brief for Mr. Odera for the respondent

Ms B. Wokabi – Court Assistant.

