



**Universal Resources International Limited v Diamond Trust Bank Kenya
& 12 others; Diamond Trust Bank Kenya (Plaintiff); Universal Resources
International Limited & 7 others (Defendant) (Civil Case 233 of 2017)
[2025] KEHC 11413 (KLR) (Commercial & Admiralty) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11413 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY**

CIVIL CASE 233 OF 2017

PM MULWA, J

JULY 31, 2025

BETWEEN

UNIVERSAL RESOURCES INTERNATIONAL LIMITED PLAINTIFF

AND

DIAMOND TRUST BANK KENYA 1ST DEFENDANT

MICHAEL GERALD LYNCH 2ND DEFENDANT

SIMON MUTUKU MUTUA 3RD DEFENDANT

MUSA ADAM & 9 OTHERS & 9 OTHERS 4TH DEFENDANT

AND

DIAMOND TRUST BANK KENYA PLAINTIFF

AND

UNIVERSAL RESOURCES INTERNATIONAL LIMITED DEFENDANT

MICHAEL GERALD LYNCH DEFENDANT

SIMON MUTUKU MUTUA DEFENDANT

MUSA ADAM DEFENDANT

STEPHEN SAMUEL PAINO DEFENDANT

RICHARD KARIUKI GITHAE DEFENDANT

MARK LLYOD SPTEPHENSON DEFENDANT

FRANCIS EDWARD STRANG DEFENDANT



RULING

1. By a Notice of Motion application dated 6th September 2017, Diamond Trust Bank Kenya Limited, the 1st Defendant/Applicant herein, seeks orders that:
 - i. This Court do consolidate the suit herein with Nairobi HCCC No. 494 of 2012 (consolidated with NBI HC MISC. Civil Application No. 169 of 2012 Universal Resources International Limited & Stephen Samuel Piano -vs- Michael Gerald Lynch, Musa Adam, Simon Mutuku, Richard Kariuki Githae, Mark Lloyd Stephenson, Francis Edward Strange & Diamond Trust Bank Kenya Limited) and NBI HCCC No. 601 of 2015.
 - ii. This Court do give all the necessary and proper directions as shall be necessary for the said consolidated action.
 - iii. Costs of this application be in the said consolidated action.
2. The grounds upon which the application is based are that the suits have similar issues and are still pending, raise similar and common questions of fact and law and relate to the same parties. That consolidation is necessary to avoid duplication of proceedings and multiplicity of suits.
3. The application is supported by the affidavit of Lwanga Mwangi, a Debt Recovery Officer with the applicant Bank, sworn on 6th September 2017. He deposes that sometimes in 2011 the Bank became aware of internal irregularities with the Plaintiff/ Respondent – Universal Resources International Limited - which majorly was a dispute between the directors of the company. According to Mr. Mwangi, it became difficult for the Bank to establish which party was entitled to operate the plaintiff's accounts, and hence proceeded to suspend all transactions therein.
4. It is the applicant's case that, to protect its interests, it filed NBI MISC. Civil Application No. 169 of 2012 (O.S.). In equal measure the Plaintiff/Respondent instituted NBI HCCC No. 494 of 2012 which restrained transactions by the named respondents and led to withdraw of USD 69,000 from A/c No. 0112xxx002. It is averred that later the parties to the O.S. executed a consent order but which was never endorsed by the Court. Later, on 18th March 2014 directions were given for the consolidation of HCCC No. 494/2012 and HC Misc. 169/2012 (O.S.). Thereafter, there were unsuccessful attempts to compromise the suit. Further research and diligence by the Respondent revealed the existence of NBI HCCC No. 601 of 2015.
5. It was further contended by the Applicant that the issue of directorship is common in all the suits hence the need for consolidation to avoid embarrassment which may be occasioned by the suits proceeding separately. In any case, consolidation will ensure expeditious disposal of the matter and settlement of the issues once and for all.
6. The application is opposed through the replying affidavit by Mark Lloyd Stephenson, a director of the Plaintiff, sworn on 10th May 2017. The Plaintiff/Respondent avers that the cause of action in the instant suit as well as in Nairobi HCCC 494/2012 and Nairobi HCCC 601/2015 arose at different times and out of different transactions and therefore cannot be consolidated.
7. The Plaintiff further contends that it has lost interest in Nairobi HCCC 494/2012 as consolidated with Misc. 169/2012 and has since filed notice to withdraw the suit, thus a Court cannot order a party to continue pursuing the suit it has lost interest in. And further that the Applicant is not a party to the issues raised for adjudication in HCCC 494/2012 and HCCC 601/2015. It is argued that the prayers



sought in the instant application are intended to confer undue advantage upon the 1st Defendant/Applicant and the Respondent shall be greatly disadvantaged.

8. Only the 1st Defendant/Applicant and the Plaintiff/Respondent participated in the instant application which was canvassed by way of written submissions. The Applicant filed submissions dated 27th September 2024 and those by the Respondent are dated 10th February 2025.

Analysis and determination

9. Having considered the application, the submissions filed and the respective affidavits in support of the parties' arguments, there is only one issue for determination, that is: whether the instant suit should be consolidated with Nairobi HCCC No. 494 of 2012 (as consolidated with Nairobi Misc. Civil Application No. 169 of 2012) and Nairobi HCCC No. 601 of 2015.
10. The term 'consolidate' is defined in Black's Law Dictionary, 10th edition as follows: "To combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment or sometimes, in separate judgments."
11. The law governing the consolidation of suits is founded under Section 80(h) of the *Civil Procedure Act* and Order 11 Rule 3(1)(h) of the Civil Procedure Rules. In consolidating suits, the Civil Procedure Rules mandate courts to be guided by the following three parameters: a). Do the same questions of law or fact arise in both cases? b). Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transactions? c). Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?
12. These principles were set out in the case of the Law Society of Kenya v Center for Human Rights and Democracy and 12 Others [2014] eKLR where the Supreme Court of Kenya 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 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."
13. It is therefore clear that the purpose of consolidation of suits is to save costs, time, speed up trial, eliminate duplicative trials involving the same parties, issues and evidence, for efficient and proper administration of justice and expeditious disposal of matters, consequently promoting judicial economy so long as it is not prejudicial to any of the parties.
14. The instant suit was lodged by the Respondent on 31st May 2017 and alleged the Defendants had committed fraud jointly and severally and sought for declaration that the 1st Defendant unlawfully froze the Plaintiff's Bank account No. 0112xxx002. The 1st Defendant/Applicant is not a party in HCCC No. 601 of 2015 and does not demonstrate how the cause of action therein is related to the instant suit.
15. It is contended by the Respondent that the suits sought to be consolidated were commenced at different times and the causes of action stemmed from different transactions. It is also evident from the parties' pleadings the parties are not the same in all suits. Indeed, the Applicant herein is not a party in Nairobi HCCC No. 601 of 2015. Again, there are a number of orders and directions have been made variously in the separate suits some of which are yet to be complied. The Respondent argues that Misc. No. 169/2012 was withdrawn and HCCC No. 494/2012 was settled vide a consent between the parties.



16. In *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* (Civil Suit No. 992 of 1994) cited with approval in *Lakhamshi Khimji Shah & another v Ajay Shantilal Shah & 2 others* (2010) eKLR the court made the following remarks concerning consolidation:

“Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action...The circumstances in which suits can be consolidated are broadly similar to those in which parties may be joined in one action...There are however situations where consolidation is undesirable like where in two actions a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counterclaim in the other. The other situation where consolidation is undesirable is where the plaintiffs in two or more actions are represented by different advocates. In such situation the hearing may take long and the purpose of saving time will be defeated.”

17. Applying the above principles to the present application, the first factor to note is that the three matters sought to be consolidated are not founded on the same facts. Secondly, the parties are not entirely similar, and as argued by the Plaintiff/Respondent, some Advocates have only been retained for a particular suit and not the other(s). These facts make their consolidation not feasible. Indeed, consolidating the suits would muddle further the issues and result in a prolonged litigation.
18. It is the right of each of the parties in each case to have their day in Court and be given a chance to articulate their grievance in the best way they understand it. Even though litigation may be founded on identical facts, ordinarily, facts might have several different threads and what one party might consider important and emphasize in a matter might appear less important or inconsequential to the other. This may evoke feelings that their right to be heard was compromised because their main concern in the case was not brought out.
19. In view of the above, I am persuaded by the contention that the application is intended to confer undue advantage upon the 1st Defendant/Applicant and the Plaintiff/Respondent will be greatly disadvantaged. Consequently, I find no merit in the application dated 6th September 2017 and it is hereby dismissed with costs to the Plaintiff/Respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Zelekha h/b for Mr. Kago for Plaintiff

Mr. Shah for 1st Defendant/Applicant

Court Assistant: Carlos

