



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

**CIVIL DIVISION**

**CIVIL SUIT NO. 813 OF 2007**

**W.M. MUIRURI.....PLAINTIFF**

**VERSUS**

**O.P. NGOGE t/a O.P. NGOGE &**

**ASSOCIATES, ADVOCATES.....DEFENDANT**

**DIRECTIONS BY THE COURT**

**Preamble**

On 16<sup>th</sup> March, 2017, the parties were scheduled for a full hearing of the substantive suit herein. It is an old suit, filed ten years ago. The suit itself concerns a complaint by Mr Muiruri, former Chief Magistrate, against Mr Ngoge alleging defamatory words uttered against him by Mr Ngoge.

The hearing date of 16<sup>th</sup> March, 2017, was fixed on 14<sup>th</sup> November, 2016. Prior to that, the matter was certified ready for hearing by Waweru J, on 23<sup>rd</sup> July, 2013.

In the interim, Mr Ngoge filed a document intituled “*Counterclaim [ Petition Under Article 22 of the Constitution]*” filed on 7<sup>th</sup> March, 2017 pursuant to leave granted by the High Court (Odunga, J). The plaintiff objects to the filing of the “Counterclaim” document on grounds that such a pleading cannot be filed in a defamation suit; that it obfuscates and confuses the nature of the suit; that the pleading is a petition and would be better heard as a separate matter in the Constitutional Division; and therefore the document should not be admitted.

Having perused this old file, and having considered the parties’ submissions, I observe and note as follows, and issue the following directions:

1. Leave was granted by Odunga J., in his Ruling of 20/9/2012, to the Defendant to file his Counterclaim/Petition under Article 22 of the Constitution. There is a five year delay by the Defendant in filing the said Counterclaim.
2. The above notwithstanding, I note that the Defendant’s Counterclaim/ Petition *inter alia* raises issues with regard to taxation of various Bills of Cost by the Defendant.
3. The issues raised in the defence are the same ones that have been raised in the current counterclaim, save that in the counterclaim, the Defendant states that his rights under various

international instruments as well as the Constitution have been breached.

4. Ordinarily, the counterclaim would be filed with the defence. I am thus of the view that given the age of this matter, the Counterclaim as filed can be canvassed at the time of the main hearing as it would call into evidence the interrogation of facts in the case.

5. The joinder of the Attorney General as vicariously liable is declined, as it is not substantially demonstrated that the defamation suit cannot, after all these years, be properly determined without the necessary presence of the AG.

6. The court files in suit numbers HCC Misc Nos 670, 671, 672 & 673 of 2006, and 679 of 2006 referred to in Paragraph 12 of the "Counterclaim" shall be tied together with this file and availed at the hearing.

7. Accordingly, I give the following directions:

### **Directions**

a. The Counterclaim as filed is hereby admitted.

b. The Plaintiff may file a response to the Counterclaim in respect of those matters alleging constitutional breaches.

c. The main suit shall be set down for expeditious hearing following the parties' compliance with Order 11 of the Civil Procedure Rules, and taking into account the fact that this Court has jurisdiction to deal with constitutional issues arising within a defamation suit

d. Compliance shall include agreeing all documents filed for the hearing including Witness statements and bundles of documents.

### **Issues Arising**

1. Whether the defendant's letter of 21<sup>st</sup> December, 2006 concerning the person of the plaintiff addressed to various persons amounts to libel.

2. Whether the alleged refusal by the plaintiff to tax the Defendant's Bill of costs, amounts to corruption, incompetence, misconduct and abuse of the office of the plaintiff and thus a justification for the letter of 21<sup>st</sup> December, 2006.

3. Whether in not taxing the Defendant's Bill of Costs, the Plaintiff infringed on the Defendant's rights as enshrined under the Constitution.

4. Whether the plaintiff is entitled to the reliefs sought.

**Dated at Nairobi this 22<sup>nd</sup> day of June 2017**

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**RICHARD MWONGO**

**PRINCIPAL JUDGE**

Delivered in the presence of:

1. ....for the Plaintiff

2. ...for the Defendant

3. Court Clerk.....