



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 185 OF 2009

LUCY WAIRIMU MWANGI.....
.....PLAINTIFF
- VERSUS -
MONICA JACKLINE WAMBUI1ST
DEFENDANT
PAULINE MUKUHI NG'ANG'A.....2ND
DEFENDANT

R U L I N G

This is a Ruling on the Notice of Motion dated 22nd July 2011 which seeks the striking off of the counter claim in the amended defence dated 6th July 2011 on the grounds that the leave of court for the counter-claim was not sought or granted; and that it amounts to an abuse of the process of the court and that the counter-claim should be disallowed. The application is supported by the affidavit of Aldrin Ojiambo. Counsel for the Applicant Miss Kamau submitted that apart from the said counter-claim being prejudicial to the interests of the Plaintiff. It is also important to adhere to the provisions of law and procedure.

Counsel for the Respondent Mr. Opini opposes the application and submitted that the leave granted to them to amend the defence was sufficient to amend defence and counter-claim and therefore no further or separate leave was required to plead the counter-claim.

I have looked at the application and its opposition. In my view the leave of the court granted to amend the defence did not limit the Defendant to amending the defence only. If issues raised in the amended plaint required a response by way of counter-claim the Defendant could not wait and seek a separate leave to respond.

I therefore, dismiss the application with costs to the Respondent.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI
THIS 2ND DAY OF NOVEMBER 2011.

E. K. O. OGOLA
JUDGE

PRESENT:

..... For the Applicant

..... For the Defendant

Irene – Court clerk