



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1408 of 1998**

1. Land and Environmental Division

2. Subject of main suit:-

Land ownership

LR11595

36.5 acres

Muguga, Kabete area

3. Application by defendant 1 July 2005

Interlocutory judgment be entered against the Commissioner of Lands as prayed in the amended counter claim dated 28 March 2002

4. No response by both respondents due to failure to file reply

5. Held:

i) Deputy Registrar court not to enter Interlocutory Judgment

ii) No interlocutory Judgment is entered on a counter claim on a

claim for land

6. Case law – Nil

7. Advocates:

G.K. Kuria holding brief for P. Nganga of Kamau Kuria & Kiraitu & Co. Advocates for the plaintiff/respondent -present

S.K. Ritho of S.K. Ritho & Co. Advocates for the 1<sup>st</sup> and 3<sup>rd</sup> defendant/applicant

And plaintiff in counter claim.

J.K. Atanda of the Attorney General's Chambers Advocate for the 4<sup>th</sup> defendant – present

2<sup>nd</sup> defendant absent but served

**WANGUI KARANJA..... 1<sup>ST</sup> PLAINTIFF**

**SALOME NJERI KARANJA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JOSEPH NJENGA NGANGA .....1<sup>ST</sup> DEFENDANT**

**NJANE KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**FRANCIS NDEGWA ..... 3<sup>RD</sup> DEFENDANT**

**RULING NO.2**

I: Application for leave to enter Interlocutory Judgment on a counter-claim by the defendants dated 1 July 2005

I: BACKGROUND OF APPLICATION

1. The subject of the main suit before this court touches on trespass allegedly committed by the defendants. The suit was filed on 25 June 1999. The defendants denied this trespass and filed a defence and a counter-claim. The Hon. The Attorney General representing the Commissioner of Lands failed to file a reply to the counter- claim. The plaintiff and the Attorney General were served with the application of 1 July 2005 seeking leave for the deputy registrar to enter Interlocutory Judgment.

2. The applicants had requested the deputy registrar to enter the Interlocutory judgment. The said deputy registrar declined to do so. The applicant then filed this application and asks the court to so enter the said interlocutory judgment. The reasons being there had been no defence to the counter claim filed by the state.

3. To this application of 1 July 2005 it is unclear why there has been a delay in the same being heard. It has been about 2½ years.

4. This court noted none of the respondents the plaintiff and the state filed any documents in reply to oppose the said application.

II: FINDING

5. Where a defendant files a defence and counter claim and where no defence has been filed to and for the counter-claim the court does not enter Interlocutory Judgment against the Commissioner of Lands[1]. What indeed occurs is that the suit is set down for hearing.

6. I would reject this application and dismiss it with costs to the respondent. This suit be accordingly be set down for hearing.

Dated this 12 day of February 2008 at Nairobi.

M.A. ANG'AWA

JUDGE

G.K. Kuria holding brief for P. Nganga of Kamau Kuria & Kiraitu & Co. Advocates for the plaintiff/respondent -present

S.K. Ritho of S.K. Ritho & Co. Advocates for the 1<sup>st</sup> and 3<sup>rd</sup> defendant/applicant

And plaintiff in counter claim.

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2<sup>nd</sup> defendant absent but served