



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NAIROBI  
MILIMANI COMMERCIAL COURTS

Civil Case 2202 of 2000

PAN AFRICA PAPER MILLS (E.A.) LIMITED .....  
PLAINTIFF

VERSUS

AFRI PACKAGING & PRINTING LIMITED .....  
DEFENDANT

**RULING**

This matter has been referred to me under Rule 2(3) of The High Court (Practice and Procedure) (Amendment) Rules 1995. The reference arises from a claim for Shs.6,061,125/= by the Pan African Paper Mills (E.A.) Limited against Afri Packaging & Printing Limited in respect of which the defendant in its defence sought to set-off as against any sums which it might have been found to pay to the plaintiff, the sum of Shs.4,343,162/= it claimed in the defence was due to it from the plaintiff on account of various alleged failures and misdeeds relating to a contract between the two parties.

On the filing of the defence and set-off, the defendant was charged by the High Court Registry a filing fee of Shs.70,075/= pursuant to the provisions of paragraph 3(b) of the Schedule to Part IX of The High Court (Practice and Procedure) (Amendment) Rules 1995. Mr. Hira for the defendant now contends that a set-off is not a counter-claim but in truth a defence and therefore he should not have been charged a filing fees for the set-off. He therefore seeks a refund of the sum of Shs.70,000/= that was charged.

Mr. Hira did not cite any authority for his contention and with due respect, I do not think he is right. A set-off is defined in the concise Law Dictionary as:-

*“A claim in a liquidated amount by the defendant to a sum of money as a defence to the whole or part of a money claim by the plaintiff ... whether or not it is added as a counter-claim.”*

In Blacks Law Dictionary, the same word is defined as:-

*“A counter-claim demand which the defendant holds extrinsic of plaintiff’s cause of action.”*

It will be obvious from the above definitions that the difference between a counter-claim and a set-off is extremely fine. It can nonetheless be said that in general terms both are counter-claims to a claim by a

plaintiff. For the purposes of assessment of court fees both are in my view undistinguishable and consequently court fees are assessed on both in like fashion. Apart from that however, in the instant case the so-called set-off made in the defence lacks every characteristic of a set-off and is in all respects but name, a counter-claim. In the circumstances, the defendant was properly charged filing fees for the set-off and accordingly his complaint in respect thereof has no merit.

For the above reasons, the application for a refund is dismissed.

Dated at Nairobi this 31<sup>st</sup> day of July, 2001.

T. MBALUTO

JUDGE