



**Ombi Rubber Rollers Limited v WEFLogistics Limited (Miscellaneous Application E1026 of 2024) [2025] KEHC 10055 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E1026 OF 2024**

**PM MULWA, J**

**JULY 10, 2025**

**BETWEEN**

**OMBI RUBBER ROLLERS LIMITED ..... APPLICANT**

**AND**

**WEF LOGISTICS LIMITED ..... RESPONDENT**

**RULING**

1. The motion for determination is dated 4<sup>th</sup> December 2024, and principally seeks transfer of a suit filed at the Milimani Small Claims Court, Commercial Claim No. E17339 of 2024, to the Milimani Chief Magistrate's Commercial court for trial and disposal. The grounds are that the Applicant would like to file a counterclaim, to the tune of Kshs. 1,980,157.00, yet that amount exceeds the pecuniary jurisdiction of the trial court. The applicant has been sued by the Respondent in the said case for the sum of USD 2,845 on account of non-payment of freight charges.
2. The application is opposed by the affidavit sworn on 16<sup>th</sup> January 2025 by Darren Brown, the director of the Respondent. He depones that the applicant is at liberty to pursue the counterclaim at the chief magistrate's court without interfering this the suit filed at the Small Claims Court.
3. I have considered the application, the grounds thereof, the affidavit in opposition, and the submissions made.
4. It is not in doubt that the Small Claims Court's pecuniary jurisdiction is limited to Kshs. 1,000,000.00. as provided under Section 12 of the *Small Claims Court Act*, No. 2 of 2016.
5. The Applicant's intended counterclaim of Kshs. 1,980,157.00 is well beyond this threshold.



6. A counterclaim is for all intents and purposes a separate suit and by filing a counterclaim that is clearly outside the pecuniary jurisdiction, the Applicants invite the court to exercise its preemptory powers to strike out the counterclaim.
7. The right to file a counterclaim is recognized in law and in appropriate cases, may be consolidated with the claim for efficiency and comprehensive adjudication. However, it is equally well established that a defendant is not bound to file a counterclaim. It remains a right that may be exercised at the party's discretion. Nothing prevents the Applicant from initiating an independent claim before the Magistrate's Court where jurisdiction exists.
8. In addition, rule 14 of the *Small Claims Court Rules* gives a respondent who wishes to file a counterclaim whose value exceeds the pecuniary jurisdiction of the court various options. It provides as follows:

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- (1) A respondent who has a counterclaim exceeding one million shillings may-
    - a. Abandon that part of the counterclaim exceeding one million shillings;
    - b. Pursue his or her counterclaim in the proceedings and recover the amount not exceeding one million shillings; or
    - c. File a separate claim in the Magistrates' Court to recover the whole of the counterclaim amount.
  - (2) A respondent who abandons that part of the counterclaim exceeding one million shillings shall state in his or her response that the amount in question is abandoned.
9. Further, Section 2 of the *Small Claims Court Act* makes it clear that one of the cardinal objectives of the Court is the timely and efficient resolution of disputes. Section 4 of the *Act* further provides for the overriding objective to facilitate access to justice, the just, expeditious and proportionate resolution of disputes. Permitting transfer of matters from the Small Claims Court every time a counterclaim exceeds the jurisdiction of the Court would potentially frustrate the streamlined procedure intended under the *Act*.
  10. The High Court has, in previous cases, upheld the integrity of the Small Claims Court process. In *Alcott Wiz Trading Co. Ltd & 2 others v Jotun (K) Limited* (Miscellaneous Application E091 of 2023) [2023] KEHC 2742 (KLR) the Court emphasized that a party with a counterclaim beyond the Small Claims Court jurisdiction could pursue it in a separate forum, without derailing the claim properly before the Small Claims Court.
  11. Section 18 of the *Civil Procedure Act* grants this Court the discretionary power to transfer a suit from one court to another, provided the receiving court is competent to try it. However, this power must be exercised judicially and in furtherance of the overriding objective of the court under Sections 1A and 1B of the *Civil Procedure Act*, namely, the just, expeditious, proportionate, and affordable resolution of disputes.
  12. The Small Claims Court is a statutory creation with its simplified procedures and a jurisdictional limit that is clearly defined. I am also not persuaded that there is a legal basis under Section 18 of the *Civil Procedure Act* or under the *Small Claims Court Act* for the High Court to transfer matters out of the Small Claims Court. Section 18 only applies to matters pending before courts subordinate to the High



Court and does not contemplate the Small Claims Court, which is governed by its own statute and special procedures.

13. In the result, I find no merit in the application dated 4<sup>th</sup> December 2024. The Applicant remains at liberty to pursue its counterclaim in the proper forum, without impeding the pending proceedings at the Small Claims Court.
14. The Notice of Motion dated 4<sup>th</sup> December 2024 is hereby dismissed. Costs of the application shall be borne by the Applicant.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

N/A for Applicant

Ms. Ngui for Respondent

Court Assistant: Carlos

