



**Piedmont Investments Limited v Standard Assurance Kenya Limited & 3 others;
Equity Bank (Kenya) Limited (Plaintiff to the Counterclaim); Saika Two Developers
Limited & 2 others (Defendant to the Counterclaim) (Commercial Case 806 of 2003)
[2025] KEHC 13148 (KLR) (Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13148 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 806 OF 2003
MN MWANGI, J
SEPTEMBER 18, 2025

BETWEEN

PIEDMONT INVESTMENTS LIMITED PLAINTIFF

AND

STANDARD ASSURANCE KENYA LIMITED 1ST DEFENDANT

UFANISI CAPITAL & CREDIT LIMITED 2ND DEFENDANT

SUPERIORFONE COMMUNICATIONS LIMITED 3RD DEFENDANT

EQUITY BANK (KENYA) LIMITED 4TH DEFENDANT

AND

EQUITY BANK (KENYA) LIMITED PLAINTIFF TO THE COUNTERCLAIM

AND

**SAIKA TWO DEVELOPERS LIMITED DEFENDANT TO THE
COUNTERCLAIM**

FERDINAND WAITITU NDUNGU . DEFENDANT TO THE COUNTERCLAIM

MONICA NJERI NDUNGU DEFENDANT TO THE COUNTERCLAIM

RULING

1. The plaintiff/applicant filed a Notice of Motion application dated 28th April 2024 pursuant to the provisions of Order 7 Rule 12 of the Civil Procedure Rules, 2010 seeking an order for this Court to



expunge the 4th defendant's counterclaim against Saika Two Developers Limited, Ferdinand Waititu Ndungu and Monica Njeri Ndungu from this suit.

2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Paul Amuga, an Advocate of the High Court of Kenya and learned Counsel for the plaintiff.
3. Mr. Amuga averred that after the 4th defendant was joined to this suit, it filed a defence and counterclaim against Saika Two Developers Limited, Mr. Ferdinand Waititu Ndungu and Ms Monica Njeri Ndungu, (the 1st, 2nd and 3rd defendants respectively, in the counterclaim) who are not parties to this suit. He stated that the counterclaim does not involve the plaintiff and contains claims that are entirely independent of the plaintiff's case. He contended that including the counterclaim in this suit would cause the plaintiff to suffer prejudice, lead to misjoinder of parties and issues, and complicate these proceedings. Mr. Amuga proposed that the counterclaim should be filed separately and tried independently.
4. In opposition to the application, the 4th defendant filed a replying affidavit sworn on 21st June 2024 by Mr. Kariuki King'ori, the 4th defendant's Manager, Legal Services. He averred that upon being joined as the 4th defendant, Equity Bank filed its statement of defence and counterclaim within the prescribed timelines. He deposed that as a defendant, Equity Bank has the right to file a counterclaim and join other parties pursuant to the provisions of Order 7 Rules 8 to 12 of the Civil Procedure Rules, 2010. Mr. King'ori claimed that the counterclaim relates to the suit property, which was used as security for a Kshs.200,000,000/= commercial mortgage loan, forming the basis of the dispute. He asserted that handling the counterclaim within this suit would avoid a multiplicity of suits and promote complete and final resolution of all related matters.
5. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed by the law firm of Amuga & Company Advocates on 18th November 2024, while the 4th defendant's submissions were filed on 13th November 2024 by the law firm of Igeria & Ngugi Advocates.
6. Mr. Amuga learned Counsel for the plaintiff submitted that the 4th defendant was joined to this suit on its own application, without seeking leave to join any other parties. Counsel submitted that the 4th defendant's counterclaim introduces new parties and does not make any claims or raise issues against the plaintiff. He argued that there are no common questions of law or fact between their claim and the 4th defendant's counterclaim as the said counterclaim is based on an independent lending contract and seeks recovery of a loan or alternative security. To buttress his submissions, Mr. Amuga relied on the case of John Patrick Machira t/a Machira & Company Advocates v Grace Wahu Njoroge [2006] eKLR.
7. Mr. Mbaji, learned Counsel for the 4th defendant relied on the case of Brek Sulum Hemed v Constituency Development Fund Board & another [2017] eKLR, and submitted that upon being joined to this suit, Equity Bank acquired full rights to defend and file a counterclaim, including bringing in additional parties pursuant to the provisions of Order 7 Rules 8 to 12 of the Civil Procedure Rules, 2010. He stated that the counterclaim is based on the same suit property, which was used as security for a Kshs.200,000,000/= commercial mortgage loan. He further stated that it is in the interest of justice for the 4th defendant's counterclaim to be heard together or concurrently with the main suit, to avoid duplication of proceedings and to ensure that all issues related to the suit property are resolved comprehensively.



Analysis and Determination.

- 8. Upon consideration of the instant application, the grounds on the face of it and the affidavit filed in support thereof, as well as the replying affidavit by the 4th defendant and the written submissions by Counsel for the parties, the issue that arises for determination is whether the 4th defendant’s counterclaim should be expunged from the court record.
- 9. In a Ruling delivered on 9th February 2024, I allowed Equity Bank’s application to be joined to this suit as the 4th defendant. In the said Ruling, I directed the 4th defendant to file and serve its statement of defence within 21 days.
- 10. Subsequently, the 4th defendant filed a statement of defence that included a counterclaim. It is not in contest that the 4th defendant’s counterclaim is not against any of the original parties to the suit, but against Saika Two Developers Limited, Mr. Ferdinand Waititu Ndungu and Ms Monica Njeri Ndungu. The plaintiff argued that including the said counterclaim in the current case will result in prejudice, misjoinder of parties and issues, as the claims in the counterclaim are unrelated to the plaintiff’s case. The plaintiff asserted that the counterclaim should be filed and tried separately.
- 11. The 4th defendant on the other hand averred that upon being joined to this suit, it acquired all the rights of a defendant, including the right to file a counterclaim and join other parties under Order 7 Rules 8 to 12 of the Civil Procedure Rules, 2010. It maintained that the counterclaim is connected to the suit property, which was used as security for a Kshs.200,000,000/= commercial mortgage loan, forming the basis of the dispute. The 4th defendant contended that addressing the counterclaim within this suit will avoid a multiplicity of suits and promote complete and final resolution of all related matters.
- 12. Defence and counterclaim is provided for under Order 7 of the Civil Procedure Rules, 2010. Rule 3 of the said Order provides for set-off & counterclaim. It states as follows-

A defendant in a suit may set-off, or set-up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and whether it is for a liquidated or unliquidated amount, and such set-off or counterclaim shall have the same effect as a cross-suit, so as to enable the court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but the Court may on the application of the plaintiff before trial, if in the opinion of the court such set-off or counterclaim cannot be conveniently disposed of in the pending suit, or ought not to be allowed, refuse permission to defendant to avail himself thereof. (Emphasis added).

- 13. The Black’s Law Dictionary 11th Edition defines a counterclaim as –

A claim for relief asserted against an opposing party after an original claim has been made; especially a defendant’s claim in opposition to or as a set off against the plaintiff’s claim.

- 14. The Halsbury’s Laws of England 4th Edition, Vol 42 on its part explains a counterclaim by giving a case scenario as follows -

When A has a claim of any kind against B and brings an action to enforce that claim, and B has a cross-claim of any kind against A which by law he is entitled to raise and have disposed of in the action brought by A, then B is said to have a right of counterclaim.

.....



any claim in respect of which the defendant could bring an independent action against the plaintiff may be enforced by a counter-claim subject only to the limitation that it must be such as can conveniently be tried with the plaintiff's claim. Thus not only claims for money but also other claims such as a claim for injunction or for specific performance or for declaration may

15. In opposition to the instant application, the 4th defendant relies on the provisions of Order 7 Rules 8 to 12 of the Civil Procedure Rules, 2010 which states as follows -

Order 7, rule 8 - Title of counterclaim

Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, together with any other person or persons, he shall add to the title of his defence a further title similar to the title in a plaint, setting forth the names of all persons who, if such counterclaim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver to the court his defence for service on such of them as are parties to the action together with his defence for service on the plaintiff within the period within which he is required to file his defence.

Order 7, rule 9 - Claim against person not party

Where any such person as is mentioned in rule 8 is not a party to the suit, he shall be summoned to appear by being served with a copy of the defence, which shall be served in accordance with the rules for regulating service of summons.

Order 7, rule 10 - Appearance by added parties

Any person not already a party to the suit who is served with a defence and counterclaim as aforesaid must appear thereto as if he had been served with a summons to appear in the suit.

Order 7, rule 11 - Reply to counterclaim

Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him of the counterclaim and shall serve a copy thereof on all parties to the suit.

Order 7, rule 12 - Exclusion of counterclaim

Where a defendant sets up a counterclaim, if the plaintiff or any other person named in the manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent suit, he may at any time before reply, apply to the court for an order that such counterclaim may be excluded, and the court may, on the hearing of such application, make such order as shall be just. (Emphasis added).

16. The import of the foregoing provisions is that a defendant is ordinarily permitted to file a counterclaim not only against the plaintiff but also against third parties, as long as the defendant's claim arises from the same subject matter as that in the main suit. In this case, the plaintiff contends that the 4th defendant's counterclaim introduces a new cause of action based on a loan facility involving non-parties, thus the said claim is not connected to the plaintiff's original cause of action.
17. Upon perusal of the pleadings filed in this suit including the impugned 4th defendant's defence & counterclaim, it is apparent that the 4th defendant contends that the suit property was charged to secure a loan of Kshs.200,000,000/= and that its rights as a chargee are directly implicated. It is therefore



evident that the 4th defendant's counterclaim is founded upon the same suit property that forms the subject of this suit.

18. In the oft cited case of *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR), the Court of Appeal cautioned against striking out of pleadings unless it is clear that they disclose no reasonable cause of action and would otherwise be an abuse of the process of the Court. Madan JA (as he then was) stated as follows -

If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.

19. This Court is also alive to the provisions of Sections 1A & 1B of the *Civil Procedure Act* which provide for the overriding objective that calls for Courts to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. Striking out the 4th defendant's counterclaim will without a doubt compel the 4th defendant to initiate a separate suit, resulting in duplication of proceedings and risking inconsistent findings in relation to the same property especially since the subject matter in this suit would be similar to the subject matter in the 4th defendant's suit. It is not lost to this Court that the suit herein was filed in year 2003 and 22 years have gone by awaiting determination. It would be a travesty of justice at this point in time to order for separation of the claims in this suit.
20. Order 7 Rules 8 to 12 of the Civil Procedure Rules, 2010, permit the filing of a counterclaim even against third parties, provided such claims arise from the same transaction or relate to the same subject matter, with the objective of facilitating a comprehensive and final determination of the dispute, unless the plaintiff successfully demonstrates that he stands to suffer significant prejudice.
21. Although the counterclaim filed by the 4th defendant herein introduces new parties, it however revolves around the legality of the charge over the suit property and the alleged indebtedness therein. It is evident from the plaint and the 4th defendant's defence & counterclaim that both the plaintiff and the 4th defendant claim to have an interest in the subject parcel of land. The plaintiff claims to be the owner of the suit property, whereas the 4th defendant's interest in the suit property is that of a chargee. These issues are extricably intertwined since a determination of the validity or effect of the 4th defendant's counterclaim may have a direct bearing on the rights claimed by the plaintiff.
22. This Court notes that in as much as the plaintiff claims that it may suffer prejudice from being entangled in proceedings to which it has no connection, it has not demonstrated the kind of prejudice it stands to suffer. The above notwithstanding, it is now well settled that in considering whether or not to strike out a pleading, prejudice alone is not sufficient, where the parties involved are necessary or proper for a just resolution of the matter, as is the case herein.
23. In light of the foregoing analysis, this Court finds that the 4th defendant's counterclaim though bringing in third parties, is directly connected and/or related to the subject matter in this suit and will



aid in the complete and effectual determination of the dispute between the parties herein in line with the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, which states that -

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added

24. This Court is persuaded that the 4th defendant's counterclaim has been properly brought within the confines of the above provisions of the Civil Procedure Rules and it is sufficiently connected to the subject matter of this suit.
25. It is my finding that the instant application is devoid of merits. It is hereby dismissed with costs to the 4th defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF SEPTEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Ahomo holding brief for Mr. Amuga for the plaintiff/applicant

Mr. Mbaji for the 4th defendant/respondent

Mr. Njenga for the Official Receiver (Liquidator of Standard Assurance)

Ms B. Wokabi – Court Assistant.

