



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 53 OF 2007 (OS)**

**MERU CENTRAL FARMERS COOPERATIVE UNION LTD.....PLAINTIFF**

**VERSUS**

**KAIRANYA INVESTMENT LTD.....1<sup>ST</sup> DEFENDANT**

**RUTH IGOKI RINTARI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application dated 9:4:2018 seeks the following orders:

- i. That the counter claim filed herein is totally a separate suit to determine separate issues which are absolutely alien to the plaintiff's claim herein.
- ii. That the issues to be determined by the counter-claim overlook the fundamental issues of the plaintiff; that the defendant's title to the suit property was ousted a long time ago by the plaintiff's long occupation as provided under section 7 of the limitation of actions act.
- iii. That the defendant having lost his right to occupation, the law provided that he has also lost his title and therefore it is the plaintiff who is entitled to the right, title and ownership of the said suit property. The defendant will have no leg to stand on in support of his counter-claim.

2. The application is supported by the affidavit of Mr. Kioga filed on 9.4.2018 where he has deponed inter alia that the counterclaim should be tried separately from the present suit to avoid confusion.

3. The application is opposed via the replying affidavit of Mr. Gikunda filed on 16.4.2018 where he avers that this court delivered its ruling dated 14.2.2018 in finality as to the validity or otherwise of the defendant's counter claim, that the plaintiffs have already filed the defence to the counter claim and that the parties and the subject matter is the same. Defendants have cited the provisions of the constitution (article 159) and the oxygen rule principles set out in section 1 "A" and 1 "B" of the Civil Procedure Act averring that cases ought to be heard expeditiously in order to save courts time and parties resources.

4. Defence contends that plaintiff's interest is to further delay the determination of this old suit to the detriments of the defendants and that in any case the plaintiff has filed a notice of appeal against the ruling of 14.2.2018.

5. I find that the issues raised in the present application are the same ones that were raised in the preliminary objection dated 29.9.2017 (filed on 29.9.2017) and which was argued orally as from 20.11.2017 to 6.12.2017. The court delivered a ruling there of on 14.2.2018.

6. I am therefore in agreement with defence contention that the court delivered its ruling dated 14.2.2018 in finality as to the validity or otherwise of the defendant's counter-claim. No material evidence has been presented before me to vary and or set aside the said ruling. In the circumstances, I find that the application dated 9.4.2018 is unmerited, the same is dismissed with costs to respondent/defendants.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18<sup>TH</sup> DAY OF JULY, 2018 IN THE PRESENCE OF:-**

**Court Assistant:** Janet/Galgalo

Gikonyo holding brief for Kioga for plaintiff

Gikunda for defendants

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**