



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
HCC NO 20 OF 2006
PRISCILLA JERUTO KISOSO.....PLAINTIFF
VERSUS
KIPOROT OLE TOTONA alias SINGO ARAP
TOTONA.....1ST DEFENDANT
TUNGO TOTONA.....2ND DEFENDANT
LEDEMA TOTONA.....3RD DEFENDANT
RONALD TOTONA.....4TH DEFENDANT
RULING NO. 1 (of 21ST MARCH 2016)

1. This matter is today scheduled for hearing. Mr. Karanja has however raised an issue on the counterclaim, being that the 2nd – 5th defendants in the counterclaim have never been served. He has asked that their names be struck off.
2. This has been opposed by Mr. Arusei for the defendants and plaintiff in the counterclaim. He submitted inter alia that he is ready with the plaintiff's case and the issue of how to proceed on the counterclaim may be addressed later. He also submitted that if aggrieved, Mr. Karanja can file an application under order 7 Rules 3 and 12.
3. I have considered the issue. The Amended Defence and counterclaim was filed on 4th November 2011. Although Mr. Arusei submitted that there is no defence to the counterclaim, I have actually seen one filed on 29th November 2011 by the plaintiff in the original suit. I have not seen the place of order 7 Rules 3 and 12 cited by Mr. Arusei. These provide for a situation where one party applies that the counterclaim be heard separately, which is not the sort of application being tabled by Mr. Karanja.
4. What Mr. Karanja is saying is that the other parties in the counterclaim have not been served and they should be struck off. Although Mr Arusei argued that Mr. Karanja cannot raise such issue as he does not act for these persons, I actually am of the view that he can as his client is one of the parties in the counterclaim.
5. I think the issue is addressed by other 5. Under Order 5 Rule 1, the summons was to be prepared and collected by the plaintiff in the counterclaim. He then had a duty to serve under Order 5 Rule 2 (7). If

service is not effected within 24 months the suit may be dismissed.

6. It is over 4 years since the counterclaim was filed. There has been no application to extend time for service. 4 years by any stretch of imagination is too long a period for service not to have been effected. This suit has been in court for over 10 years now. I am of the view that the most appropriate order is to strike out the parties named as 2nd, 3rd, 4th and 5th defendants in the counterclaim. They are so struck off.

7. The matter will proceed with the plaintiff in the original suit being the only defendant in the counterclaim.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of March, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr Lawrence Karanja present for plaintiff

Mr Arusei present for defendant

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU