



**Koringura v Tingauoko (Environment & Land Case 13 of 2023)
[2025] KEELC 2889 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 13 OF 2023**

**CK NZILI, J
MARCH 26, 2025**

BETWEEN

WILSON KORINGURA PLAINTIFF

AND

ANGORTORENGE TINGAUOKO DEFENDANT

RULING

1. When this matter came up to confirm compliance with Order 11 of the Civil Procedure Rules on 17/12/2024, learned counsel for the plaintiff objected to the addition of a party in the defense; and that the counterclaim was unknown in law unless the defendant had made a formal application. The court directed the parties to canvass the issue of striking out the name of the added party by way of oral submissions on the preliminary objection raised. Learned counsel for the defendant termed the purported preliminary objection as falling short of what is set out in *Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors Ltd* [1969] E.A. 696.
2. Learned counsel urged the court to find the counterclaim properly filed under Order 7 Rule 8 of the Civil Procedure Rules and as an independent claim from the plaint filed before the pleadings were closed. Reliance was placed on *Harris -vs- Grable* [1877] 6 Ch, D.748, *Fairness -vs- Booth* [1876] 4 Ch. D. 586 and *Kabrito Construction Ltd -vs- David Mereka T/A Mereka & Co. C.A. No. 40 of 2001*.
3. Learned counsel for the plaintiff insisted that the 2nd defendant was improperly joined as a party to the suit without following Order 1 Rule 3 of the Civil Procedure Rules. Learned counsel submitted that Order 7 of the Civil Procedure Rules is not a stand-alone provision and must be read alongside other laws, including Order 51 Rule 1 of the Civil Procedure Rules. Learned counsel urged the court to strike out the name of the 2nd defendant from the proceedings.
4. The primary pleadings in this matter are the plaint dated 30/9/2023, statement of defense and counterclaim dated 7/4/2024, and a reply to defense and defense to the counterclaim dated 30/9/2024.



The preliminary objection orally raised by the plaintiff is not pleaded in the reply to the defense and defense to the counterclaim dated 30/9/2024. In paragraph 3 of the statement of defense, the defendant pleads that the recording of the land parcel in the name of the plaintiff was procured through fraud. In paragraphs 36-41 of the counterclaim, the defendant sets out the particulars of fraud or illegality by the plaintiff, in acquiring the suit parcel of land due to the acts of commission and omission by the 2nd defendant.

5. Order 7 Rule 5 of the Civil Procedure Rules allows a defendant to file a statement of defense, counterclaim, set off and a cross-claim of the counterclaim is an independent claim under Order 7 Rule 3 of the Civil Procedure Rules. Withdrawal of a primary suit does not affect a counterclaim. A counterclaim must have all the hallmarks of a suit, including a titular heading and a verifying affidavit.
6. A party filing a counterclaim has to define who are the parties to the counterclaim. There is no bar in law for a defendant to include other parties to the counterclaim apart from the original plaintiff. The law envisages a situation where a counterclaim as an independent claim from the primary suit may bring on board other parties to the suit. In that case, summons to enter an appearance must be extracted, signed and served alongside the defense and the counterclaim to both the plaintiff and the new defendants who were not parties to the initial claim.
7. In *Onward Cargo Systems Co. Ltd -vs- Eveready E. A Ltd* [2015] KECA 658 [KLR], the court said that it was in order to file a counterclaim instead of a separate suit since the issues raised in the counterclaim arise from the same facts as those alleged in the plaint.
8. In *KCB Ltd -vs- James Karanja* [1981] eKLR, the court observed that a counterclaim is a fresh suit only that the defendant becomes the plaintiff for all intents and purposes and that a counterclaim is combined in the plaintiff's proceedings for convenience to enable the court to pronounce a final judgment in one set of proceedings both on the original and on the cross-claim.
9. A preliminary objection under *Mukisa Biscuits Manufacturing Co. Ltd (supra)* must be a pure point of law. The one raised herein is not a pure point of law. Order 7 Rule 8 of the Civil Procedure Rules provides that where a defendant sets out any counterclaim that raises questions between himself and the plaintiff and other person(s), he shall add to the title of his defense 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 defendant to such cross-action, and shall deliver to the court his defense for service on such of them, as are parties to the actions together with his defense for service on the plaintiff within the period within which is required to file his defense.
10. The rationale behind Order 7 Rule 3 of the Civil Procedure Rules is to avoid a multiplicity of proceedings on a claim based on the same or similar or different causes of action or between the parties to the suit. A defendant, therefore, under this Order, in my considered view, does not need the leave of court to add another party other than the plaintiff, who now becomes a defendant to the counterclaim. Equally, I hold the view that the said defendant does not need to seek leave to amend the pleading he is filing as a defense and a counterclaim.
11. In the *County Government of Kilifi -vs- Mombasa Cement* [2017] eKLR, the Court of Appeal held that Order 7 Rule 3 of the Civil Procedure Rules was silent on the effect of such a counterclaim as to whether it must be related to the original subject matter of the suit. Again, in *Beatrice Mumbi Wamahu -vs- Mobil Oil (K) Ltd* [2011] eKLR, the court said a counterclaim is a separate suit under Section 35 of the *Limitation of Actions Act*; hence, its survival is not pegged on the pendency of the primary suit.
12. The upshot is that I find the preliminary objection incompetent. It is dismissed with costs.



**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 26TH DAY OF MARCH 2025.**

In the presence of:

Court Assistant - A. Ebenyo

No appearance for the parties

HON. C.K. NZILI

JUDGE, ELC KITALE.

