



At the time the defences were filed, the Defendants appear to have been represented by the same Counsel, Mr. Mangeni Ivan Geoffrey.

The 2<sup>nd</sup> Defendant took up different Counsel and raised a preliminary objection to the Counter Claim arguing that the Defendant cannot in law file a Counter Claim against a Co-defendant alone. That he ought to have filed a separate suit.

The learned trial Magistrate agreed with the respondent and added that such an action ought to have been an independent suit. This appeal is against that ruling.

There were three grounds of appeal filed which are:

- i) That the Trial Magistrate erred in law and in fact when he struck off the first Appellant's Counter Claim as being barred in law against the first Respondent.
- ii) The Trial Magistrate erred in law and in fact when he held that the Counter Claim was wrongly brought as the first Respondent.
- iii) The Trial Magistrate erred in law and in fact when he held that the Appellant should have brought a different suit.

It is proposed to ask the High Court of Uganda at Jinja for the following orders.

- i) Appeal be allowed with costs for this appeal
- ii) That the decision / ruling and orders of the Trial Magistrate be quashed and set aside.

The parties argued the grounds jointly.

The argument of Appellant's Counsel is that a Counter Claim is an independent suit. That it is a cross action. He relied on O.8 r.8 of **The Civil Procedure Rules**, Blacks Law Dictionary, 6<sup>th</sup> Edition and the decision in **Erinest Kabyanga V Sanyu Patrick C.S 304/2002**.

That the Appellant had a cause of action against the co-defendant that the Appellant did not see any further action against the Plaintiff who if he won, she would not succeed against him on anything. If he indeed was successful, she intended to get a remedy from her co-defendant.

Counsel for the appellant argued that the Trial Magistrate who found that the Appellant had a valid claim against the respondent should have allowed the



Counter Claim filed. That the appellants claim arises from the same subject matter which she chose to proceed with by Counter claim.

The Respondent opposes this appeal and submitted that the rules do not have room for a Counter Claim against a co-defendant solely. That O.8 r.8 of The CPR is clear on this. The gist of the rule is that a Counter Claim is against the claims of The Plaintiff together with any other person. It is first against the Plaintiff and then any other person can be added defend the Counter Claim.

The rules add in O.8 r.9 that an added party must be served with the defence showing the Counter Claim arises from the defence.

Turning to the merits, this Court, like both Counsels, will examine the grounds of appeal jointly.

The relevant provisions of the law in this matter are rules 2 and 8 of Order 8 of The Civil Procedure Rules.

These provisions should in my view be given their plain meaning.

Under r.2 the Counter Claim arises out of an action brought by the Plaintiff. The defendant then sets up a cross action to enable the court enter Judgment on the cross action in that same suit.

Rule 8 of Order 8 contemplates a Counter Claim as a cross action against the Plaintiff and any 3<sup>rd</sup> party who would be defendants to that cross action.

This court is therefore in total agreement with the Holding in **Stanbic Bank Vs. Victoria Fishnet Supplies Ltd & others M.A. 294/2015** which confirms the above.

Even Rule 11 (2) of Order 8 of the Civil Procedure Rules envisages the Plaintiff shall always be a party to the Counter Claim. It provides for the filing of a reply to the Counter Claim and states that the Plaintiff shall file within 15 days after any person named as a party in a Counter Claim has made a reply.

In the 8<sup>th</sup> edition of Blacks Law Dictionary a Counter Claim is defined as:

*"A claim for relief asserted against an opposing party after an original claim has been made"*

The Counter claim only arises as is the case in the CPR against the claim of another party, in this case being the Plaintiff.

From the above a cross action by way of Counter Claim can only be maintained against the Plaintiff and any other person.

In the listed case the Appellant sought to file an action, by way of Counter Claim, against the co-defendant alone. That action is not envisaged by Order 8 of the Civil Procedure Rules. If the appellant intended to proceed against her co-defendant alone, she should have lodged an independent suit.

In the circumstances I uphold the ruling of the trial Magistrate.

This appeal is dismissed with costs.

The case file is remitted back to the trial Court to conclude hearing.



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**MICHAEL ELUBU**  
**JUDGE**  
**25/02/2019**