

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE CLAIM NO. 107 OF 2018  
(ARISING FROM CB. NO. 048 OF 2018 FORTPORTAL LABOUR OFFICE)**

**BRIGHT EMMANUEL .....CLAIMANT**

**VERSUS**

**GRAND VICTORIA LIMITED .....RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson
3. Ms. Julian Nyacwho

**RULING**

This claim was filed by the claimant alleging that he was unfairly and unlawfully terminated and for this he prayed for general damages, severance allowance, punitive damages and other reliefs. In reply the respondent alleged that the claimant was terminated after he had embezzled funds of his employer to the tune of 14,132,000/= which he himself admitted. It was further alleged by the respondent by way of counter claim which was filed separately from the reply to the memorandum of claim, that the claimant had fraudulently during the course of his employment presented a fictitious landlord and defrauded the respondent of 11,600,000/= and prayed that the claimant refunds the same. According to the respondent the claimant having received 28,800,000/= for the purpose of paying rent for the premises for the operation of the respondent, the claimant only paid 17,200,000/= leaving a balance of 11,600,000/= which he allegedly paid to a person other than the landlord of the premises occupied by the respondent.

At the start of the hearing of this claim counsel for the claimant raised four preliminary objections relating to the counter claim which this court decided to deal with before the substantive claim.

The first preliminary objection raised was that the counterclaim did not disclose a cause of action.

From the onset we would like to note that the nomenclature of “**counterclaimant**” and “**counter respondent**” as used by both parties is not known in the courts of law. The “**claimant**” just like the “**plaintiff**” is known in practice to continue being referred to as such even when a counter claim is filed.

Thus in the High court, the plaintiff is not referred to as the “**counterplaintiff**” or the defendant as “**counterdefendant**” where a counter claim is lodged. It was therefore unnecessary conjecture for both claimant and respondent to use the terms “**counterclaimant**” and “**counterrespondent**” which we shall not use in this ruling. It was not necessary either for the respondent to file separately a counter claim on 24/04/2019, having filed a reply to the memorandum of claim earlier. Whereas a counterclaim is an independent suit from the main claim, it is usually contained in the same claim as a separate pleading. Nonetheless both the nomenclature and the separate filing are in our view a technical aspect of procedure which need not affect substantive justice. We shall therefore proceed to determine the preliminary objection.

The claimant on the first leg of the objection argued that the counter claim did not disclose a cause of action. From the submissions of counsel for the claimant we are not convinced that the counter claim discloses no cause of action.

His argument that the counter claim can only be disposed of by an independent suit is not substantiated and therefore not acceptable since by its nature a counter claim is an independent suit.

The second leg of the preliminary objection is that this court has no jurisdiction to entertain the counterclaim. He contended that this court being a court of first instance had no jurisdiction to entertain the counter claim since it was not referred to this court by the labour officer. He argued that the counterclaim of 11,600,000/=

raised a totally new claim of causing financial loss which is a criminal offense and which this court has no jurisdiction to entertain.

In reply, the respondent argued that this court had jurisdiction because the counter claim was part of the dispute between the parties which was referred to this court by the labour officer.

The counter claim is for recovery of 11,600,000/=allegedly received by the claimant for the purpose of paying rent for the premises in which the claimant was operating as an employee of the respondent. We form the opinion that this counter claim originates from the same course of employment of the claimant, termination of which is an issue referred to this Court by the labour officer.

The counter claim is therefore properly before this court and this court has jurisdiction, not only because the main claim connected to the counterclaim was referred to it, but also because this would avoid a multiplicity of suits in the court system.

It seems to us that counsel for the claimant misdirected himself when he submitted that causing financial loss is only a criminal offence which can only be committed against government entities. It is common knowledge that private institutions and individual persons are entitled to file civil claims against their employees for causing financial loss and even dismiss them for the same offence. Therefore causing financial loss is not only a criminal offence as it may also constitute a Civil wrong.

Consequently in entertaining the counter claim, this court will not be entertaining a criminal offence as counsel for the claimant seems to suggest.

The 3rd leg of the objection is that the counter claim is a wrong party to the suit. We agree with the respondent that the submission of the claimant on whether or not the claimant is a party is premature and goes into the merits of the counterclaim and therefore we cannot discuss it at this level of the proceedings.

The 4<sup>th</sup> leg of the objection is that the claimant alleges fraud whose particulars have not been given in the counter claim.

In reply the respondent admitted to have pleaded fraud but argued that there was no need to plead particulars of fraud since it was based on violation of the contract of employment. There is nothing further from the truth. Once a person pleads fraud as a cause of action he/she is required to particularize the aspects of the fraud alleged. This is for the purpose that the plaintiff/claimant is able to appreciate how the fraud is alleged to have been perpetuated so as to be able to effectively defend the same. However we form the opinion that non-particularization of the fraud is not fatal at the preliminary stage of the case.

All in all we find that the preliminary objection has no merits and it is hereby overruled. The claim and count claim will both be heard on merits. No order as to costs is made.

**Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**Panelists:**

1. Mr. Bwire John Abraham
2. Mr. Mavunwa Edson
3. Ms. Julian Nyacwho

Dated: 21/06/2019