

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 00 – CV – LD – 0014 OF 2020

KAISO JACK ::: PLAINTIFF

VERSUS

1. NYAKAISIKI JUDITH

2. MWESIGE RICHARD ::: DEFENDANT

3. ASIIMWE JOVIA (Administrator of the estate of the late Samuel Baker)

BEFORE: HIS LORSHIP VINCENT WAGONA

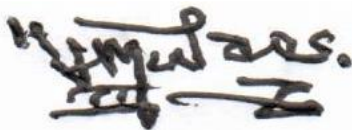
RULING ON A PRELIMINARY POINT OF LAW:

Introduction:

When the case came up in court on 25th September 2023, Counsel Bahenzire Angella for the plaintiff submitted that she had a preliminary objection regarding the competency of the Written Statement of Defense and Counter claim filed by the 1st defendant. A schedule to file written submissions was issued and extended on 31st October 2023 and only the plaintiff's counsel complied.

Point of law raised for the Plaintiff:

Learned counsel contended for the plaintiff that Order 6 rule 19 of the Civil Procedure Rules allows amendment of pleadings at whatever stage of the proceedings. Order 8 rule 7 is to the effect that if a party desires to include a counter claim, the same should be part of his or her written statement of defense. In *Nakirwowa Majorine Kiddu & anor v Maurice Sserugo Kiddu & anor, HCCS No. 587 of 2015* court emphasized that pleadings filed without leave are improper.



The plaintiff was granted leave to amend the plaint. The plaintiff filed an amended plaint and served the defendants. The 1st defendant in her Written Statement of Defense included a counter claim without leave of court. In the first written statement of defense filed by the 1st defendant, there was no such counter claim. The written statement of defense where a counter claim was included without leave should be struck out.

Issues:

Whether the defendants' amended written statement of defense is incurably defective and liable to be struck out.

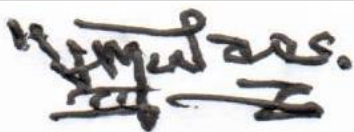
Consideration by Court:

Order 8 rule 1 of the Civil Procedure Rules provides that: *A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether the setoff or counterclaim sounds in damages or not, and the setoff or counterclaim shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross-claim. But the court may on the application of the plaintiff before trial, if in the opinion of the court the setoff or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself or herself of it.*

(2) *Where a defendant includes a counterclaim in the defence, the defendant shall accompany it with a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on.*

Rule 7 adds thus:

7. Counterclaim.

A handwritten signature in black ink, appearing to be 'Vijaydas' with a flourish underneath.

Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he or she shall, in his or her statement of defence, state specifically that he or she does so by way of counterclaim.

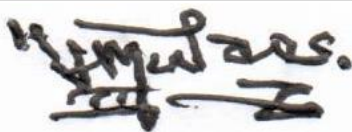
Further Order 6 rule 19 further states that:

- 5 *The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

The plaintiff was granted leave to amend the plaint. The plaintiff filed an amended
10 plaint and served the defendants. The 1st defendant in her Written Statement of Defense responding to the amended plaint and included a counter claim. The plaintiff contends that because in the first written statement of defense filed by the 1st defendant, there was no such counter claim, the defendant required leave of court to include a counter claim in the amended WSD responding to the amended plaint.

- 15 This is a procedural issue where counsel for the plaintiff cited no authority that applies to the particular scenario. In a persuasive decision by the Supreme Court of India by **NV Ramana J, In Ashok Kumar Kalra v Wing CDR Surendra Agnihotri & others, Supreme Court SLP (C) No. 23599 of 2019, 2019, SC 1525, 2020(2)** the court noted that: *“any provision under the procedural law should not be constructed in such a*
20 *way that it would leave court helpless.. In fact a wide jurisdiction has been given to civil court regarding the procedural elements of a suit. As held by this Court, procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.”*

- I take the view that Order 6 rule 19 and Order 8 rule 1 and 7 of the Civil Procedure
25 Rules are to be construed in a manner that aids justice. It is my understanding and



interpretation that when the plaintiff was granted leave to amend the plaintiff and proceeded to file and serve the defendants, the cause action in respect of which the defendants were to file an amended WSD were those contained in the amended plaintiff. The amended plaintiff became the action referred to in Order 8 rule 1 of the Civil Procedure Rules that entitled the defendants to include a counter claim in their amended WSDs in the terms of Order 6 rule 19 and Order 8 rule 1, 2 and 7 of the CPR without requiring leave of court. In case any even if leave was required, the leave granted to the plaintiff to file an amended plaintiff, inherently included leave for the defendants to include a counter claim in their WSD where it was found necessary based on the facts pleaded in the amended plaintiff. If the plaintiff amends a plaintiff and pleads facts which in the view of the defendant would give raise to a cause of action in relation to the same facts, the defendant is at liberty to include a counter claim in the amended written statement of defense without seeking leave of court first.

I therefore find no merit in this point of law and the same is accordingly overruled.



Vincent Wagana
High Court Judge / Fortportal

DATE: 27/03/2024

