

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 345 OF 2015**

IRENE NAMUBIRU}.....COUNTERCLAIMANT

VERSUS

- 1. DERRICK KATONGOLE a.k.a LYTO BOSS}**
- 2. CATHERINE KUSASIRA}DEFENDANTS TO COUNTERCLAIM**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

This ruling arises from a preliminary objection filed in writing against the counterclaim of the Defendant brought by the second counter Defendant. The second counter Defendant's Counsel raised a preliminary objection under the provisions of Order 6 rules 28, 29 and 30 of the Civil Procedure Rules for the submission that the counterclaim does not disclose a cause of action against her and should be dismissed with costs.

When the matter came for hearing on 10th March, 2017 Counsel Arthur Mpairwe appeared for the Plaintiff while Counsel William Kyobe appeared for the Defendant and Counsel John Bosco Mudde represented the second counter Defendant Catharine Kusasira. The second counter Defendants Counsel intimated that he would raise a preliminary objection to the counterclaim because it discloses no cause of action against the second counter Defendant. Consequently he was advised to file written submissions addressing the court on the objection and to serve the submissions on the Plaintiff's Counsel who would in turn file his written reply. The preliminary objection was fixed for ruling on 11th April, 2017 at 2:30 PM.

On 3rd April, 2017 KAL Advocates filed what is entitled "COUNTERCLAIMANT'S WRITTEN SUBMISSIONS". The long and short of the submission is that the second counter Defendant raised a preliminary objection to the effect that the counterclaim does not disclose a cause of action against her. This is what the second and third paragraph of the submissions reads:

"Your Lordship considering the circumstances of this case we wish to withdraw the counterclaim as against both Counterclaimants.

We pray that this court be pleased to dismiss the counterclaim with no order as to costs."

A withdrawal of suit is made under Order 25 rule 1 of the Civil Procedure Rules. The Plaintiff may by notice in writing before delivery of the Defendant's defence or after receipt of the defence but before taking any other proceedings in the suit, by notice in writing wholly discontinue his lawsuit against any or all the Defendants whereupon he or she shall pay the Defendant's costs of the suit. However, this suit had been fixed for hearing and therefore Order 25 rule 1 (2) of the Civil Procedure Rules is the rule applicable to the Counterclaimant's suit and it provides as follows:

“(2) Except as in this rule otherwise provided, it shall not be competent for the Plaintiff to withdraw or discontinue a suit without leave of the court, but the court may, before or at, or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out.”

This is because the Counterclaimant situation does not fall under sub rule 1. The question for determination is therefore whether the suit should be dismissed with costs or not. The Counterclaimant prays that it should be dismissed with no order as to costs.

In the premises, the Defendants to the counterclaim having incurred costs and particularly the second Defendant having filed objections by 16th March, 2017, the counterclaim as against the other Defendants to the counterclaim stands dismissed with costs.

Ruling delivered on 11th April, 2017

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Katongole Derrick in Court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

11th April, 2017