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The Republic of Uganda  
In The High Court of Uganda

Holden at Soroti

Miscellaneous Application No. 003 of 2022  
[Arising from Civil Suit No. 005 of 2018]

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Life Line Ministries :: Applicant

Versus

15 Akello Frida and 12 Others :: Respondents

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

20 This is an application by way of Chamber Summons under sections 98 of  
the Civil Procedure Act, Section 33 of the Judicature Act, Order 1 rules 3  
& 13 and Order 8 rules 9 & 10 of the Civil Procedure Rules for orders that;

a) Leave be granted to the applicant to Amend her Written statement  
of Defence to file a counterclaim and add No. 8<sup>th</sup> – 13<sup>th</sup> Respondents  
25 as defendants to the Counterclaim in Civil Suit. 05 of 2018, now  
pending before this Honourable Court.

b) The Costs of this application be provided for.

5 The grounds of the application are set in the application and affidavit deponed by Bishop Julius Peter Oyet the founder and presiding Bishop of the applicant. They include;

10 a) That there is need to add the said parties to civil suit No. 05 of 2018 for purposes of determining the real questions in controversy between the parties.

b) That the said parties are pastors of Life Line Ministries Centre Branch Churches in the districts of Kumi, Amuria, Serere, Katakwi and Malaba.

15 c) That the amendment does not in any way prejudice the respondents as it is necessary to avoid multiplicity of suits.

d) That it is in the interest of justice that this application be granted.

In the affidavit in support of the application the deponent stated;

20 1. That the 1<sup>st</sup> – 6<sup>th</sup> Respondents filed Civil Suit No. 05 of 2018, claiming ownership of the disputed land/property comprised in FRV 779 Folio 12, Plot 137, Soroti Block 6 at Opiyai measuring approximately 5.0580 Hectares and other various orders.

25 2. That the applicant established herself in Teso sub region in 2004 under the name Life line centre Soroti being the first branch of the defendant in Teso having been curved out of Life Line Ministries Kampala as established in 1999.

30 3. That when the applicant gained ground and became a popular Ministry in Teso the management sought to expand its ministry within Teso and other parts of Mbale and Malaba thus giving birth to Kumi Life Line Center, Serere Life Line Center, Amuria Life Line Center, Malaba Life Line Center and Katakwi Life Line Center under the leadership of the 9<sup>th</sup> – 13<sup>th</sup> defendants by counterclaim.



- 5 4. That the applicant (intending counter claimant) appointed and deployed the 8<sup>th</sup> – 13<sup>th</sup> counter defendants as pastors to preside and run its church branches in Soroti, Kumi, Amuria, Serere, Katakwi and Malaba respectively (copies of the appointment letters attached hereto marked “A<sub>1</sub> – A<sub>6</sub>”).
- 10 5. That after the 8<sup>th</sup> Respondent/counter defendant had served in the applicant’s ministry in Soroti branch for about 13 years, a disagreement arose between the 7<sup>th</sup> defendant and me the presiding Bishop of the applicant and before I and the 7<sup>th</sup> defendant could resolve our differences, the 8<sup>th</sup> Respondent resigned from the
- 15 leadership of the applicant’s ministry.
6. That immediately the 8<sup>th</sup> Respondent resigned he incited the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents to denounce the applicant and take over the applicant’s branch churches and properties in the respective churches.
- 20 7. That the applicant now intends to file a counter claim against the 8<sup>th</sup> – 13<sup>th</sup> respondents and plaintiffs for a declaration that the respondents are illegally and or wrongly claiming possession/ownership of the applicant’s properties in the above listed branch ministries of the applicant including land.
- 25 8. That my lawyers have now advised me, which I believe to be true and correct that there is need to amend our defence by introducing a counterclaim and adding the 8<sup>th</sup> – 13<sup>th</sup> respondents as defendants by counterclaim in this suit having not been parties to the suit before to enable court to determine this matter effectively.
- 30 9. That the proposed amendments are intended to bring before this Honourable Court the real matters in controversy between the parties herein so that the same are determined on their true and substantive merits.

- 5 10. That my lawyers have informed me further, which I believe to be true and correct that the time allowed by law for amendment of pleadings has since expired.
11. That this Honourable court has power to order amendment of pleadings at any stage to ensure that all issues in controversy  
10 between the parties over the suit land and other properties are fully investigated and finally determined by this court.
12. That the proposed amendments arise out of the same facts in respect of the piece of land claimed by the Plaintiffs and those in the possession of the 9<sup>th</sup> – 13<sup>th</sup> respondents in this suit.
- 15 13. That the proposed amendments will not occasion any prejudice to the Respondent / Respondents/Plaintiffs.
14. That my said Lawyers have in addition informed me which I believe to be true and correct that there is need to amend our defence to prevent multiplicity of suits, to save unnecessary costs in litigation  
20 as well as court's valuable time.
15. That the hearing of the respondent's case has not commenced and this application has been brought without undue delay.
16. That this application is brought in good faith and it is in the interest of justice that the same be granted

25 In reply to the application, the respondent through Otim Yuventines stated as follows;

1. That the application and the affidavit are riddled with falsehoods and the applicant shall be put to strict proof.
2. That the application is not tenable in law as it seeks to introduce a  
30 counterclaim that is not existent without leave to file the same out of time.
3. That this court has no geographical jurisdiction over matters in Tororo and Malaba affecting some of the respondents.

[4] 



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4. That the applicant has amended their pleadings by removing the 13<sup>th</sup> Respondent without leave of court which is an illegality.

5. That the applicant should have sought leave to file a counter claim out of time instead of leave to amend their defence to introduce a counterclaim.

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6. That there is no need to bring the 8<sup>th</sup> to 13<sup>th</sup> respondents as defendants since the matter before court is a dispute as to ownership of the land and property which does not affect the intended respondents.

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7. That the applicant has taken the wrong procedure to file a counter claim out of time.

8. That the proposed amendment will prejudice the respondent's case as it is a totally new suit with different issues, new facts and causes of action.

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9. That the application has been brought out of time and with delay, considering the main suit was filed in 2018.

10. That the application has been brought mala fide and is a waste of courts time and an abuse of court process intended to defeat the interest of justice.

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11. That it is in the interest of justice that the applicant's application is dismissed with costs.

In rejoinder the applicant stated thus;

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1. That the applicant had filed a counterclaim in time when they first filed its written statement of defence but the respondents raised an issue to do with the existence of what they called "strangers" in the counterclaim hence this application seeking to formerly bring on board those alleged strangers.

5 2. That the spirit in which it seeks to add the 7<sup>th</sup> to 13<sup>th</sup> respondents to the counterclaim as the counter-defendants is that the claim against them arises from the same facts and to avoid multiplicity of suits.

10 3. That this court has unlimited jurisdiction in determining matters before it and as such the allegation of geographical jurisdiction over matters in Tororo is misconceived in law.

15 4. That there is already a counterclaim containing the original parties to the suit and therefore no need to seek leave of court to file a counterclaim out of time. The claim that a wrong procedure was adopted by the applicant is misleading in respect to the current application.

20 Counsel for the applicant raised a preliminary objection submitting that the affidavit in reply sworn by Otim Yuventine is incurably defective as the said reply was sworn by one Otim, the 3<sup>rd</sup> respondent who is not an officer of the 7<sup>th</sup> respondent and was not duly authorised to act for or on behalf of the 7<sup>th</sup> respondent which is a corporate body.

25 Counsel further submitted that Civil Suit No. 05 of 2018 was instituted in a representative capacity and therefore any pleadings in that capacity have to be brought on one's own behalf and on behalf of all the other plaintiffs or respondents.

That Otim Yuventine swore his affidavit in reply on his behalf which renders it a stand-alone affidavit meaning the rest of the respondents did not prefer to respond to the application and as such the application proceeds against them exparte.

30 Counsel relied on ***Owori Media and Anor Vs. Eco Bank Uganda Ltd. M.A No. 1105 of 2014, Lena Nakalema and 3 Others Vs, Mucunguzi Myers M.A No. 460 of 2013*** and ***Taremwa***



5 ***Kamishani and Others Vs. Attorney General H.C.M.A No. 38 of 2012.***

The respondents did not file submissions and therefore did not address court on this preliminary objection.

10 The genesis of this application is Civil Suit No. 5 of 2018 which was instituted in a representative capacity and a court order was given in that regard.

A court order to a party in a representative suit is a mandate for the party to represent itself and the others even without having to seek further authority from the others represented.

15 See: ***Taremwa Kamishani & 8 Ors v Attorney General & 2 Ors Miscellaneous Cause 38 of 2012 [2012] UGHC 101.***

In ***Taremwa Kamishani (supra)*** Hon. Justice Bashaija K. Andrew stated thus;

20 ***“Let me state clearly that where the party obtains a representative order it is sufficient authority to represent himself/ herself and others in the same interest and he or she can swear an affidavit on his or her own behalf and on behalf of the others represented.”***

25 In ***Kaheru & Anor v Zinorumuri (Miscellaneous Application 82 of 2017) [2017] UGHCCD 129***, it was stated;

30 ***“The principle is that save in Representative suits where the party who obtains the Order to file the suit can swear Affidavits binding on others on whose behalf the suit is brought, it does not apply otherwise. Where an Affidavit is sworn on one’s behalf and on behalf of others, there is***

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***need to prove that the others authorized the deponent to swear on their behalf.”***

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From the above holdings, I am of the considered opinion that it was not again necessary for the respondents who having received a representative order in the head suit would again have to seek another so as to reply to this application.

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Furthermore, the 3<sup>rd</sup> respondent apart from being a party to the Application, is also a witness and his affidavit constitutes evidence, which is subject to the rules of evidence under the **Evidence Act Cap 6, Section 133**, thereof, stipulating that no particular number of witnesses shall in any case be required for proof of any fact.

Consequently, it would be futile to require that all the nine witnesses put in affidavits repeating same thing to prove the fact in issue. Proof or not of a matter is not based on the “***law of large numbers***” as was correctly determined in ***Taremwa Kamishani (supra)***.

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Therefore, I would find and conclude that it was not necessary for all the respondents to file a reply to the application especially since they would, in my view, possibly repeat the same evidence.

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The fact of the other respondents not swearing affidavits is a mere technicality that should not bar the determination of the application. The objection is accordingly overruled.

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Coming back to this application, Counsel for the applicant submitted that the 8<sup>th</sup>-13<sup>th</sup> intending counter-defendants should be added as parties and counter defendants to the suit because they are illegally occupying the premises of the applicant and yet they are no longer paying their allegiance nor recognise the applicant as their appointing authority yet the



5 applicant still had interest in all the properties which are in their occupation in the districts of Kumi, Amuria, Serere, Katakwi and Malaba.

In making this submission, relied on **Order 1 rule 10 (2)** and **Order 8 rule 8 of the Civil Procedure Rules** which is the law in respect the joinder of parties and counterclaims.

10 Counsel further submitted that the objection which led to the filing of this application was unnecessary since the law provided for the procedure they had adopted.

The position of the law in regard to the issues raised by counsel for the applicant is as follows;

15 **Order 1 rule 10(2) of the Civil Procedure Rules** provides;

20 “The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions  
25 involved in the suit, be added.”

**Order 8 rule 8 of the Civil Procedure Rules** provides;

30 “Where a defendant by his or her defence sets up any counterclaim which raises questions between himself or herself and the plaintiff together with any other persons, he or she shall add to the title of his or her defence a further title similar to the title in a plaint, setting forth the

5 names of all the persons who, if the counterclaim were to  
be enforced by cross-action, would be defendants to the  
cross-action and shall deliver to the court his or her  
defence for service on such of them as are parties to the  
action together with his or her defence for service on the  
10 plaintiff within the period within which he or she is  
required to file his or her defence.”

Order 8 rule 9 provides thus;

15 “Where any such person as mentioned in rule 8 of this  
Order is not a party to the suit, he or she shall be  
summoned to appear by being served with a copy of the  
defence, which shall be served in accordance with the  
rules for regulating service of a summons.”

Order 8 rule 10 provides thus;

20 “Any person not already a party to the suit who is served  
with a defence and counterclaim as aforesaid must appear  
in the suit as if he or she had been served with a summons  
to appear in the suit.”

In *Kabyanga v Sanyu Civil Suit 304 of 2002 cited as [2015]  
UGHCLD 30*, Hon. Lady Justice Eva K. Luswata stated thus;

25 “It seems to me that the requirement for a heading in a  
counterclaim would apply only where the defendant has  
introduced a new party to the proceedings as a defendant  
to the suit. This would serve to avoid any confusion on  
who are the old and new parties to the counterclaim, and  
30 the actual parties who are the claimants and defendants  
to it. This would not be the case where the parties in the



5 *suit have remained the same but interchanged only as a  
result of the counterclaim. Indeed, Justice Lameck  
Mukasa in Nile Breweries Ltd Vs Brunal Ozunga T/a  
Nebbi Boss Stores HCCS 580/06 was of the view that Rule  
10 8 should be read together with all the other rules in Order  
o.8 r.9 that a person who is added as a new party by  
reason of the counterclaim, is after the counterclaim is  
filed, summoned to court by service upon them of the  
statement of defence and counterclaim in accordance  
15 with the rules for regulating service of  
summons. Thereafter, they will join the suit as if they  
have been served with summons in a suit.”*

I agree and adopt the interpretation of the law by my learned sister above.

20 A look at the law on counterclaims clearly shows that one need not seek  
leave to add parties that are not in the original claim since counterclaim is  
simply filed at the time the Written Statement of Defence with all counter  
defendants included in the title of the counterclaim and then made aware  
of the claim through the service of the defence.

25 The applicants averred that this was previously done but that counsel for  
the respondents objected to such a procedure and so it was let to go on the  
basis that it had parties who were not originally in the suit and so resulted  
into the filing of this application.

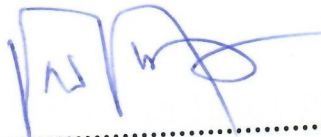
30 I find that if the right procedure in filing a counterclaim was followed by  
the applicant previously, any objection to including counter defendants in  
the WSD of the defendant was misplaced and not grounded in any law and  
as such the said objection should have been overruled which would have  
made the need to file this application to amend the counterclaim not

5 necessary as the position of the law in regard to counterclaims is clear.  
Thus the original procedure adopted was the proper course of action to  
take in terms of counterclaims.

Accordingly, the interest of justice and considering that this Honourable  
Court has an unlimited jurisdiction, I would hereby direct that all the  
10 required pleadings in regard to this matter arising from the same facts  
should be filed by the parties with the defendant, if it so wishes filing its  
counterclaim as part of its WSD naming all counter defendants who  
should thus be served with the WSD containing the counterclaim and who  
would thus make appropriate replies in order to minimise multitudes of  
15 suits.

Accordingly, this application is thus allowed with costs to be in the cause.

I so order.



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20 Hon. Justice Dr Henry Peter Adonyo

Judge

23<sup>rd</sup> June 2022