

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 8 OF 2020

AZANIA BANK LIMITED PLAINTIFF (COUNTER CLAIM)

VERSUS

SMX LIMITED 1ST DEFENDANT (COUNTER CLAIM)

PRIME PROPERTIES LTD 2ND DEFENDANT (COUNTER CLAIM)

HASNAIN GULAM HUSSEIN3RD DEFENDANT (COUNTER CLAIM)

RULING

The eighth defendant in the main suit (1st defendant to a counter claim) had raised a preliminary objection to the first defendant/plaintiff's counter claim that it offend the provisions of Order VIII rule 9 of the Civil Procedure Code, Cap 33 R.E. 2019, having been preferred against the co-defendant to the main suit.

It is true that the provision of Order VII rule 9 Cap 33 (supra), stipulate that a counter claim ought to be presented by the defendant against the plaintiff.

Herein, the first defendant/ plaintiff to a counter claim, presented a counter claim against the 8th defendant, 1st plaintiff and 2nd plaintiff to the main suit who are 1st, 2nd and 3rd defendant respectively, to the counter claim. In a counter claim it is alleged that the 8th defendant to a main suit was advanced with various facilities which were guaranteed by the 1st and 2nd plaintiff into the main suit.

In the written statement of defence for the 8th defendant (in a main suit), she almost admitted each and every particulars pleaded by the first and second plaintiff to a main suit (amended plaint) and she joined hand to the prayers (reliefs) sort (sic, sought) by the 1st and 2nd plaintiff to the main suit. The provisions of sub rule 1 of rule 10 of Order VII Cap 33 (Supra) allow the plaintiff to a counter claim to join any other person whether or not party to the suit. I reproduce it for appreciation,

'where a defendant, by a written statement, sets up any counter claim which raises questions between himself and the plaintiff along with another person (whether or not a party to the suit), he may join that person as a party against whom the counter claim is made'.

As such, an argument that a counter claim cannot be brought against a co-defendant is legally untenable.

As much a counter claim arises from the same facts as those relating to the original proceeding (main suit) and in view of a fact that the plaintiffs in the main suit are also impleaded in the counter claim along with the 8th defendant, to my view a counter claim is maintainable.

Having premised as above, the preliminary objection is found to be unmerited and is overruled. Costs shall be in the cause.



E. B. Luvanda
Judge
1/12/2020

Court: Ruling delivered at chamber court.

Order: 1ST PTC on 14/12/2020 at 10.00 hours.

E. B. Luvanda
Judge
1/12/2020