THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF PALLISA
HOLDEN AT PALLISA
LAND SUIT NO. 03 OF 2026

JOY SEKU LULE — **PLAINTIFF / COUNTER-DEFENDANT**

VERSUS

1. NANZALA PULISIKIRA OONYU
2. DITONGO DANIEL — **DEFENDANTS / COUNTER-CLAIMANTS**

BEFORE: H/W KYEMBE KARIM
RULING ON WHETHER THE COUNTERCLAIM STILL STANDS

On 20th August 2026 this court ruled that the plaintiff's suit had abated for failure to take out summons for directions. The defendants had filed a counterclaim, on whose status the court did not then pronounce. The counter-claimants, represented by **Mr. Seku Jotham Bolle**, now seek summons for directions on it. The counter-defendant appeared and was represented by **M/S JSC Centers, Mbale**. The issue is whether the counterclaim survived the abatement of the main suit.

Resolution

A counterclaim is, in effect, a separate suit by the defendant against the plaintiff. Order 8 rule 13 of the Civil Procedure Rules allows a counterclaim to be proceeded with even where the plaintiff's suit is stayed, discontinued or dismissed. Abatement under Order 11A rule 1(6) is the consequence of the plaintiff's default in taking out summons for directions. It ends the plaintiff's suit. The rule says nothing of a counterclaim, and Order 11A rule 1(8) itself contemplates an action proceeding only on a counterclaim, treating the counter-claimant as the plaintiff.

This reading is supported by authority. In ***Mbarara Municipal Council v Natta Mary Nalongo, HCCS No. MMB 44 of 1997* [*2005*] *UGHC 98***, Mugamba J held that the words of Order 8 rule 13 are not to be read narrowly and cover any case where the plaint is put out of action, and that the counterclaim remained alive. In ***V.G. Keshwala & Sons Ltd v Modern Laminates Ltd, HCT-29-LD-CS-0167-2025* [*2026*] *UGHC 441***, Nabisinde J, on the same facts, held that abatement of the main suit does not extinguish the counterclaim, which remains pending and must be prosecuted by the counter-claimant under Order 11A. I respectfully agree with both decisions.

The defendants should not lose their claim because of the plaintiff's inaction. The abatement ruling of 20th August 2026 disposed of the plaintiff's suit only and did not touch the counterclaim, which therefore remained pending. Article 126(2)(e) of the Constitution also requires that substantive justice be done without undue regard to technicalities.

Orders

1. The counterclaim survived the abatement of the plaintiff's suit and stands on its own under Order 8 rule 13 of the Civil Procedure Rules.
2. The counterclaim shall proceed to directions under Order 11A of the Civil Procedure Rules, with the defendants as counter-claimants.
3. Costs shall abide the outcome of the counterclaim.

I so order.

H/W KYEMBE KARIM
22/10/2026