THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA

MISCELLANEOUS APPLICATION NO. 0021 OF 2026
(ARISING FROM CIVIL SUIT NO. 015 OF 2026)

1. OMAR AHMED
2. AHMED SAEED ABDULRAHMAN BAMAKHARAMA.....APPLICANTS

VERSUS

1. ALI AHMED
2. JAMILA AHMED.....RESPONDENTS

BEFORE: H/W KYEMBE KARIM, MAGISTRATE

RULING

Introduction

1. This is an application by Chamber Summons under Order 1 rule 13, Order 6 rules 19 and 31 and Order 41 rules 1, 2 and 9 of the Civil Procedure Rules, S.I. 71-1 (CPR), and section 98 of the Civil Procedure Act, Cap. 282. The applicants seek leave to amend their written statement of defence and to raise a counterclaim in Civil Suit No. 015 of 2026, and the costs of the application.

2. Both applicants swore affidavits in support. The 1st respondent opposed the application by an affidavit in reply. The 2nd respondent filed none.

Background

3. The respondents sued the applicants on 30 July 2026 as beneficiaries of the estate of their late father, Ahmed Abdurahman. They claim trespass on, and intermeddling with, estate land at Muvule Mukanga, West Ward, Pallisa Town Council, measuring about four plots. They seek declarations, vacant possession, demolition, a permanent injunction, general damages, interest and costs.

4. The applicants, then without a lawyer, filed a self-drafted joint written statement of defence dated 17 August 2026. The court received it on 17 August 2026 and it is endorsed as lodged on 19 August 2026. Counsel for the applicants gave the date as 12 August 2026, but the court record shows the later dates. The defence denied the claim, relied on the Administrator General's distribution agreement and a UNRA assessment form, and raised no counterclaim.

5. On 24 August 2026 the applicants filed this application with a proposed Amended Written Statement of Defence and Counterclaim (Annexure "A"). They say that after instructing counsel they found that their own defence omitted and misstated material facts, among them illegality, fraud, limitation and their status on the land. The proposed pleading also adds a counterclaim against the respondents for declarations about the land and the Administrator General's process, a permanent injunction, an account of UNRA compensation, damages and costs.

6. The 1st respondent says the applicants have not disclosed the facts they omitted, that new facts cannot be introduced by amendment, and that the application wastes the court's time and prejudices him. In submissions, the respondents add that a counterclaim cannot be introduced by amending a defence that had none, and that the applicants should have applied for leave to file a counterclaim out of time.

Representation and procedure

7. The applicants were represented by Counsel **Musana Peter** of **M/s Tumwebaze, Kasirye & Co. Advocates**, with Counsel **Ogaki Herbert** holding brief on 5 and 28 October 2026. The respondents were represented by **M/s Nangulu & Mugoda Advocates**; on 5 October 2026 Counsel **Wekesa Prossy** appeared holding brief for Counsel Mugoda. On 28 October 2026 the respondents and their advocates were absent.

8. On 5 October 2026 the court directed written submissions: the applicants by 12 October, the respondents by 19 October, and ruling on 28 October 2026. The applicants filed on 19 October 2026 and the respondents on 23 October 2026. The applicants filed a rejoinder dated 26 October 2026. The court has considered all of them.

Preliminary points

9. **Unsigned and late submissions.** The respondents ask the court to expunge the applicants' submissions because they were filed late, served on 21 October 2026, and are unsigned. The applicants say signed copies were forwarded by email and that the respondents suffered no prejudice. The copy on the court file is unsigned, but submissions are not evidence, the respondents answered them in full, and Article 126(2)(e) of the Constitution requires substantive justice without undue regard to technicalities. Both sides also filed after the dates set. The request to expunge is declined. Counsel are reminded to keep to court timelines and to sign their filings.

10. **Wrong order cited.** The respondents rightly point out that Order 41 CPR concerns temporary injunctions and has nothing to do with amendment. The application is also brought under Order 6 rule 19 and section 98 of the Civil Procedure Act, which properly empower the court, so the mis-citation is not fatal.

Issues

11. The issues are:

    (a) whether the applicants should be granted leave to amend their written statement of defence;

    (b) whether the applicants should be granted leave to raise a counterclaim; and

    (c) what remedies and costs are appropriate.

The law

12. Order 6 rule 19 CPR provides that 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 that all amendments necessary for determining the real questions in controversy between the parties shall be made.

13. In ***Gaso Transport Services (Bus) Ltd v Martin Adala Obene, SCCA No. 4 of 1994*** the Supreme Court set out the principles: the amendment must not cause injustice to the other side, and an injury that costs can compensate is not an injustice; multiplicity of proceedings should be avoided and amendments that avoid it should be allowed; an application made in bad faith should be refused; and no amendment should be allowed where the law prohibits it. In ***Mulowooza & Brothers Ltd v N. Shah & Co. Ltd, SCCA No. 26 of 2010*** the Supreme Court held that amendments should be freely allowed unless they would cause an injustice that costs cannot cure, or would introduce a distinct cause of action in place of the original one. It added that it is wrong to refuse an amendment merely because it pleads new facts or adds a cause of action. See also ***Eastern Bakery v Castelino [1958] 1 EA 461***.

Issue 1: leave to amend the written statement of defence

14. The respondents' real quarrel is with the counterclaim. As for the defence itself, the objections in paragraphs 7 to 9 of the 1st respondent's affidavit are not made out.

15. The original defence was drafted by the applicants themselves, who are lay persons. The application was filed days after it, before any hearing and before any evidence was taken. Nothing suggests bad faith.

16. The claim that the applicants disclosed no omitted facts cannot stand with paragraph 8 of the same affidavit, which says the amendment introduces new

facts. The proposed pleading sets those facts out. In any case, new facts are not a ground for refusal. A party amends precisely to plead the facts he actually relies on. The Supreme Court said as much in ***Mulowooza***. Courts are also more willing to allow correction where a defence was self-prepared, as in ***Nagayi Florence v Ndoraaho Amooti Yovan Ruhukya & Others, HCT-17-LD-MA-0224-2025***.

17. No prejudice is shown. The 1st respondent says only that the amendment "prejudices" him and wastes time. That is a bare assertion. The suit is at the pleadings stage, the respondents may reply to the amended pleading, and any inconvenience can be met in costs. The accusations in paragraphs 5 and 6 of his affidavit, that the applicants built "stealthily" and are intermeddling with unadministered estates, are matters for trial.

18. The proposed pleading does depart from the original in places. The original defence relied on the Administrator General's distribution agreement (its Annexure "B") as the basis on which all beneficiaries were allocated land. The proposed pleading says the same agreement was signed "under mistake or representation of material fact". It also alleges that the respondents fraudulently obtained UNRA compensation, whereas the original said every beneficiary, the respondents included, received it. A party may change position by amendment, and what effect the earlier pleading has at trial is for the trial court. But the new pleading must be clear: it must say who signed under mistake or misrepresentation and give particulars.

19. Leave to amend the defence is granted, on the terms below.

Issue 2: leave to raise a counterclaim

20. The respondents rely on Order 8 rules 2, 7, 8, 12 and 13 CPR, ***British India General Insurance Co. Ltd v Mohanlul Solanki, CACA No. 30 of 1997***, ***Charles Lwanga v Centenary Rural Development Bank***, ***Nambi v Bunyoro General Merchants [1974] HCB 12*** and ***Omumbejja Namusisi & Others v Makerere University, Misc. Application No. 199 of 2013***.

21. They are right on the basic rules. A counterclaim has the same effect as a cross-action (Order 8 rule 2(1)). It must be set up in the defence (rule 7), with a further title where other persons are involved (rule 8), and within the time for filing the defence. The original defence contained none. Strictly, what the applicants need is leave to file a counterclaim out of time, not leave to "amend" a defence that had none. The applicants themselves accept that a counterclaim is a separate action, which is why they say the amended defence stands even if the counterclaim fails.

22. But the application need not fail on that account. The summons asks for leave "to raise a counterclaim", the whole proposed pleading was served, and the respondents answered the point fully. They have not been misled by the absence of the words "out of time". Article 126(2)(e) of the Constitution forbids defeating a substantive application on a technicality of that kind. In ***Nagayi***, which I have cited, the High Court treated an application in the same terms as one under Order 8 rule 11 and granted a self-represented defendant leave to add a counterclaim (paragraphs 29 to 31). In ***Wamala Realty Ltd v G7 Prime Ltd, Misc. Application No. 2162 of 2025***, Rubagumya J likewise allowed a counterclaim to be added, referring to ***Mukalazi v Nansubuga***, ***Phoenix of Uganda Assurance Co. Ltd v Kuti Investments Ltd*** and ***Kasozi v Registered Trustees of Kampala Archdiocese***, to avoid multiplicity of suits.

23. ***Namusisi***, as quoted by the respondents, reached the opposite result because leave to file out of time had not been sought. It is persuasive only. I prefer the later approach, where the application is in substance one for leave to file out of time, the other side is not prejudiced and the dispute can be resolved in one suit. ***Nambi***, as cited, concerns the rule against substituting one cause of action for another. A counterclaim does not substitute the plaintiffs' claim; it adds the defendant's own cross-claim, which Order 8 allows. ***Lwanga*** and ***Solanki*** establish that a counterclaim is a cross-action that survives the dismissal of the main suit. That is not in dispute and does not decide whether leave should be given.

24. The relevant considerations favour leave. The delay is a matter of days. The applicants are lay persons who filed their own defence. The counterclaim arises from the same land, the same family and the same Administrator General process and distribution agreement that the plaint itself pleads (plaint, paragraphs 5(c) to (h)). A separate suit would repeat the same evidence. The respondents have not shown any prejudice particular to the counterclaim, no hearing has begun, and they will be able to file a defence to it.

25. The proposed counterclaim has defects in its particulars: blank sums for special damages, an unparticularised claim of publication, a mis-described Administrator General's cause, relief concerning persons who are not parties, errors in the prayers and in the description of the parties, and no stated value. These are matters of pleading that counsel are expected to put right. Leave is granted on condition that they are corrected.

26. This ruling does not decide whether the court can grant every relief the counterclaim seeks, including the declaration about the Administrator General's

cause. The respondents remain free to challenge the counterclaim in their defence to it, or to apply under Order 8 to have it excluded from this suit.

27. I make no finding on who owns the land, on the validity of the distribution agreement, on the administration of any estate, or on whether either side may sue over estate property without letters of administration. Those are for the trial court.

Issue 3: remedies and costs

28. Each side was partly right: the respondents on the form of the application and the state of the counterclaim, the applicants on the amendment of the defence. Costs of the application shall be in the cause.

Orders

(a) The application is allowed on the terms below.

(b) The applicants are granted leave to amend their written statement of defence and to file a counterclaim out of time.

(c) Within fourteen (14) days from today the applicants shall file an Amended Written Statement of Defence and Counterclaim with the particulars corrected in accordance with this ruling.

(d) If the amended pleading is not filed within that time, the leave granted shall lapse.

(e) The respondents shall file their reply to the amended defence and their defence to the counterclaim within fifteen (15) days after service.

(f) Costs of the application shall be in the cause.

Dated and delivered electronically at Pallisa this 28th day of October 2026.



KYEMBE KARIM
MAGISTRATE
28/10/2026