



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC E470 OF 2024**

**CANNON GENERAL INSURANCE (K)  
LIMITED.....1<sup>ST</sup> PLAINTIFF**

**CANNON LIFE ASSURANCE (K)  
LIMITED.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**SAFARI REALTY  
LLP.....1<sup>ST</sup>  
DEFENDANT**

**VISHISHT INDERJIT  
TALWAR.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me for determination are two applications. The first application is a Chamber Summons dated 16<sup>th</sup> January, 2025, brought under Sections 1A, 1B, 34 and 63(e) of the Civil Procedure Act, Order 1 Rule 10(2) and 25 of the Civil Procedure Rules in which the Defendants/Applicants seek the following orders:-

***THAT the following parties to be joined in this suit as Defendants;***

***a) The Estate of Inderjit Amarnath Talwar (Mr. Talwar)***

***b) Evisa Investments Limited***

***c) Douglas Basil Anthony Pinto***

***d) Metropolitan International Holdings Proprietary Limited (MIH)***

***e) Gareto Investment Trust Limited (Kenya) (Gareto)***

***f) Goodison Twenty Five Limited (Goodison)***

***g) Golum Investments Limited (Golum)***

***h) Desterio Oyatsi***

***ii. That an order be issued to serve the pleadings in this Suit on Metropolitan International Holdings Proprietary Limited, a South African entity, in accordance with Order 5 of CPC by way of e-mail or in any other manner as this Court may direct.***

***iii. The costs of this application be provided for.***

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Vishisht Inderjit Talwar sworn on even date.

### **THE APPLICANT'S CASE**

3. The Applicant averred that he is a former director of the Plaintiffs and the son of the late Inderjit Amarnath Gianchand Talwar (Mr. Talwar), who was one of the main shareholders and directors of Cannon Assurance Limited (Cannon) after purchasing the insurance business in the 1980s.
4. He further averred that Mr. Talwar acquired Cannon in 1984. To comply with legislative changes, Mr. Talwar transferred 66.67% of the shares in Cannon Assurance Limited to Evisa

- Investments Limited (Evisa), a Mauritian company he owned, and 8.89% to Douglas Bazil Anthony Pinto (Pinto).
5. He averred that around 2013, Metropolitan International Holdings Proprietary Limited (MIH), a South African company, acquired 66.29% of the shares in Cannon, while the remaining shares were held by Mr. Desterio Oyatsi through Goodison Twenty Five Limited, which held 4.71%, and by Gareto Investment Trust Limited (Kenya), which held 4%.
  6. He averred that MIH paid for Gareto's 4% shares, which were given to Mr. Oyatsi *ex gratia*, and that Mr Oyatsi signed the Share Sale Agreement (SSA) for Gareto as the "Ultimate Beneficial Owner". He further averred that it was agreed that Cannon would declare a dividend in specie to the existing shareholders to reduce its balance sheet by making the "vacant land parcels" available, since they were not part of the statutory fund.
  7. He stated that the terms were formalized in a Share Sale Agreement (SSA) dated 12<sup>th</sup> May, 2014, with the Purchasers being MIH, Gareto, Goodison, and Golum Investments Limited (Golum), while the sellers were Evisa, Mr. Talwar, and Pinto. He stated that the 1<sup>st</sup> Plaintiff was also a party to the Sale of Share Agreement.
  8. After the Share Sale Agreement was completed, CAL rebranded, and the companies were renamed Metropolitan Cannon General Insurance Limited (MCGIL) for the general insurance business and Metropolitan Cannon Life Assurance Limited (MCLAL) for the life insurance business.

9. That after completing the Share of Sale Agreement, Mr. Oyatsi began alleging that the properties were illegally transferred to his late father and the 1<sup>st</sup> Defendant. On 20<sup>th</sup> March, 2020, Mr. Oyatsi wrote a letter claiming that the properties were illegally transferred as a dividend in specie despite an agreement in the SSA. He stated that a committee appointed by the Plaintiffs' board investigated his allegations and concluded that the dividend in specie was agreed upon by all relevant parties, thereby rejecting Mr. Oyatsi's attempt to reverse the transfer of the properties.
10. He claimed that Mr. Oyatsi used schemes to gain full control of the Plaintiffs' boards, including interfering with MIH's efforts to change its directors on the 2<sup>nd</sup> Plaintiff's board, who then orchestrated his removal from the Plaintiffs' boards through a letter dated 8<sup>th</sup> August 2020.
11. He asserted that the proposed Defendants were parties to the Sale of Shares Agreement and should be joined to respond to the allegations in the Amended Complaint and to clarify the circumstances surrounding the transfer of the suit properties. He also argued that Desterio Oyatsi is a necessary party because he is the architect of the actions leading to the Plaintiffs' takeover, even though he did not contribute funds to his minority shareholding.
12. He maintained that the proposed Defendants are necessary parties but were intentionally excluded from these proceedings by the Plaintiffs. He asserted that their joinder would assist the Court in resolving the dispute effectively. He

further asserted that neither the Plaintiffs nor the proposed Defendants would be prejudiced by the joinder.

### **PLAINTIFFS CASE**

13. In opposing the application, the Plaintiffs filed a replying affidavit sworn on 29<sup>th</sup> January, 2025, by Betty Kanyagia, the Head of Legal & Corporate Services of the 1<sup>st</sup> Plaintiff.
14. The deponent stated that the application lacks merit and is an abuse of the Court process. She contended that the Defendants admitted in their pleadings that the transfers outlined in the Amended Plaint do not align with their claims. She also stated that the Defendants admitted in their pleadings that the transfers did not originate from the agreements referenced in the recital or facilitate the sale of the 1<sup>st</sup> Plaintiff's properties to the Defendants in accordance with Section 43(2) of the Land Registration Act.
15. She claimed that the Defendants argued that, contrary to the explicit terms of the disputed transfers, the transfers were made to the Defendants as repayment of a debt, specifically a dividend by the 1<sup>st</sup> Plaintiff. She stated that the Defendants are not shareholders of the 1<sup>st</sup> Plaintiff.
16. She further deposed that the joinder of the proposed Defendants is intended to enable the Court to rewrite the transfers by making fundamental changes thereto by:
  - a) *Deleting the entry in the recital which states that the intention of the parties was to sell the land stated therein and substitute the same with an entry that the intention was to implement the share sale agreement dated 12<sup>th</sup> May 2014 and pay a dividend or debt to the Defendants;*

- b) *Deleting the entry for payment of the purchase price as consideration and substitute it with an entry for payment of a debt or dividend as the consideration;*
  - c) *Deleting the entry that the purchase price for the land was paid and received by the 1<sup>st</sup> Plaintiff as stated in the said transfer, and substitute the same with an entry that repayment of a debt or dividend was made by the 1<sup>st</sup> Plaintiff to the Defendants in satisfaction of a debt or dividend.*
  - d) *Changing the mode of completion or performance of the agreement from payment of the purchase price by the Defendants and substitute it with an entry that it was infact the 1<sup>st</sup> Plaintiff to complete by transferring title in satisfaction of a debt or part payment of a debt in satisfaction of a debt.*
  - e) *Deleting the nature of the title transferred or acquired by the Defendants from a bona fide purchaser for value to the acquisition of title as a creditor from a debtor.*
17. She asserted that this Court has no constitutional or statutory mandate to rewrite agreements or legal instruments entered into by the litigants.

### **THE RESPONSE**

18. In a supplementary affidavit dated 19<sup>th</sup> February, 2025, the Applicant averred that Betty Kanyagia lacks knowledge of the Plaintiffs' claim as it relates to agreements made before her employment and that the claim is time-barred. He urged the Court to summon Ms. Kanyagia for cross-examination to determine who within the Plaintiffs' entities was instructing her to plead to matters beyond her knowledge.
19. He stated that the claim that the application is an abuse of process is vague and unfounded, as no cogent reasons have

been provided to explain the alleged abuse. He asserted that the Plaintiffs have abused the court process by deliberately failing to disclose the existence of the Share Sale Agreement dated 12<sup>th</sup> May, 2014, which is central to this case.

20. He maintained that the Defendants have not admitted in the defence and counterclaim that the transfers were made fraudulently. He reiterated that the transfers were executed in accordance with the Sale of Shares Agreement, a fact the Plaintiffs are aware of but have intentionally omitted from these proceedings. He argued that the Plaintiffs' opposition to the joinder is a deliberate attempt to obscure the truth about the transfers. He maintained that the consideration indicated in the transfer documents was for the purpose of assessing stamp duty and that each property was part of the Dividend in Specie under the Sale of Shares Agreement.

21. He argued that the Plaintiffs are attempting to suggest intentions that were neither expressed nor implied in the Defendant's pleadings. He emphasized that the Defendants have not invited the court to rewrite any agreements or legal documents. Conversely, he contended that it is the Plaintiffs who are seeking to rewrite the transfers despite being aware of the Sale of Share Agreement.

22. Based on the foregoing, the deponent insisted that the proposed Defendants are necessary parties because they will assist the court in understanding how the transfers were executed and whether those transfers should be invalidated.

23. The application was canvassed by way of written submissions.

### **THE DEFENDANTS SUBMISSIONS**

24. The Defendants filed their submissions dated July 1, 2025. On behalf of the Defendants, Counsel submitted that joinder of the Proposed Defendants would assist the Court in effectively resolving all disputes, clarifying the nature of the transaction, the roles of the parties, and the commercial understanding that governed their dealings.

25. Counsel further submitted that the Defendants' main defense is that the properties were transferred pursuant to a Share Sale Agreement dated 12<sup>th</sup> May, 2014, for the sale of the 1<sup>st</sup> Plaintiff's shares, which was signed by several parties, including the 1<sup>st</sup> Plaintiff and some of the Proposed Defendants.

26. To support this point, reliance was placed on **Order 1 Rule 10 (2) of the Civil Procedure Rules** and the case of **Julius Meme v Republic & another [2004] KEHC 2623 (KLR) (the Meme Case)**. Further reliance was placed on the Court of Appeal case of **Civicon Limited v Kivuwatt Limited & 2 others [2015] KECA 588 (KLR) (the Civicon Case)** and **Pravin Bowry v John Ward & another [2015] KECA 215 (KLR)**.

27. Counsel submitted that the Plaintiff's cause of action arises from the transfer of the suit properties to the late Mr. Inderjit Amarnath Talwar or his nominees under the Sale of Shares Agreement. It was submitted that the Proposed Defendants

are necessary parties, as they were actively involved in the Sale of Shares Agreement but were intentionally excluded from the suit. Counsel further submitted that the Plaintiffs' action seeks to persuade the court to ignore the Defendants' defense and the existence of the Sale of Shares Agreement.

28. Counsel acknowledged that since the Court cannot rewrite contracts, the Proposed Defendants should be joined to assist the court in fully understanding the transactions based on the Sale of Share Agreement. Counsel cited the case of **Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another [2015] KEHC 6117 (KLR)**.

29. It was submitted that the Proposed Defendants are necessary parties because the Defendants' entire defense rests on the Sale of Shares Agreement. Counsel argued that the non-joinder of the proposed Defendants would render the transfers invalid, causing irreparable prejudice.

30. Counsel argued that the absence of Metropolitan International Holdings (MIH), which organized the transfers through the dividend in specie, prevents a fair and comprehensive assessment of the suit. It was argued that the Plaintiffs oppose joinder because they are apprehensive that their false and malicious claims will collapse.

31. The second application is a Notice of Motion Application dated 24<sup>th</sup> January, 2025, brought under Order 13 Rule 1 of the Civil Procedure Rules, in which the Plaintiffs/Applicants seek the following orders:-

- 1. In accordance with the law as stated in Order 13 Rule 2 of the Civil Procedure Rules, the application be heard first before the determination of any other question between the parties in this suit.**
- 2. Judgement be entered in favour of the Plaintiffs as prayed in the amended Plaint.**
- 3. The costs of this Application be provided for.**

32. The application is premised on the grounds appearing on its face together with the supporting affidavit of Betty Kanyagia, sworn on even date.

### **THE APPLICANT'S CASE**

33. The deponent averred that the Defendants admitted in their joint defence and counterclaim that the 1<sup>st</sup> Plaintiff neither sold the properties to them nor did the Defendants purchase them, contrary to what is indicated in the transfer documents.

34. She further averred that the transfers conveyed title to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in each of the suit properties as bona fide purchasers for value. She averred that the Defendants admitted they did not purchase the suit properties as indicated in the transfers and that they are not bona fide purchasers for value.

35. The deponent argued that, based on the Defendants' admissions, the entries in the transfers are false and that the titles obtained by the Defendants as bona fide purchasers for value are invalid. She maintained that the Defendants are

liable for the breaches of law pleaded in the amended Plaintiff, and that the Plaintiffs are therefore entitled to the orders sought.

36. She maintained that based on the admissions, the Defendants hold the assets illegally as proceeds of crime and money laundering activities.

### **THE DEFENDANT'S CASE**

37. The Defendants opposed the application through the replying affidavit sworn on 22<sup>nd</sup> February, 2025 by the 2<sup>nd</sup> Defendant. He averred that the application is misconceived and an abuse of the court process because it seeks judgment on admission based on a deliberate mischaracterization of the Defendants' Statement of Defence and Counterclaim. He argued that the Defendants' reference to the SSA as the basis for transferring the suit properties does not constitute an admission of the Plaintiffs' claim, as the Plaintiffs concealed the existence of the Sale of Shares Agreement from the court, and their entire case is based on fraud, which the Defendants have denied.

38. He further averred that the Plaintiffs do not meet the threshold for judgment on admission since the Defendants have not made any clear, unequivocal, or unambiguous admissions on the contested issues. He maintained that the Defendants' reference to the Share Sale Agreement and the dividend in specie was intended to provide the context for the transfers and does not amount to an admission.

39. He deposed that the Plaintiffs' attempt to isolate statements and mischaracterize them as admissions is legally untenable and amounts to an abuse of process. He contended that the Defence raises triable issues, including the nature of the transfers and the involvement of the 1<sup>st</sup> Plaintiffs.

40. The deponent is apprehensive that they would be denied their right to a fair hearing if the application is granted. He contended that the Defendants would suffer irreparable harm if they are deprived of their lawfully acquired property without being able to present their defence. According to the deponent, the application is a distraction from the main issue, namely that the suit is time-barred, and is intended to circumvent a hearing on jurisdictional issues.

41. In conclusion, he urged the Court to dismiss the application with Costs.

42. The application was canvassed by way of written submission.

### **THE PLAINTIFFS' SUBMISSIONS**

43. The Plaintiffs filed their Submissions dated 3<sup>rd</sup> February 2025.

44. On their behalf, Counsel submitted that the Plaintiffs are seeking to recover their land assets, which were unlawfully transferred to the Defendants.

45. Counsel submitted that the Plaintiffs' claims arise from the transfers and transactions outlined in the amended Plaintiff, which created and conferred legal rights on the 1<sup>st</sup> Plaintiff

as the seller to be paid the purchase price specified in each transfer. Similarly, the transfers created and conferred legal rights on the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, as the purchasers, to acquire title to the suit properties upon payment of the purchase price.

46. It was submitted that the instruments created a liability on the 1<sup>st</sup> Plaintiff to transfer title to the Defendants upon receipt of the purchase price, and that the Defendants were to pay the 1<sup>st</sup> Plaintiff the purchase price for each parcel in consideration for the transfer of title. Counsel argued that the entries are prima facie evidence that the Defendants acquired title from the Plaintiffs as bona fide purchasers for value. To buttress this argument, reliance was placed on Sections 30(3) and 35(3) of the Land Registration Act.

47. Counsel further submitted that the Defendants admitted in the defense and counterclaim that they never entered into a sale agreement for the suit properties with the 1<sup>st</sup> Plaintiff or paid any purchase price, and therefore the title entries are false.

48. Counsel relied on **Supreme Court Petition 8 (E010) of 2021, Dina Management Limited v County Government of Mombasa & 5 others**, to submit that the titles were obtained through false entries and are therefore null and void. Further reliance was placed on the case of **Arthi Highway Developers vs West End Butchery & 6 others**.

49. In conclusion, Counsel relied on the case of **Kericho ELC No. 51 of 2014 Alice Chemutai Too (Suing in her capacity as the personal representative of Kikoech Tele (deceased) vs Nickson Kipkirui Koriri & Another** to argue that the Defendants' titles should be cancelled because they were fraudulently obtained.

### **THE DEFENDANT'S SUBMISSIONS**

50. The Defendants filed their submissions dated 1<sup>st</sup> July 2025.

51. On behalf of the Defendants, Counsel contended that the application is misplaced and an abuse of the court process because the defense and counterclaim contain no admissions. It was submitted that the allegation that the defense and counterclaim contain express admissions is a deliberate distortion of the pleadings intended to circumvent a full hearing.

52. Counsel outlined the following issues for the court's determination:

*a) Whether the Defendants have made admissions to warrant judgment being entered in a summary manner under Order 13 Rule 2 of the Civil Procedure Rules; and*

*b) Whether the Defence raises triable issues.*

53. Regarding the first issue, Counsel relied on Order 13 Rule 2 of the Civil Procedure Rules to submit that the Defence and Counterclaim does not contain an unequivocal, unqualified, and self-evident admission upon which judgment can be entered. To support this point, Counsel relied on the case of of

**Coffee Board of Kenya v Thika Coffee Mills Limited & 2 others [2014] KECA 409 (KLR).** Further reliance was placed on the case of **Agricultural Finance Corporation's Kenya National Assurance Company Limited (In Receivership) [1997] eKLR (the Agricultural Finance Case).**

54. It was submitted that the Plaintiffs' case relies on allegations of fraud rather than on whether property transfers actually occurred. It was argued that the transfers were based on the Sale of Shares Agreement.

55. Regarding the second issue, Counsel submitted that the Defence and Counterclaim raise triable issues that should be heard on their merits and not dismissed by judgment on admission. To support this point, reliance was placed on **Black's Law Dictionary, 10<sup>th</sup> Edition, at page 1735** and on the case of **Gilbert v Smith [1876] UKLawRpCh 171**, which was relied upon by the Court of Appeal in **Choitram & another v Nazari [1984] KECA 116 (KLR) (Choitram)**. Further reliance was placed on the case of **Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others [2021] KEHC 13344 (KLR)**. Appeal case of **Cassam & another v Sachania & another [1982] KECA 1 (KLR)** and **Express Automobile Kenya Limited v Kenya Farmers Association Limited & another [2020] KEELC 1080 (KLR) (the Express Automobile Case)**. Further reliance was placed on the case of **Ellis v. Allen [1913] UKLawRpCh 144** and the Court of Appeal in

**Olympic Escort International Co. Ltd. & 2 Others v. Parminder Singh Sandhu & another [2009] KECA 258 (KLR).**

56. It was submitted that the Defense and Counterclaim raise significant issues, including whether the transfers were validly made under the Sale of Shares Agreement and whether the 1<sup>st</sup> Plaintiff can lawfully revoke the Sale of Shares Agreement after a decade in light of estoppel or acquiescence.
57. Counsel submitted that granting summary judgment would violate the Defendants' rights to access to justice and a fair hearing, protected under Articles 48 and 50(1) of the Constitution. Counsel emphasized that allegations of fraud should be proven by strong evidence and tested through cross-examination.
58. Counsel cited the case of **Oxbridge Limited v Guaranty Trust Bank (Kenya) Limited [2021] KEHC 12548 (KLR) (the Oxbridge Case)** and **Cannon Assurance Company Kenya Limited v Peter Omonywa KSI HCCA No. 243 of 2009 [2014] eKLR**. Counsel submitted that the Plaintiffs have invoked judicial decisions on the doctrine of bona fide purchaser for value without notice as outlined in **Katende v Haridar & Company Ltd [2008] (the Katende Case)**, **Samuel Kamere v Lands Registrar [2015] eKLR (the Kamere Case)**, and the Supreme Court decision in **Dina Management Limited v County Government of Mombasa & 5 Others [2023] (the Dina Management**

**Case).** Counsel further submitted that the applicability of those legal principles to the present dispute is misplaced.

59. Counsel argued that the suit properties were acquired through corporate restructuring under the Sale of Shares Agreement, not through a conventional sale, thereby distinguishing the transaction from the typical vendor-purchaser relationship described in **the Katende, Kamere, and Dina Management** cases.

60. Counsel submitted that the 1<sup>st</sup> Plaintiff, who previously owned the suit properties, was a signatory and an active participant in the Sale of Shares Agreement, the execution of which resulted in the transfer of the suit properties. It was further submitted that the 1<sup>st</sup> Plaintiff not only sanctioned the transaction but also ensured that Mr. Talwar remitted the withholding tax to the Kenya Revenue Authority.

61. Counsel argued that the Plaintiffs' reliance on the case of **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others** is misplaced, as the 1<sup>st</sup> Plaintiff in the present suit was a consenting party to the transaction, unlike in the Arthi Highway case, where the defrauded company was a passive victim.

62. In conclusion, Counsel submitted that the Plaintiffs have failed to meet the threshold for judgment on admission under Order 13, Rule 2 of the Civil Procedure Rules.

63. It was submitted that granting the orders would violate the Defendants' right to a fair hearing under Article 50 of the Constitution and would unjustly prejudice their ability to

present their case, including in proceedings before the Environment and Land Court in Mombasa. In conclusion, Counsel urged the court to dismiss the application with costs.

64. The Plaintiffs filed rejoinder to the Defendants submissions dated 4<sup>th</sup> July 2025 and replying submissions dated 8<sup>th</sup> July 2025 which I have duly considered.

### **ANALYSIS AND DETERMINATION**

65. Having considered the applications, the respective affidavits, and the rival submissions, the following issues fall for determination:

***a) Whether the proposed Defendants should be joined as parties to this suit.***

***b) Whether the Plaintiffs have satisfied the legal threshold for the grant of judgment on admission.***

66. The Defendants seek to join the proposed Defendants on the grounds that they were privy to the Sale of Shares Agreement and will therefore assist the court in resolving the dispute before it.

67. The law governing joinder of parties is grounded in Order 1 Rule 10(2) of the Civil Procedure Rules, which provides as follows;

***“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 to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added***

68. It is the Defendants' position that the proposed Defendants were parties to the Sale of Shares Agreement, which was instrumental in the transfer of the suit properties. They argued that the proposed Defendants played significant roles in the Sale of Shares Agreement, which led to the disputed transfers. The Plaintiffs argued that the joinder of the proposed Defendants is intended to assist the court in rewriting the agreements and other instruments.
69. The evidence on record shows that the proposed Defendants were privy to the Sale of Shares Agreement. The validity and circumstances surrounding the disputed transfers are central to this case. It is evident that the proposed Defendants played a central role in the transactions that led to the disputed transfers. The Plaintiffs did not deny the existence of the Sale of Shares Agreement. Similarly, the Plaintiffs have not shown what prejudice they would suffer if the proposed Defendants are added to this suit. The Plaintiffs' apprehension that the inclusion of the proposed Defendants is meant to rewrite the

transfer documents is, in my view, unfounded. Joinder of parties does not alter the terms of written agreements between the parties. This court finds that joinder of the proposed Defendants is necessary for the effective resolution of this dispute.

70. Regarding the second application, the Plaintiffs are seeking judgment to be entered on admission.

71. Order 13 Rule 2 of the Civil Procedure Rules provides that:-

***Any party may at any stage of suit, where admission of facts been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order or give such judgment as the court may think just."***

72. In **Choitram v. Nazri (1984) KLR 327**, the Court of Appeal held that a judgment on admission may be entered only when the admission is clear, unequivocal, and leaves no triable issue for determination.

73. The power to grant judgment on admission is discretionary and must be exercised sparingly. Even when an admission appears, the court must still consider whether any triable issues of fact or law remain that require a full hearing.

74. In the matter at hand, the Plaintiffs contend that the Defendants admitted in their Defence and counterclaim that

the 1<sup>st</sup> Plaintiff did not sell the suit properties to them. Additionally, she stated that the Defendants admitted they did not purchase the suit properties and therefore the entries in the transfer documents are false. The Defendants denied the allegations and asserted that the transfers were made pursuant to the Sale of Share Agreement.

75. The Defendants have expressly denied liability in the statement of defence and counterclaim. In the absence of a clear admission of liability, I find that the Plaintiffs have not met the required threshold. The admission relied upon is qualified, ambiguous, and not plainly expressed in a manner that leaves no doubt about liability.

76. Where the Defence, as in the instant case, raises triable issues, the court must refrain from determining them summarily. In **Job Kilach v Nation Media Group Ltd**, the court held that the existence of any triable issue, even a single bona fide issue, is sufficient to defeat an application for judgment on admission.

77. In the end, I find that the application dated 24<sup>th</sup> January 2025 is not merited and is hereby dismissed. Costs to abide by the outcome of the suit.

78. I also find that the application dated 16<sup>th</sup> January 2025 is merited and the same is hereby allowed in the following terms:-

***a) The proposed parties are hereby joined as Defendants.***

***b) The Plaintiffs to file and serve the amended  
Plaint within 14 days from the date hereof.***

***c) The Defendants to file and serve their  
defences within 14 days of service by the  
Plaintiffs.***

***d) Costs to abide by the outcome of the suit.***

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT  
TEAMS THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Otieno holding brief for Oyatsi for the Plaintiffs  
Ms Salim for the Defendants  
Ahmed - Court Assistant