

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. E055 OF 2024

**JOSEPH ORWENYO NYAMBAKA.....1ST
PLAINTIFF/APPLICANT JAMES NYABUGA
ORWENYO.....2ND PLAINTIFF/APPLICANT EVERLYINE
KERUBO NYARIKI.....3RD PLAINTIFF/APPLICANT**

VERSUS

**JAMES NJOROGE GITAU.....1ST DEFENDANT/RESPONDENT
LAND REGISTRAR KISAMIS.....2ND DEFENDANT/RESPONDENT
THE ATTORNEY GENERAL.....3RD
DEFENDANT/RESPONDENT**

RULING

Introduction

1. This ruling is in respect of the Plaintiffs/Applicants' Notice of Motion dated **November 13, 2025**. The Applicants seek summary judgment against the 1st Defendant, **James Njoroge Gitau**, pursuant to the provisions of **Order 36, Rule 1** of the Civil Procedure Rules.
2. The underlying dispute concerns land parcel **KJD/NTASHART/6122**. The Applicants pursue this matter in their capacity as the joint administrators of the estate of the late **Jason Nyariki Orwenyo**. They contend that the property belongs to the deceased's estate and that its continued detention hinders the final distribution of the assets and the rendering of accounts as directed by the succession court.

3. The application is supported by the affidavit of **James Nyabuga Orwenyo**. The Applicants' primary contention is that the 1st Defendant has admitted liability, rendering his defense a "sham" with no real prospect of success at trial .
4. This assertion is based on an affidavit sworn by the 1st Defendant himself on **August 24, 2024**. In that affidavit, the 1st Defendant declared that:
 - i. His name was entered as the owner of the suit property without his knowledge or consent;
 - ii. He explicitly renounces ownership of the land; and
 - iii. He requests the Land Registry to expunge his name from the title documents.
3. Consequently, the Applicants argue that since the 1st Defendant has admitted the suit property is not his, there remains no triable issues between the parties.
4. The 1st Defendant opposes the application through **Grounds of Opposition** dated 4th **December 2025** . He raises the following points:
 - a. He maintains that the Plaintiffs' plaint maliciously alleges fraud on his part without providing an "iota of evidence," asserting that fraud is a complex issue that cannot be resolved via summary judgment.
 - b. He contends that the suit is frivolous and constitutes an abuse of the court's process.
 - c. He suggests the appropriate course of action is for the Plaintiffs to either withdraw the suit or proceed by serving the 2nd and 3rd Defendants.

Analysis and Determination

5. The sole issue for determination before this Court is **whether the Applicants' application have met the legal threshold for entry of summary judgment against the 1st Defendant as prayed.**

6. The law on summary judgment is set out under **Order 36 Rule 1** of the **Civil Procedure Rules** which provides as follows:

“(1) In all suits where a plaintiff seeks judgment for— (a) a liquidated demand with or without interest; or (b) the recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits. (2) The application shall be supported by an affidavit either of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.”

7. The primary objective of this rule is to enable a plaintiff with a clear cut case to obtain judgment without unnecessary delay and expenses of a full trial. However, this power must be exercised with caution to ensure that a defendant with a legitimate defense is not shut out.
8. In the case of *Dhanjal Investment Ltd vs Shabaha Investment Ltd [1998] eKLR*, the Court of Appeal held that:

*“The law on summary judgment procedure has been settled for many years now. It was held as early as in 1952 in the case of *Kandlal Resturant v Devshi & Company (11952) EACA 77* and followed by the Court of Appeal for Eastern Africa in the case of *Souza Figuerido & Company Ltd v Mooring Hotel Ltd (1959) EA 425* that if the defendant shows a bona fide triable issue, he must be allowed to defend without condition..”*

9. This Court also notes the principles laid down in *Kenya Trade Combine Ltd v N. M. Shah [2001] eKLR*, where the Court of Appeal aptly held:

“In this appeal, it is clear that by the time the application for summary judgment was being heard, there was already a defence and counter-claim on the file... In a matter of this nature, all that a defendant is supposed to show is that a defence on record raises triable issues which ought to go for trial. We should hasten to add that in this respect a defence which raises triable issues does not mean a defence that must succeed.”

10. In the present case, the 1st Defendant has filed a defense and Grounds of Opposition, asserting that the allegations of fraud raised in the Plaintiff necessitate a full trial. However, this application is uniquely premised on a specific admission of fact made by the 1st Defendant.

11. Regarding this application, the main provision of law is **Order 13 Rule 2** of the **Civil Procedure Rules**, which provides that:

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court admissions for such judgment or Order as upon such admissions 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.”

12. The threshold for what constitutes a sufficient admission was articulated by the Court of Appeal in *Choitram v Nazari [1984] KLR 327*. Referring to the equivalent of Order 13 Rule 2, **Madan, J.A.** stated:

“For the purpose of Order XII Rule 6, admission can be expressed or implied either on the pleadings or otherwise, e.g., in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in

judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning.”

13. In the same case, **Chesoni Ag. JA** emphasized the court's role:

“It is settled that a judgment on admission is in the discretion of the court and not a matter of right that discretion must be exercised judicially.”

14. The Applicants rely on an affidavit sworn by the 1st Defendant on **24th August 2024**. In that document, the 1st Defendant states:

"I was informed that my name was entered in the property described as KJD/NTASHART/6122 without my consent or knowledge... I make this affidavit declaring that I renounce the ownership of the land... I request the Lands Registry to expunge my name from the document."

15. This Court finds that the 1st Defendant's sworn statement is an admission that is unequivocal and does not require a magnifying glass to ascertain its meaning. By renouncing ownership and requesting the removal of his name from the title, the 1st Defendant has effectively conceded the Plaintiffs' claim to the land.

16. While the 1st Defendant now argues in his Grounds of Opposition that fraud must be proved at trial, such an argument cannot override a clear and obvious admission of non-ownership. If a party admits they have no interest in the subject matter of the suit, there is no "bona fide triable issue" remaining for the court to spend its precious time over. To allow the matter to proceed to a full trial would be to ignore the 1st Defendant's own declaration and would result in an unnecessary waste of judicial resources.

17. Having considered the law and the facts, this Court finds that the Applicants' application has met the threshold for summary judgment. The 1st Defendant's admission is unequivocal and satisfies

the requirements of **Order 13 Rule 2**. Consequently, the 1st Defendant has failed to show a bona fide triable issue that would warrant a full trial.

18. Off course there is the issue of the costs of the suit and this application. The court retains the discretion to award costs under section 27 of the Civil Procedure Act. Considering that this suit has been terminated without a full trial and in a bid to promote reconciliation between the parties, the court directs that each party bears its own costs of the suit and the application.

19. Consequently, judgment is entered in favor of the Plaintiffs/Applicants against the 1st Defendant in the following terms:

- A. **Land Parcel No. KJD/NTASHART/6122** is declared to be the property of the estate of the late **Jason Nyariki Orwenyo**.
- B. The **Land Registrar, Kajiado West** is ordered to rectify the register forthwith by expunging the 1st Defendant's name and replacing it with the names of the Applicants as administrators of the estate of the late Jason Nyariki Orwenyo (deceased) and further to cancel the title in the name of James Njoroge Gitau issue a certificate of title to administrators of the estate of the late Jason Nyariki Orwenyo (deceased) accordingly.
- C. Each party to bear its own costs of the suit and the application.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 29th Day of January 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Orondo Tuli for the Plaintiffs/Applicants

Ms. Kirui for the 1st Defendant/Respondent

N/A by the 2nd & 3rd Defendants

Court Assistant: Mpoye

M.D. MWANGI
JUDGE

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