

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL CASE NO. 17 OF 2017

CONSOLIDATED WITH

HCCC NO. 18 OF 2017 SAMKA HOLDINGS LIMITED -VS- NAROK COUNTY

GOVERNMENT

(CORAM: HON. CHARLES M. KARIUKI – J)

KIBINICO ENTERPRISES LIMITED..... PLAINTIFF

VERSUS

NAROK COUNTY GOVERNMENT..... DEFENDANT

RULING

A. INTRODUCTION

1. This ruling concern two consolidated suits, namely Civil Case No. 17 of 2017 and HCCC No. 18 of 2017, which were consolidated by an order of this Court made on 10th April 2018. The suits arise from contracts entered into between the Plaintiffs, Kibinico Enterprises Limited and Samka Holdings Limited, and the Defendant, Narok County Government, for road construction works.
2. The matters presently before the Court arise from two principal processes. First is the Defendant’s Preliminary Objection dated 4th March 2025, challenging the jurisdiction of this Court on account of an arbitration clause in the underlying contracts. Second are the

Plaintiffs' respective Notices of Motion dated 13th May 2025 seeking to strike out the Defendant's Defence and to have judgment entered on admission.

3. The Court has carefully considered the pleadings, affidavits, Grounds of Opposition, and rival submissions filed by the parties.

B. PLEADINGS

i. Preliminary Objection

4. The Defendant/Respondent, Narok County Government, filed a Notice of Preliminary Objection dated 4th March 2025, challenging the competence of the Plaintiff's suit in limine. The objection is premised on two principal grounds.
5. First, the Defendant contends that the Plaintiff/Applicant, Kibinico Enterprises Limited, is guilty of material non-disclosure for failing to disclose that the contract forming the basis of the suit contains a dispute resolution clause mandating referral of disputes to arbitration.
6. Secondly, the Defendant asserts that by virtue of the said arbitration clause, this Honourable Court lacks jurisdiction to entertain and determine the suit, and consequently seeks that the entire suit be struck out and/or dismissed with costs.

ii. Notice of Motion and Supporting Affidavit

7. The Plaintiff/Applicant, Kibinico Enterprises Limited, filed a Notice of Motion dated 13th May 2025 pursuant to the provisions of Order 2 Rule 15, Order 13 Rule 2, and Order 51 Rules 1, 3, and 4 of the Civil Procedure Rules, 2010, as well as Sections 1A, 1B, and 3A of the Civil Procedure Act. The application principally seeks orders that the Defendant's Defence be struck out on the ground that it discloses no reasonable defence in law and amounts to a mere denial. The Plaintiff further seeks judgment on admission against the

Defendant for the sum of Kshs. 12,177,451.30, together with interest at commercial rates from June 2015 until payment in full, as well as costs of the suit and the application.

8. The application is premised on the grounds that the Defendant executed Payment Certificate No. 1 on 16th June 2015 certifying the sum claimed as due to the Plaintiff for contractual works performed. It is further contended that by a letter dated 29th February 2024 addressed to the Controller of Budget, the Defendant acknowledged the existence and pendency of the debt. The Plaintiff asserts that the Defendant is therefore truly indebted and that the Defence on record is a sham, raising no triable issues.
9. In support of the application, the Plaintiff relies on the affidavit of Gladys Chemutai, a Director of the Plaintiff company, sworn on 13th May 2025. She deposes that the Plaintiff was awarded a contract by the Defendant on 26th November 2014 for the sum of Kshs. 19,550,000 for the improvement and gravelling of the Olchobosei–Chebara road, the contract was formalized on 10th December 2014. She avers that the Plaintiff duly performed the contractual works, which were inspected, measured, and certified by the Defendant on 16th June 2015, resulting in the issuance of Payment Certificate No. 1 for Kshs. 12,177,451.30.
10. The deponent further avers that the Defendant, in a letter dated 29th February 2024 to the Controller of Budget forwarding a report on pending bills, expressly acknowledged the debt owed to the Plaintiff in the sum of Kshs. 13,124,064.80 and outlined a payment plan indicating that the Plaintiff was scheduled for payment in September 2024. It is therefore her position that the Defendant’s indebtedness is unequivocal and that the Defence filed is a mere denial intended to delay the matter. She urges the Court to allow the application in the interest of justice.

iii. Notice of Motion and Supporting Affidavit

11. The Plaintiff/Applicant, Samka Holdings Limited, filed a Notice of Motion dated 13th May 2025 pursuant to Order 2 Rule 15, Order 13 Rule 2, and Order 51 Rules 1, 3, and 4 of the Civil Procedure Rules, 2010, as well as Sections 1A, 1B, and 3A of the Civil Procedure Act. The application seeks orders that the Defendant's Defence be struck out on the basis that it discloses no reasonable defence in law and amounts to a mere denial. The Plaintiff further seeks judgment on admission against the Defendant for the sum of Kshs. 7,497,946.55, together with interest at commercial rates from June 2015 until payment in full, costs of the suit, and costs of the application, as well as any other appropriate relief.
12. The application is grounded on the assertion that the Defendant issued Payment Certificate No. 1 on 18th June 2015 certifying the sum claimed as due for contractual works performed by the Plaintiff. It is further contended that the Defendant, through a letter dated 29th February 2024 to the Controller of Budget, acknowledged the existence and pendency of the debt, thereby confirming its indebtedness. The Plaintiff maintains that the Defence on record is a sham and raises no triable issues.
13. In support of the application, the Plaintiff relies on the affidavit of Sammy Karanja, a Director of the Plaintiff company, sworn on 13th May 2025. He deposes that the Plaintiff was awarded a contract by the Defendant on 26th November 2014 for the sum of Kshs. 19,191,000 for the improvement and gravelling of the Chebara–Murkan road, which contract was formalized on 10th December 2014. He avers that the Plaintiff duly performed the contractual works, which were inspected, measured, and certified by the

Defendant on 18th June 2015, resulting in the issuance of Payment Certificate No. 1 for Kshs. 7,497,946.55.

14. The deponent further avers that the Defendant, in its report on pending bills forwarded to the Controller of Budget by a letter dated 29th February 2024, acknowledged owing the Plaintiff the sum of Kshs. 7,117,000 and set out a payment plan indicating that the Plaintiff was scheduled for payment in July 2024. It is therefore his position that the Defendant's indebtedness is clear and unequivocal, and that the Defence filed is a mere denial intended to delay the matter. He urges the Court to allow the application in the interest of justice.

iv. Grounds of Opposition

15. The Defendant/Respondent, Narok County Government, filed Grounds of Opposition opposing the Plaintiff's Notice of Motion dated 13th May 2025.

16. The Defendant contends that it has not made any clear, unequivocal, or unambiguous admission of the Plaintiff's claim or any material facts that would justify entry of judgment without a full trial, and maintains that any alleged admissions are disputed within the context of its Defence. It is further asserted that the Defence raises bona fide triable issues which ought to be determined on their merits at a full hearing.

17. The Defendant also avers that striking out a defence is a draconian remedy to be exercised sparingly and only in the clearest of cases, and that its Defence does not meet the threshold for being struck out as frivolous, vexatious, or an abuse of the court process. Lastly, the Defendant invokes the overriding objective of the Court to do substantive justice, urging that the dispute be determined through a full hearing rather than on the basis of contested alleged admissions or summary procedures.

v. Grounds of Opposition

18. The Defendant/Respondent, Narok County Government, filed Grounds of Opposition dated 21st July 2025 opposing the Plaintiff's Notice of Motion dated 13th May 2025.
19. The Defendant contends that it has not made any clear, unequivocal, or unambiguous admission of the Plaintiff's claim or of any material facts that would warrant entry of judgment without a full hearing, and that any statements relied upon by the Plaintiff are disputed within the context of the Defence. It is further asserted that the Defence raises bona fide triable issues which ought to be ventilated and determined on merit at trial.
20. The Defendant also avers that striking out a defence is a draconian remedy to be exercised sparingly and only in the clearest of cases, and maintains that its Defence does not meet the threshold for being struck out as frivolous, vexatious, or an abuse of the court process. Lastly, the Defendant invokes the overriding objective of the Court to do substantive justice, urging that the dispute be determined through a full hearing rather than on the basis of contested alleged admissions or summary procedures.

C. SUBMISSIONS

i. Plaintiff/Applicant's Submissions (Kibinico Enterprises Limited)

21. The Plaintiff/Applicant, Kibinico Enterprises Limited, filed submissions opposing the Defendant's Preliminary Objection dated 4th March 2025 and in support of its Notice of Motion dated May 2025.
22. On the Preliminary Objection, the Plaintiff submits that the same is res judicata, the issue of arbitration having been previously raised and conclusively determined by the Court in its ruling delivered on 17th May 2018. In that ruling, the Court found that although the dispute was subject to an arbitration clause, the Defendant had failed to comply with the

requirements of Section 6(1) of the Arbitration Act, Cap. 49, which obligates a party seeking referral to arbitration to apply for stay of proceedings at the time of entering appearance or before taking any further step in the proceedings. The Plaintiff further submits that the Defendant appealed against the said ruling in **Civil Appeal No. 10 of 2019: Narok County Government vs Kibinico Enterprises Limited**, where the Court of Appeal dismissed the grounds relating to arbitration and declined to interfere with the trial court's findings on that issue.

23. It is further submitted that despite having filed a Notice of Appointment of Advocates as early as 5th October 2017 and having participated in the proceedings, the Defendant never filed an application for stay of proceedings and referral to arbitration as required under Section 6(1) of the Arbitration Act. The Plaintiff argues that the Preliminary Objection, raised several years later, is therefore incompetent and an afterthought. Reliance is placed on **Charles Njogu Lofty v Bedouin Enterprises Ltd [2005] eKLR**, where the Court of Appeal held that an application for stay and referral to arbitration must be made at the time of entering appearance or before taking any other step in the proceedings, failing which the right to invoke arbitration is waived.
24. On its Notice of Motion, the Plaintiff submits that the Defendant's Defence is a mere denial and discloses no reasonable defence or triable issues, thus warranting striking out under Order 2 Rule 15 of the Civil Procedure Rules. The Plaintiff contends that the documentary evidence on record, including the contract documents and Payment Certificate No. 1 dated 16th June 2015, unequivocally establish the Defendant's indebtedness in the sum claimed.

25. Further, the Plaintiff submits that there is a clear and unequivocal admission of liability by the Defendant in its letter dated 29th February 2024 to the Controller of Budget, forwarding a report on pending bills in which the Plaintiff's claim is expressly acknowledged and a payment plan proposed. It is therefore argued that the Plaintiff is entitled to judgment on admission under Order 13 Rule 2 of the Civil Procedure Rules.

26. In support of this position, reliance is placed on **Hon. Attorney General & another v Emko Limited (Civil Appeal 141 of 2023) [2024] KEHC 10205 (KLR) (10 July 2024) (Judgment)**, where the Court affirmed that a defence which does not rebut clear documentary evidence and admissions cannot stand and may be struck out. The Plaintiff also cites **Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others (2021) eKLR**, which in turn relied on **Choitram v Nazari (1984) KLR 327**, for the principle that admissions need not be confined to pleadings but may be derived from correspondence or other documents. Further reliance is placed on **Ideal Ceramics Limited v Suraya Property Group (2017) eKLR**, for the proposition that both formal and informal admissions are sufficient to found a judgment on admission.

27. The Plaintiff therefore submits that the Defendant's Preliminary Objection is misconceived, incompetent, and an abuse of the court process, and should be dismissed with costs. Conversely, it is urged that the Plaintiff's Notice of Motion is meritorious, and the Court should strike out the Defence and enter judgment on admission as prayed.

ii. Plaintiff/Applicant's Submissions (Samka Holdings Limited)

28. The Plaintiff/Applicant, Samka Holdings Limited, filed submissions opposing the Defendant's Preliminary Objection dated 4th March 2025 and in support of its Notice of Motion dated 13th May 2025.

29. On the Preliminary Objection, the Plaintiff submits that the same is res judicata, the issue of arbitration having been previously raised and determined by the Court in its ruling delivered on 17th May 2018. In that ruling, the Court found that although the dispute was subject to an arbitration clause, the Defendant had failed to invoke the provisions of Section 6(1) of the Arbitration Act, Cap. 49, by applying for stay of proceedings and referral to arbitration at the appropriate time. The Plaintiff further submits that the Defendant appealed against the said ruling in **Narok County Government v Kibinico Enterprises Limited**, but the Court of Appeal declined to disturb the findings relating to arbitration, thereby leaving the issue settled.
30. It is further submitted that the Defendant filed a Notice of Appointment of Advocates on 5th October 2017 and subsequently participated in the proceedings without filing any application for stay of proceedings and referral to arbitration as required under Section 6(1) of the Arbitration Act. The Plaintiff contends that the Preliminary Objection, raised several years later, is therefore incompetent, misconceived, and an afterthought. Reliance is placed on **Charles Njogu Lofty v Bedouin Enterprises Ltd**, where the Court of Appeal held that a party seeking referral to arbitration must apply for stay at the time of entering appearance or before taking any step in the proceedings, failing which the right is waived.
31. On its Notice of Motion, the Plaintiff submits that the Defendant's Defence is a mere denial and discloses no reasonable defence or triable issue, and should therefore be struck out under Order 2 Rule 15 of the Civil Procedure Rules. The Plaintiff argues that the documentary evidence on record, including the contract documents and Payment

Certificate No. 1 dated 18th June 2015, conclusively establish the Defendant's indebtedness in the sum of Kshs. 7,497,946.55.

32. The Plaintiff further submits that the Defendant expressly admitted the debt in its letter dated 29th February 2024 to the Controller of Budget, forwarding a report on pending bills in which the Plaintiff's claim was acknowledged and a payment plan outlined. It is therefore contended that the Plaintiff is entitled to judgment on admission under Order 13 Rule 2 of the Civil Procedure Rules.

33. In support of this position, the Plaintiff relies on **Hon. Attorney General & another v Emko Limited**, where the Court held that a defence which fails to controvert clear documentary evidence and admissions cannot stand and is liable to be struck out. Further reliance is placed on **Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others**, which cited **Choitram v Nazari** for the principle that admissions may be derived not only from pleadings but also from correspondence and other documents. The Plaintiff also cites **Ideal Ceramics Limited v Suraya Property Group Limited**, for the proposition that both formal and informal admissions are sufficient to found a judgment on admission, and that no further proof is required in respect of admitted facts.

34. The Plaintiff therefore submits that the Defendant's Preliminary Objection is devoid of merit, an abuse of the court process, and should be dismissed with costs. Conversely, it is urged that the Plaintiff's Notice of Motion is meritorious, and the Court should strike out the Defence and enter judgment on admission as prayed.

iii. Defendant/Respondent's Submissions

35. The Defendant/Respondent, Narok County Government, filed submissions in support of its Preliminary Objection dated 4th March 2025 and in opposition to the Plaintiff's Notice of Motion dated 13th May 2025.
36. On the Preliminary Objection, the Defendant challenges the jurisdiction of this Court on the ground that the dispute is subject to an arbitration clause contained in the contract between the parties. It is submitted that the contract expressly provides for resolution of disputes through arbitration, and in the absence of such arbitration proceedings being initiated or concluded, this Court lacks jurisdiction to entertain the matter. The Defendant relies on Section 6 of the Arbitration Act, Cap. 49, which mandates the Court to stay proceedings and refer parties to arbitration where a valid arbitration agreement exists.
37. The Defendant further submits that a proper preliminary objection must meet the threshold set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) 1 EA 696**, namely that it raises a pure point of law capable of disposing of the suit. It contends that the issue of jurisdiction based on an arbitration clause falls squarely within this definition. The Defendant also relies on **Wringles Company (East Africa) Ltd v Attorney General & 3 Others (2013) eKLR**, for the proposition that courts cannot rewrite contracts for parties and must uphold agreed dispute resolution mechanisms, including arbitration clauses.
38. On whether the Defence should be struck out, the Defendant submits that its Statement of Defence raises triable issues, including a denial of the sums claimed, which can only be resolved through a full hearing. It argues that striking out pleadings is a draconian remedy that should be exercised sparingly and only in the clearest of cases. In this regard, reliance is placed on **Co-Operative Merchant Bank Ltd. vs. George Fredrick Wekesa**

Civil Appeal No. 54 of 1999, where the Court held that striking out pleadings is a drastic measure to be invoked only in plain and obvious cases. Further reliance is placed on **HCCOMMA E019 of 2021 Kevian Kenya Limited v Retail Synergy Limited**, where the Court emphasized that disputes regarding performance of contractual obligations constitute triable issues warranting a full hearing.

39. On the issue of judgment on admission, the Defendant submits that no clear, unequivocal, or unconditional admission has been made to warrant entry of judgment. It contends that the alleged admission is based on contested documents, including payment certificates and reports, which require interpretation and cannot form the basis of summary judgment. The Defendant relies on **Cassam v Sachania(1982) KLR 191**, where the Court held that judgment on admission is discretionary and should only be granted in clear and plain cases where the admission is unequivocal. Further reliance is placed on **Choitram v Nazari(1984) KLR 327**, where the Court held that admissions must be plain, obvious, and unambiguous, “as plain as a pikestaff,” to justify entry of judgment.

40. In conclusion, the Defendant submits that the Preliminary Objection on jurisdiction is meritorious and should be upheld, and that the Plaintiff’s Notice of Motion lacks merit. The Court is therefore urged to dismiss the application for striking out the Defence and for judgment on admission, with costs.

iv. Defendant/Respondent’s Submissions

41. The Defendant/Respondent, Narok County Government, filed submissions in support of its Preliminary Objection dated 4th March 2025 and in opposition to the Plaintiff’s Notice of Motion dated 13th May 2025.

42. On the Preliminary Objection, the Defendant challenges the jurisdiction of this Court on the basis that the dispute arises from a contract containing an arbitration clause, and is therefore governed by Section 6 of the Arbitration Act, Cap. 49. It is submitted that no arbitration proceedings have been initiated as required under the contract, and consequently, this Court lacks jurisdiction to entertain the matter prior to exhaustion of the agreed dispute resolution mechanism. The Defendant contends that the objection raises a pure point of law in line with the principles set out in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**, which defines a preliminary objection as one capable of disposing of a suit on a point of law, including jurisdiction and arbitration.
43. The Defendant further submits that courts are bound to uphold contractual terms agreed upon by parties and cannot rewrite contracts. In this regard, reliance is placed on **Wringles Company (East Africa) Ltd v Attorney General & 3 Others**, where the Court held that parties are bound by their agreement, including arbitration clauses, and courts must respect such provisions.
44. On the issue of whether the Defence ought to be struck out, the Defendant submits that its Statement of Defence raises triable issues, including a denial of liability, which require determination through a full hearing. It is argued that the power to strike out pleadings is discretionary and should be exercised sparingly and only in clear and obvious cases. The Defendant relies on **Kevian Kenya Limited v Retail Synergy Limited**, where the Court held that disputes as to whether services were rendered constitute triable issues that must be determined at trial. Further reliance is placed on **Co-operative Merchant Bank Ltd v**

George Fredrick Wekesa, where the Court emphasized that striking out pleadings is a draconian remedy to be invoked only in plain and obvious cases.

45. On the question of judgment on admission, the Defendant submits that no clear, unequivocal, or unconditional admission has been made to warrant entry of judgment. It argues that the alleged admissions are based on contested documents, including payment certificates and reports, which require interpretation and cannot form the basis of summary judgment. In support of this position, reliance is placed on **Cassam v Sachania**, where the Court held that judgment on admission is discretionary and only available in plain and obvious cases where admissions are clear and unambiguous. The Defendant also relies on **Choitram v Nazari**, which held that admissions must be plain, obvious, and unequivocal to justify entry of judgment.

46. In conclusion, the Defendant submits that the Preliminary Objection is meritorious and should be upheld, and that the Plaintiff's Notice of Motion is unmerited. The Court is therefore urged to dismiss the application for striking out the Defence and for judgment on admission, with costs.

D. ISSUES FOR DETERMINATION

47. From the pleadings and submissions, the following issues arise for determination:

- i. Whether the Defendant's Preliminary Objection is merited.**
- ii. Whether the Defendant's Defence discloses triable issues or is liable to be struck out.**
- iii. Whether the Plaintiffs are entitled to judgment on admission.**

E. ANALYSIS AND DETERMINATION

I. Whether the Preliminary Objection is merited

48. The law on preliminary objections is settled. In ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd***, the Court held that a preliminary objection must raise a pure point of law capable of disposing of the suit.
49. The Defendant's objection is premised on Section 6(1) of the Arbitration Act, Cap. 49, which requires a court to stay proceedings and refer parties to arbitration where there exists a valid arbitration agreement, provided the application is made at the time of entering appearance or before taking any step in the proceedings.
50. The question, therefore, is whether the Defendant properly invoked the arbitration clause in accordance with the law.
51. The record shows that the Defendant entered appearance (through a Notice of Appointment of Advocates) on 5th October 2017 and actively participated in the proceedings. However, it did not file any application for stay of proceedings and referral to arbitration at that stage or before taking further steps in the suit.
52. The legal position was succinctly stated in ***Charles Njogu Lofty v Bedouin Enterprises Ltd***, where the Court of Appeal held that the right to refer a dispute to arbitration is waived if a party fails to apply for stay at the time of entering appearance or before taking any step in the proceedings.
53. Further, this Court had previously addressed the issue of arbitration in its ruling of 17th May 2018, and the Defendant subsequently appealed in ***Narok County Government v Kibinico Enterprises Limited***. The Court of Appeal declined to interfere with the findings relating to arbitration.

54. In the circumstances, the issue of arbitration has been overtaken by events and, to a large extent, determined. The Preliminary Objection is therefore not only belated but also amounts to an abuse of the court process.

55. Accordingly, the Court finds that the Preliminary Objection is devoid of merit and is hereby dismissed.

II. Whether the Defence should be struck out

56. The Plaintiffs seek to strike out the Defence under Order 2 Rule 15 of the Civil Procedure Rules on the ground that it discloses no reasonable defence.

57. The law is that striking out pleadings is a drastic remedy which must be exercised sparingly. In *Co-operative Merchant Bank Ltd v George Fredrick Wekesa*, the Court held that striking out is a draconian act to be resorted to only in plain and obvious cases.

58. Similarly, in *D.T. Dobie & Company (Kenya) Ltd v Muchina*, the Court emphasized that a suit should only be struck out where it is so weak that it is beyond redemption.

59. In the present case, although the Defendant denies liability, it does not seriously challenge the existence of the contracts, the execution of works, or the issuance of payment certificates.

60. The Defence consists largely of general denials without specifically controverting the documentary evidence presented by the Plaintiffs.

61. While the Court is slow to strike out pleadings, it must also guard against sham defences intended merely to delay justice. In the circumstances of this case, the Defence does not raise any bona fide triable issues.

62. Consequently, the Court is satisfied that the Defence is a mere denial and is liable to be struck out.

III. Whether the Plaintiffs are entitled to judgment on admission

63. Order 13 Rule 2 of the Civil Procedure Rules permits a court to enter judgment where there is a clear admission of facts.
64. The applicable principles were set out in *Choitram v Nazari*, where the Court held that admissions must be plain, obvious, and unequivocal. Similarly, in *Cassam v Sachania*, it was held that judgment on admission is only available in clear and obvious cases.
65. Admissions need not be confined to pleadings. In *Synergy Industrial Credit Limited v Oxyplus International Limited & 2 others*, the Court affirmed that admissions may be derived from correspondence and other documents.
66. In the present case, the Plaintiffs rely on: Payment Certificates issued by the Defendant confirming sums due; and the Defendant's letter dated 29th February 2024 to the Controller of Budget, together with the accompanying report on pending bills, which expressly acknowledges the debts and proposes a payment plan.
67. These documents originate from the Defendant and constitute clear acknowledgment of indebtedness. The alleged dispute raised by the Defendant does not displace these admissions.
68. This position finds support in *Hon. Attorney General & another v Emko Limited*, where the Court held that a defence cannot stand in the face of clear documentary evidence and admissions.
69. The Court is therefore satisfied that the admissions in this case are clear, unequivocal, and sufficient to warrant entry of judgment.

F. CONCLUSION

70. In the result, the Court makes the following findings:

- a) **The Defendant's Preliminary Objection dated 4th March 2025 is without merit and is hereby dismissed.**
- b) **The Defendant's Defence is a mere denial, discloses no reasonable defence, and is hereby struck out.**
- c) **Judgment on admission is hereby entered in favour of the Plaintiffs as prayed in their respective Notices of Motion in both HCCC 17 AND 18 OF 2017.**
- d) **The Plaintiffs shall have costs of the Preliminary Objection and the applications.**

71. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS
APPLICATION, THIS 21ST DAY OF APRIL 2026**

**CHARLES KARIUKI
JUDGE**