



**Kinyanjui v Grantham (Sued as the Legal Representative of the
Estate of David Jonathan Grantham) (Civil Suit E181 of 2023)
[2026] KEHC 5825 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E181 OF 2023
AA VISRAM, J
APRIL 30, 2026**

BETWEEN

WILLIAM KUNGU KINYANJUI PLAINTIFF

AND

**STEPHANIE CAROL GRANTHAM (SUED AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF DAVID JONATHAN GRANTHAM) DEFENDANT**

RULING

1. Before the Court is the Plaintiff's Notice of Motion dated 21st July 2025. From the material placed before the Court, the Motion seeks, first, leave to amend the plaint so as to reflect the substitution of the original defendant, now deceased, with Stephanie Carol Grantham as the legal representative of his estate and, second, summary judgment for the sums claimed in the plaint.
2. The application is supported by the affidavit of William Kungu Kinyanjui. The Plaintiff's case is that the deceased had acknowledged indebtedness in the sum of USD 215,026 and Kshs 400,000 by a Deed of Settlement dated 20th May 2022; that the debt remains unpaid; and that the defence on record is a sham which raises no bona fide triable issue. The Plaintiff further contends that the amendment relating to substitution is formal, necessary, and unopposed.
3. The application is opposed through the Replying Affidavit sworn by Stephanie Carol Grantham and the Defendant's written submissions. The Defendant does not, in substance, contest the substitution issue, but opposes the prayer for summary judgment. The opposition is principally on the footing that the dispute over interest is neither plain nor straightforward. The Defendant contends that the Deed of Settlement dated 20th May 2022 superseded the earlier arrangement of 9th May 2018, that interest under the Deed accrued from 1st July 2022 and not 22nd May 2022, and that the 12% rate was applicable to the Kenya shilling component and not to the USD component. The Defendant



also contends that the Plaintiff's claim, as framed, would result in a duplicative or inflated recovery of interest.

4. I have considered the Motion, the affidavits, and the rival submissions. I have also considered the authorities cited by counsel and the applicable law.
5. The principles governing summary judgment are settled. Summary judgment is available where the claim is plain and obvious and the defendant has no bona fide defence. But the procedure is not meant to shut out a litigant where there is an arguable question of law, construction, or fact requiring ventilation at trial. In *Industrial and Commercial Development Corporation v Daber Enterprises Limited* the Court of Appeal held that unless the matter is plain and obvious, a party ought not to be deprived of the right to a full trial, and that summary procedure exists for cases where there is plainly no defence.
6. The same approach appears in *Five Forty Aviation Limited v Tradewinds Aviation Services Limited*, where the Court of Appeal reaffirmed that a triable issue does not mean one that must succeed. It is enough if the defence raises a prima facie issue fit to go to trial, and even a single bona fide triable issue is sufficient to entitle a defendant to leave to defend.
7. On the other hand, I accept the Plaintiff's submission, founded on *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another*, that a court of law cannot rewrite a contract for parties and that parties are ordinarily bound by the terms of their bargain unless vitiating factors such as fraud, coercion, or undue influence are pleaded and proved. That principle, however, does not conclude the present application in the Plaintiff's favour. It simply means that the dispute must be resolved by construing the operative contractual instrument correctly.
8. In the present case, the real controversy is not whether there was borrowing in the first place. The real controversy is narrower but material. It concerns which instrument governs the claim for interest after the parties entered into the Deed of Settlement dated 20th May 2022, the date from which interest properly accrued under that Deed, and whether the pleaded 12% rate attaches to both the USD and Kshs components or only to one of them. Those questions are not peripheral. They go directly to the amount, if any, for which summary judgment may properly be entered.
9. The Plaintiff's own amended plaint shows that the claim is not confined to a single admitted liquidated sum simpliciter, but includes multiple heads of interest calculated across different periods and at different rates. The Defendant's response is that those calculations are inconsistent with the Deed of Settlement. Whether that contention is right or wrong is not the point at this stage. The point is that it is not idle. It is a serious question of contractual construction and computation which, on the material before the Court, cannot be dismissed as sham.
10. I am therefore not satisfied that this is one of those plain and obvious cases in which summary judgment should issue. The defence, at least in relation to interest and the proper construction of the Deed of Settlement, discloses bona fide triable issues. That is sufficient to defeat the prayer for summary judgment.
11. As regards the amendment and substitution, the Plaintiff states that those prayers were not opposed, and the Defendant's own submissions indicate that substitution had already been addressed by consent and was treated as a non-issue. In the circumstances, and there being no demonstrated prejudice, the amendment to regularise the record should be allowed.
12. Accordingly, I make the following orders:



1. Leave is hereby granted to the Plaintiff to amend the plaint so as to reflect Stephanie Carol Grantham as the Defendant, sued as the legal representative of the Estate of David Jonathan Grantham. The amended plaint filed pursuant to leave is deemed as properly on record upon payment of any requisite court fees, if not already paid.
 2. The prayer for summary judgment is declined.
 3. The Defendant shall have leave to defend the suit.
 4. The costs of the prayer for amendment shall be in the cause.
 5. The costs of the prayer for summary judgment are awarded to the Defendant.
13. It is so ordered.

DATED AND SIGNED AT NAIROBI, THE 30TH DAY OF APRIL 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

ALEEM VISRAM, FCI Arb

JUDGE

