

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**

**ELCLE CASE No. E065 OF 2025**

<b>MIKA</b>	<b>KIGEN</b>	.....	
<b>PLAINTIFF/APPLICANT</b>			
<b>VERSUS</b>			
<b>FESTUS</b>	<b>KIPTOO</b>	.....	<b>1<sup>ST</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>SABINA</b>	<b>CHEPKONGA</b>	.....	<b>2<sup>ND</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>LAURA</b>	<b>JEPTOO</b>	.....	<b>3<sup>RD</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>SILAH</b>	<b>KIPYEGO</b>	<b>CHEMOSI</b> .....	<b>4<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>SUSSY</b>	<b>JEPKORIR</b>	<b>ROP</b> .....	<b>5<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>MOSES</b>	<b>SIWA</b>	.....	<b>6<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>RAEL</b>	<b>JEPCHUMBA</b>	<b>KIPKENEI</b> .....	<b>7<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>RUTH</b>	<b>KIPKORIR</b>	<b>CHERUIYOT</b> .....	<b>8<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>VINCENT</b>	<b>KIPLAGAT</b>	<b>KIGEN</b> .....	<b>9<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			
<b>SIMEON</b>	<b>S. KIGEN</b>	.....	<b>10<sup>TH</sup></b>
<b>DEFENDANT/RESPONDENT</b>			

**RULING:**

1. The Plaintiff herein filed a Notice of Motion Application dated 14<sup>th</sup> July, 2025 seeking the following orders:-
  - (1) Spent
  - (2) That pending hearing and determination of the instant suit the Honourable Court be pleased to restrain the

Defendants/Respondents their servants and/or agents from selling, alienating and or dealing with the suit land being land parcel registration No. UASIN GISHU/KAPTAGAT/183 measuring 16.5 Ha (41.25 Acres) in a manner that is detrimental to the Plaintiff and other beneficiaries whose suit land is held in trust by the Plaintiff/Applicant and 10<sup>th</sup> Defendant/Respondent.

(3) That this suit be consolidated with Eldoret Environment and Land Court Miscellaneous Application No. E016 of 2025.

(4) Costs of this Application be provided for.

2. The Application is premised on the grounds set out on the face of the Motion, as well as the Plaintiff's Supporting Affidavit sworn on the same date. The Plaintiff claims that the suit property herein parcel No. Uasin Gishu/Kaptagat/188 measuring 16.5 Ha (41.25 Acres), is registered jointly in his name and that of Simeon S. Kigen in trust and for the benefit of their family members. He alleged that the 1<sup>st</sup> - 8<sup>th</sup> Defendants have illegally trespassed on the land and are now occupying and utilising it to the detriment of other beneficiaries. He averred that the 1<sup>st</sup> - 8<sup>th</sup> Defendants had been served with an eviction notice to vacate the suit land but have declined to do so.
3. The Plaintiff deponed that due to their refusal to vacate, he filed Eldoret ELC Misc. Application No. E016 of 2025 seeking eviction orders. That the 1<sup>st</sup> - 8<sup>th</sup> Defendants have opposed the said eviction claiming to have purchased their respective portions of land from the 9<sup>th</sup> & 10<sup>th</sup> Defendants. The Plaintiff averred that it is thus necessary for the court to consolidate this matter with ELC Misc. Application No. E016 of 2025. Further, that it is in the

interest of justice that the Defendants are restrained by way of a temporary injunction from interfering with the suit land to the detriment of the Plaintiff and other beneficiaries. He added that the application is made in good faith and asked the court to grant the application.

4. The Defendants filed a Replying Affidavit sworn on 14<sup>th</sup> October, 2025 by Simeon Kipruto Kigen and Vincent Kiplagat Kigen on behalf of the other Defendants. They deponed that they were strangers to the portion of land known as Uasin Gishu/Kaptagat/188. In the same breath they averred that they are in peaceful occupation of the parcel of land known as Uasin Gishu/Kaptagat/188, which they claim is separate, distinct from and without nexus to the suit property herein.
5. They averred that they are co-owners of this parcel known as Uasin Gishu/Kaptagat/188 measuring 16.5 Ha, which they hold in trust for their siblings being the 10<sup>th</sup> Defendant, Vincent Kiplagat Kigen, Paul Kurgat and Andrew Kigen. They averred that they had sold part of their interests to the Defendants herein and received consideration. They claim that it is in fact the Plaintiff who in November, 2024 caused the suit property to be demarcated by Geocon Surveys Limited in favour of the 1<sup>st</sup> - 8<sup>th</sup> Defendants herein. They claimed that the Plaintiff filed a similar suit being Eldoret ELC Misc. App. No. E016 of 2025 which was dismissed on 23<sup>rd</sup> September, 2025 thus the instant Application and suit herein are *res judicata*.
6. They claimed that the Plaintiff had admitted that they were in occupation of the land, and could not understand his need to have them evicted before hearing and determination of the suit. They further averred that they co-own the suit property with the

Plaintiff and he cannot purport to evict them from their own property. They averred that the orders sought in the instant Application are similar to those sought in the Plaint, therefore they cannot be granted at the interlocutory stage. They deponed that the present application is made in bad faith and full of material concealment of facts.

**Submissions:**

7. The court directed that the present application be canvassed by way of written submissions. In compliance, the Plaintiff filed his submissions dated 3<sup>rd</sup> December, 2025. The Defendants also complied by filing their submissions dated 30<sup>th</sup> October, 2025.

**The Plaintiff/Applicant's Submissions:**

8. Counsel explained that the Plaintiff was seeking eviction orders against the Defendants who are currently occupying the suit land, pending hearing and determination of suit to preserve the land. Counsel called on the jurisdiction of the court under Section 152(1)(2)(a) of the Land Laws (Amendment) Act No. 28 of 2016. As to the conditions to be fulfilled for grant of an injunction, Counsel relied on **Giella vs Cassman Brown & Co. Ltd (1973) EA 358** and **Nguruman Limited vs Jan Bonde Nielsen & 2 Others CA No. 77 of 2012 (2014) eKLR**.
9. On prima facie case, Counsel cited Section 26(1) of the Land Registration Act and argued that as a title holder, the Plaintiff is entitled to proprietary rights over the suit parcel as a co-owner. Counsel submitted that the 10<sup>th</sup> Defendant did not seek the Plaintiff's consent in the purported sale to the 1<sup>st</sup> - 8<sup>th</sup>

Defendants. Counsel claimed that the sale contravened Section 91 of the Land Registration Act, thus the 1<sup>st</sup> - 8<sup>th</sup> Defendants were trespassers. That this trespass infringes on his rights and that of the beneficiaries to quietly possess the suit land, and demonstrates that he has a prima facie case. Counsel relied on **Mrao Ltd. vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 125** and **Wairimu vs Mugumo Nyankinyua Kiambaa Co. Ltd & 2 Others (2025) KEELC 1435 (KLR)**.

10. Counsel submitted that the Defendants had denied the Plaintiff and the other beneficiaries quiet possession and occupation of, as well as the right to own, use, farm and develop the suit land. Counsel submitted that Article 40 of the Constitution protects the right to property, thus the trespass by the Defendants is a direct violation of property rights contrary to Article 40 and warrants an injunction. He claims that the Defendants' occupation poses a potential risk of fragmentation of the land and may lead to adverse possession claims over time. He submitted that the Plaintiff and other beneficiaries will suffer irreparable loss that cannot be adequately compensated by way of damages if the orders sought are not granted. He relied on **Nguruman Limited vs Jan Bonde Nielsen (Supra)** and **Munir Mohamed Sketty vs Mudathiri Somoe Bwana & 10 Others (2021) KEELC 4478 (KLR)**.

11. Counsel further submitted that the balance of convenience lies in favour of the Plaintiff as a co-owner of the land. He submitted that the Plaintiff holds an indefeasible title under Section 12

(sic) of the Land Registration Act. That any delay in issuing the injunction would solidify the Defendants' claim, and erode the Plaintiff's proprietary rights over the land. Counsel asked the court to issue the orders sought in the present application. Counsel further relied on **Naftali Ruthi Kinyua vs Patrick Thuita Gachure & Another (2015) KECA 911 (KLR)**.

**The Defendants/Respondents' Submissions;**

12. Counsel for the Defendants commenced his submissions by stating that the application is *res judicata*, devoid of merit and amounts to an abuse of the court process. Counsel claimed that on 23<sup>rd</sup> September, 2025, the court dismissed Eldoret ELC Misc. Application No. E016 of 2025 with costs. Counsel argued that the present Application therefore offends Section 7 of the Civil Procedure Act, since it is between the same parties and seeks similar orders as those sought in the previous suit, and also over the same subject matter.
13. Counsel for the Defendants submitted that owing to the dismissal of ELC Miscellaneous Application No. E016 of 2025, the said suit is no longer alive and cannot be consolidated with the present suit as there is nothing pending save for payment of costs. Counsel argued that the 9<sup>th</sup> and 10<sup>th</sup> Defendants co-own the suit land with the Plaintiff in trust for their siblings. That the 1<sup>st</sup> - 8<sup>th</sup> Defendants occupy the land under the title of the co-owners having purchased their portions from them for valuable consideration.
14. Counsel accused the Plaintiff of attempting to arm-twist and steal a match against the Defendants by seeking their eviction

before the suit is heard. He asserted that the Plaintiff's claim over the entire land is unfounded and there is no basis to seek an eviction of the Defendants who purchased the 9<sup>th</sup> and 10<sup>th</sup> Defendants' interests. Counsel concluded that the Defendants had demonstrated valid interests over the suit property rendering the application for eviction untenable. He urged that the application is devoid of merit and should be dismissed with costs.

**Analysis and Determination:**

15. I have considered the application dated 12/5/2023 together with the submissions that were tendered by the parties. I am of the view that the following issues arise for determination: -
- (i) What is the property subject if this application?
  - (ii) Whether the Plaintiff has satisfied all the conditions for grant of a temporary injunction.
  - (iii) Whether this suit should be consolidated with Eldoret ELC Misc. Application No. E016 of 2025.

**(a) What is the property subject if this application?**

16. Before proceeding to determine the application on merit, I must first ascertain which plot exactly is the subject matter of this Application. The parcel number appearing on the Plaint as filed on 15<sup>th</sup> July, 2025 is Uasin Gishu/Kaptagat/183. The same parcel number also appears at prayer 2 of the Notice of Motion dated 14<sup>th</sup> July, 2025 and filed on 15<sup>th</sup> July, 2025.
17. However, the rest of the Application and the Supporting Affidavit bears the parcel number Uasin Gishu/Kaptagat/188. I note also that the Plaintiff expressly stated in the Supporting Affidavit that the property subject matter of the suit is Uasin

Gishu/Kaptagat/188. In addition, the title annexed to the Plaintiff's Supporting Affidavit is with respect to land parcel No. Uasin Gishu/Kaptagat/188, and is dated 27<sup>th</sup> June, 2012.

18. As alleged by the Plaintiff, the property is registered in his name and the name of the 10<sup>th</sup> Defendant. The Plaintiff also annexed a Certificate of Official Search dated 27<sup>th</sup> August, 2024 showing that the parcel known as Uasin Gishu/Kaptagat/188 is registered in his names and that of the 10<sup>th</sup> Defendant who hold it in trust for Paul Kurgat, Kiplagat Kigen and Andrew Kigen.
19. As proof that the parties are talking about the same property, the Defendants also annexed the same Certificate of Official Search showing that the land is registered in the names of the Plaintiff and the 10<sup>th</sup> Defendant as alleged by the Plaintiff. I am convinced therefore that the property subject of these proceedings is plot 188.

**(b) Whether the Plaintiff has satisfied all the conditions for grant of a temporary injunction;**

20. The law governing the grant or refusal of interlocutory injunctions is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010. The conditions for consideration in applications for injunctions were settled in the celebrated case of ***Giella vs Cassman Brown & Company Limited (1973) EA 358***, in which the Court pronounced itself in the following terms:

***“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable***

***injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”***

21. The first condition is that the Applicant must demonstrate that he has a prima facie case with a probability of success. While considering whether the Applicant has established a prima facie case, a court should not delve deeply into determining the substantive matters raised in the suit. The court is however required to examine the facts deponed in the rival Affidavits and the annexures alongside the applicable law. As to what amounts to a prima facie case, the Court of Appeal, in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 123** held as follows:

***“A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”***

22. On this condition, the Plaintiff has averred that he holds title as co-owner with the 10<sup>th</sup> Defendant, and they do so in trust for their siblings. The Plaintiff has annexed a Title Deed dated 27<sup>th</sup> June, 2012 showing that the land is indeed registered in the names of Simon S. Kigen and Mika Kigen. There is also a Certificate of Official Search dated 27<sup>th</sup> August, 2024 which at the proprietorship section shows that the land is held by the

Plaintiff and 10<sup>th</sup> Defendant in trust for Paul Kurgat, Kiplagat Kigen and Andrew Kigen.

23. The Plaintiff claims that the Defendants trespassed into the suit property since the sale to them was done without his consent as a co-owner. That as a result, his rights as a title holder as well as the rights of the beneficiaries to quiet possession, use and to develop the property have been infringed. He claims that this demonstrates that he has a prima facie case.
24. The 9<sup>th</sup> and 10<sup>th</sup> Defendant's however claim that the Plaintiff was aware the land was sold to the 1<sup>st</sup> - 8<sup>th</sup> Defendants and even participated in causing the land to be demarcated in their favour. They also pointed out that the Plaintiff was aware they were in occupation and had admitted as much. The Defendants have claimed that they equally own the land and cannot be evicted therefrom.
25. The Plaintiff claims the order sought herein is meant to preserve the land. He has repeated severally in the application and the submissions that he seeks to protect his rights as a co-registered owner, and the rights of the beneficiaries to the suit land. As indicated in the Search, the 10<sup>th</sup> defendant is a co-owner of the land and equally entitled alongside the Plaintiff to the land. No valid reason has been given why he should be barred from using the property. That aside, the 9<sup>th</sup> Defendant is named as one of the beneficiaries of the land created at registration. For that reason, he is equally entitled to access and use the suit land, and there is no justification why he ought to be restrained from the land.
26. With regard to the 1<sup>st</sup> - 8<sup>th</sup> Defendants, I have seen the Agreements for sale annexed by the Defendants. The oldest of

these agreements is dated 26<sup>th</sup> August, 2016 and the purchaser therein is the 4<sup>th</sup> Defendant, who under the agreement was to take possession immediately. If indeed the Plaintiff lives on the suit land, he has given no explanation as to why it has taken him almost 8 years to bring suit against this buyer. It would also appear that the latest entrants into the suit property purchased the land in the year 2022. Again, there is also no reason why the Plaintiff never moved against the Defendants when they first went into the land. Consequently, I am not convinced that the Plaintiff has demonstrated a prima facie case at this interlocutory stage.

27. The second condition is that the Applicant must demonstrate that he stands to suffer irreparable harm. In **Nguruman Limited vs Jan Bonde Nielsen & 2 others (2014) KECA 606 (KLR)** the Court of Appeal had this to say about the condition of irreparable harm:-

***“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of***

***damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."***

28. To demonstrate irreparable harm, the Plaintiff claims that the Defendants have denied him and the other beneficiaries quiet possession and occupation of the suit land, denying them the ability to use, develop or farm the property. The Plaintiff further claims that the Defendant's presence on the land infringes on his rights under Article 40 of the Constitution. It was also submitted that the Defendants' continued stay on the land amplifies risks of potential fragmentation of the land and may lead to adverse possession claims. The Plaintiff thus claims that the if the court does not grant the injunction sought, he and the other beneficiaries will suffer irreparable loss which cannot be adequately compensated by an award of damages.

29. That may very well be true. However, the Plaintiff has admitted that the Defendants are in occupation of the suit property. Since the order sought seeks to restrain them from dealing with the suit land in any way, allowing the injunction will lock them out of the land. I have no doubt therefore that granting the injunction sought will result in the Defendants' eviction before the suit is heard and their entitlement thereto determined.

30. If indeed the Defendants are entitled to the suit property and they are evicted at this interlocutory stage, the inconvenience will be greater than if they are allowed to continue staying on

the land until the matter is determined. It is for this reason that I find the balance of convenience does not lie in favour of granting the injunction.

31. In any event, the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 others (2014) KECA 606 (KLR)**, further explained that:-

***“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society (2001) Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by***

***the applicant to injunction directly without crossing the other hurdles in between.”***

32. In this instance, the Plaintiff has failed to prove a prima facie case. I am also not persuaded that the plaintiff will suffer irreparable injury in the event the injunction is not granted. In addition, the balance of convenience clearly does not lie in evicting the Defendants from the portions the Plaintiff has admitted they occupy before the matter is heard and determined on merit. Consequently, the prayer for a temporary injunction to restrain the Defendants from dealing with the suit land cannot issue.

***(c) Whether this suit should be consolidated with Eldoret ELC Misc. Application No. E016 of 2025;***

33. Turning to the second issue of consolidation of suits, the principle that governs a trial court’s exercise of the jurisdiction to consolidate suits is well settled. The Supreme Court of Kenya outlined the relevant guiding principle in ***Omoke vs Kenyatta & 83 others (Petition 11 (E015) of 2021) (2021) KESC 27 (KLR)*** as follows:-

***“Consolidation of suits or appeals will be ordered where there are common questions of either law or fact in two or more suits or appeals and where it is desirable that all the related matters be disposed of at the same time.”***

34. The Supreme Court of Kenya also outlined the essence of consolidation of suits in ***Law Society of Kenya vs Centre for Human Rights & Democracy & 12 others (2014) eKLR*** as follows:

***“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”***

35. In opposing this prayer, the Defendants argued that Eldoret ELC Misc. Application No. E016 of 2025 was dismissed on 23<sup>rd</sup> September, 2025. That pursuant to the said dismissal, the suit is no longer alive as there is nothing remaining for determination. They thus argued that the said suit cannot be consolidated with the present suit.
36. I have considered the arguments put forward by the two parties and taken time to peruse the file with respect to ELC Miscellaneous Application No. E016 of 2025. This suit was initially being handled in ELC Court 2 before Hon. Justice Washe. I note also that the Respondents had on 24<sup>th</sup> June, 2025 filed their submissions opposing the main application.
37. The proceedings in that suit show, however, that when the matter was mentioned on 30.07.2025 the learned Judge directed that the case be transferred to this court to be handled together with the instant suit. The learned Judge further

directed that the matter be mentioned before this court on 23<sup>rd</sup> September, 2025 when this matter would be mentioned.

38. Upon transfer of Eldoret ELC Misc. Case No E016 of 2025, the matter was indeed mentioned before this court on 23<sup>rd</sup> September, 2025. On that date, Counsel for the Applicants, who is still Counsel for the Plaintiff/Applicant in this suit, informed the court that they filed Eldoret ELC Miscellaneous Application No. E016 of 2025 before they filed this instant suit. Counsel expressed their desire to withdraw the application with no order as to costs. Pursuant to the Submissions by Counsel for the Applicant therein, the court proceeded to mark the matter as withdrawn with no order as to costs and the file was closed.
39. It is noteworthy that it is within a party's right to discontinue or withdraw their suit at any stage of the proceedings prior to determination thereof and/or delivery of the judgment. This right is recognized at Order 25 of the Civil Procedure Rules, 2010 which at Rules (1) & (2) reads:-

**1. Withdrawal by plaintiff [Order 25, rule 1]**

***At any time before the setting down of the suit for hearing the plaintiff may by notice in writing, which shall be served on all parties, wholly discontinue his suit against all or any of the defendants or may withdraw any part of his claim, and such discontinuance or withdrawal shall not be a defence to any subsequent action.***

**2. Discontinuance [Order 25, rule 2]**

***(1) Where a suit has been set down for hearing it may be discontinued, or any part of the claim withdrawn,***

**upon the filing of a written consent signed by all the parties.**

**(2) Where a suit has been set down for hearing the court may grant the plaintiff leave to discontinue his suit or to withdraw any part of his claim upon such terms as to costs, the filing of any other suit, and otherwise, as are just.**

**(3) The provisions of this rule and rule 1 shall apply to counterclaims.**

40. The effect of withdrawal of a suit is well explained in the case of **Priscilla Nyambura Njue vs Geovhem Middle East Ltd; Kenya Bureau of Standards (Interested Party) (2021) eKLR**, where the court held that:-

**“24. Withdrawal of a suit is itself its end. The right of a plaintiff to withdraw his suit is not a divine right but a right expressly conferred upon him by Order 25 and no right is similarly conferred upon him to revoke or rescind the withdrawal. So long as he remains the plaintiff, he may do any act which he may do in that capacity; he cannot, after withdrawal of the suit resulting in the loss of the capacity, do an act which can be done only in that capacity. Put differently, there is no provision conferring the right to revoke the withdrawal and there is no justification for saying that the right to withdraw includes in itself a right to revoke the withdrawal. Certain consequences arise from the withdrawal which prevent a party from revoking the withdrawal. The withdrawal is complete or effective as soon as it takes place. The right to**

***revoke the withdrawal can only be allowed by the legislature by expressly providing so in the rule and not by the courts. In the same vein, the rules do not confer the court with power to reinstate a suit once withdrawn. Order 25 Rule 1 provides that the withdrawal shall not be a defence to any subsequent action. Before me is not a subsequent action, but the same suit.”***

41. The Plaintiff herein exercised his right to withdraw his suit, which right was expressed by his advocate on record in this suit, who was also on record as representing him in ELC Misc. Application No. E016 of 2025. The effect of that withdrawal is that the said suit ceased to exist, and the court closed that file. There is no suit in existence or matter pending in that suit capable of being consolidated. The prayer for consolidation therefore fails.

**Orders:-**

42. The upshot is that the Notice of Motion Application dated 14<sup>th</sup> July, 2025 therefore lacks merit and is hereby dismissed with costs to the Defendants.

43. Orders accordingly.

**DATED, SIGNED and DELIVERED** virtually at **ELDOR ET** on this **12<sup>TH</sup>** day of **FEBRUARY, 2026** vide Microsoft Teams.

**HON. C. K. YANO**  
**ELC, JUDGE**

In the virtual presence of;

Mr. Nabasenge for Plaintiff/Applicant.  
Mr. Kibii for Defendants/Respondents.  
Court Assistant - Laban.

ORIGINAL