

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ELCE PMISC NO. E002 OF 2025

BERNARD MULUHYA APPLICANT

VERSUS

COLLINS MWANGE MWUNGU 1ST RESPONDENT

NANCY NELIMA NAFULA 2ND RESPONDENT

RULING

This ruling is in respect of the undated Notice of Motion brought by the applicant pursuant to the provisions of sections 1, 1A, 3, 3A and 63(e) of the Civil Procedure Act and article 159(2) of the Constitution of Kenya 2010. The application seeks for an order that VIHIGA SPM ELC NO. E011 OF 2025 be stayed pending hearing and determination of HAMISI PM ELC NO. 30 OF 2020 and that costs of the application be in the cause.

The grounds upon which the application was brought are that as there exists HAMISI PM ELC NO. 30 OF 2020 still pending hearing and determination, the filing of VIHIGA MC ELC NO. 11 OF 2025 amounts to a multiplicity of suits in respect of the same subject matter. That it has become imperative that the suit at Vihiga be stayed pending hearing and determination of the suit filed at Hamisi Law Courts.

The application was supported by the contents of the Supporting Affidavit sworn by Benard Muluha on 14th October 2025 and the annexures thereto.

The application was opposed vide the grounds of opposition dated 10/11/2025 namely; that the application is frivolous, vexatious and an abuse of the court process and ought to be dismissed with costs, that there is no substantive

application before court and that the application is in the wrong forum. There respondent also filed a Replying Affidavit sworn on 9/2/2026 by Oye Ashioya Advocate. To the Replying Affidavit were attached a copy of Notice of Withdrawal of suit and letter dated 15/10/2025.

The application was heard orally on 10th February 2026. It was submitted on behalf of the applicant that the court has powers to stay the proceedings of the suit in the trial court. That the Replying Affidavit sworn by Counsel for the respondent offends the rules of evidence and should be struck out. That the Affidavit should have been sworn by the party and not Counsel.

On behalf of respondent it was submitted that the Hamisi suit has since been withdrawn hence the application is misconceived. That the application should have been filed before the trial court and that the Replying Affidavit does not offend any law as the matters deposed to are not controversial.

I have considered the application, the opposition thereto and the oral submissions. No explanation was given for filing the application herein and not before the trial court of the suit whose proceedings are sought to be stayed.

I have seen the Notice of withdrawal of suit dated 1/9/2025 attached to the Replying Affidavit. It shows that the suit at Hamisi court has since been withdrawn hence the issue of multiplicity of suits does not arise.

Order 19 Civil Procedure Rules makes provisions on Affidavits. Rule 3 (1) thereof specifies what may be contained in Affidavits. I find that the Replying Affidavit by Counsel contains matters within Counsel's knowledge namely; the Notice of Withdrawal of the suit and the letter dated 15/10/2025 both of which are indicated

to have been authored by Counsel's law firm and hence the said Affidavit does not offend the law as submitted on behalf of the applicant.

I find that the application is not only improperly before this court but also that it lacks merit. The application is therefore hereby dismissed with costs to the respondent.

Ruling dated and signed at Vihiga and read virtually this 12th day of February 2026.

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi--Court Assistant.

N/A for the Applicant.

N/A for the Respondents.