

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND PETITION NO. E003 OF 2025
IN THE MATTER OF ARTICLES 2, 3, 10, 20, 21, 22, 23, 40, 47, & 162
OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 13 RULES 1 & 2 OF THE ENVIRONMENT
AND LAND COURT ACT, NO. 19 OF 2011

BETWEEN

JAMES OUMA ORWAPETITIONER

- VS -

THE COUNTY SURVEYOR, KISUMU.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF KISUMU2ND RESPONDENT

THE COUNTY ATTORNEY, KISUMU COUNTY3RD RESPONDENT

RULING

The application before court for determination is the Notice of Motion dated 2nd February, 2026 filed on behalf of the 2nd & 3rd Respondents. The relief sought is that;

- a) the honorable court be pleased to call for and withdraw Kisumu CMC ELC NO. E037 OF 2024 from Chief Magistrate's Court at Kisumu.
- b) the said matter be consolidated and heard together with KSM ELC PET NO. E003 OF 2025.
- c) the costs of the application be provided for.

The application was not opposed by the Petitioner.

I have considered the application, the contents of the Supporting Affidavit and annextures thereto.

I have also considered the oral submissions by Counsel.

From the annextures to the Supporting Affidavit, I note that the suit before the Magistrates' Court has a party who is not a party in the petition herein namely; Margaret Awino Akong'o who is the Plaintiff

in the suit and who brought the suit on behalf of the estate of a deceased person one John Wasiema Akong'o alias Okong'o

As a Plaintiff in the suit, her participation in this petition and more particularly the application before court is crucial. Proceeding in the absence of the said Plaintiff yet the orders to be issued will have a bearing on her suit before the trial court will be tantamount to denial of her constitutional right to a fair hearing.

I find that the application is not sustainable.

The application is hereby dismissed. The interim orders of stay granted on 5/2/2026 are hereby lifted.

No order as to costs.

Ruling dated and signed at Kisumu and read virtually this 17th day of February, 2026.

**E. Asati,
Judge.**

In the presence of:

Maureen - Court Assistant

Ohayo for the Petitioner

Opondo for the Applicants.