



3. The Defendant in support of this Application argued that although the said Appeals did not arise from this suit, they are related to it and their outcome will have a bearing on this suit.
4. Hence that there is need to stay the proceedings in this suit, pending the hearing and final determination of those appeals by the Court of Appeal.
5. The Plaintiffs have through PATRICK ALOUIS MACHARIA MAINA the 1<sup>st</sup> Plaintiff in the submissions at the hearing of this Application, argued that the said Replying Affidavit is defective for failing to comply with the legal requirements of an Affidavit and for containing inadmissible hearsay and falsehoods.
6. Hence that there is no valid Replying Affidavit and that therefore the Application is unopposed and should be allowed. And that the said Affidavit should be struck out.

### ***Determination***

7. I have perused the said Replying Affidavit and not found any defects to warrant such a drastic action. Order 19 Rule 7 of the Civil Procedure Rules, allows courts to receive any affidavit sworn for purposes of being used in any suit, notwithstanding any defect by misdescription of the parties or otherwise in the title or other irregularity in the form thereof or on any technicality.
8. Under Order 42 Rule 6 (2) of the Civil Procedure Rules, a party seeking a stay pending appeal, seeks it in the suit the subject of the Appeal, not in another suit. The Application, whether for stay of execution or stay of proceedings, should

have been sought in the Constitutional Petitions themselves.

9. Even though there is a relationship between the facts in those Constitutional Petitions and this suit, this suit is different from those petitions, and the proceedings in those petitions and the proceedings in this suit are not the same.

10. In the end, I find neither merit nor legal justification in this Application, hence hereby dismiss it with costs.

**DATED and DELIVERED at NAIROBI on this 22<sup>nd</sup> day of January 2026.**

**PROF (DR) NIXON SIFUNA  
JUDGE**