



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Appeal 114 of 2007**

**MARY NJERI KAMAU.....APPELLANT**

**VERSUS**

**NJOKI GITAU.....RESPONDENT**

**RULING**

There are two applications before the court. First in time is dated 4/12/2007 by M/s Kiama Advocates. It is related in an appeal filed against interlocutory order of Senior Resident Magistrate Kimutai made on 15/11/2007.

The second Application is dated 15/5/2008 seeking exparte orders given by this court to be vacated as it appears the holder of Ex parte order has taken far away date for hearing of the application inter-parties showing malice on her part and intention to delay. The matter relates to succession of a rice holding hither to held by deceased tenant and the applicant and Respondent are claiming rights from the deceased tenant one as a step daughter the other as widow. The appeal disputes the issue of an interlocutory injunction against the appellant while both parties had been cultivating rice on the land one took 2 acres and the other 3 acres. The case in lower court is not determined. There is need to determine the successor to enable the Irrigation Board to organize the cultivation of rice on the land. Hence the lower court proceedings were initiated by the Manager of Mwea Irrigation Scheme as provided under Irrigation Act.

Upon hearing submissions of both counsel and upon affidavits of the parties filed herein, it is my view that both parties should continue utilizing the plot on the ratio of 2:3 pending hearing of the final determination of hearing of the proceedings in the lower court. There is no prayer by any party for stay of proceedings in the lower court pending hearing of appeal.

I therefore order that both parties shall continue to utilize the holding and the orders issued by Senior Resident Magistrate are hereby stayed pending determination of Misc.Succ. Case No. 32 of 2007 at Wanguru Court. The order for stay pending appeal is not discharged.

Each party to pay its own costs.

It is so ordered.

Dated this 23<sup>rd</sup> May, 2008.

**J. N. KHAMINWA**

**JUDGE**

**23/5/2008**

**Khaminwa- Judge**

**Njue – Clerk**

**Mr. Okwaro HB for Ms Thungu**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**