

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 147 of 2006

MATHEWS KANDIE & 2 OTHERS:.....APPELLANT

VERSUS

ESTHER JEPKEMBOI KIPLAGAT:.....RESPONDENT

RULING

The applicant/appellant seeks for an order staying proceedings in Eldoret SPM.CC.No.1477 OF 1998 pending the hearing and determination of this suit.

Respondent and council did not appear today for the hearing though the date was taken by consent. Mr. Otieno told court that he is relying on the supporting affidavit.

I have considered the application and the supporting affidavit. I too considered the respondents grounds of apposition filed. I find application has merit. The applicant says he was aggrieved by the Principal Magistrate dismissed of his application for leave to amend his defence. He has already filed the appeal. If the proceedings in the lower court continues and this court after hearing the appeal finds the Magistrate erred is not allowing the amendment then no doubt the appellant/applicant who is the defendant in that suit will be prejudiced as he will be forced to proceed on the basis of the defence now on record. this appeal means the disposal of the lower courts case will now be delayed but that is lesser evil then forcing the appellants to proceed when he feels that his pleadings are not proper.

I therefore allow the application and order that there be stay of proceedings in **Eldoret SPM.CC.No.1497 of 1998** pending the hearing and determination of this appeal on condition that the appellant do deposit in court within 30 days **Shs.30,000/=** as security to costs of the appeal.

Costs of the application in the cause.

Dated and Delivered at Eldoret on 12th June,2007.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C - David

N/A for Applicant

N/A for Respondent