



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL APPEAL NO. 7 OF 2016**

**PETER MUTAI**

**T/A LESSOS AGRICULTURAL STORE....APPELLANT/APPLICANT**

**VERSUS**

**WESTERN SEED COMPANY LIMITED .....RESPONDENT**

**RULING**

By his application dated 3//2017 the applicant prays that there be stay of execution of the decree issued in **Kitale CMCC No 365 of 2015 – Western Seed Co Ltd Vs Peter Mutai T/A/ Lessos Agricultural Stores** and equally stay pending the determination of this appeal. The same is supported by the annexed affidavit of Peter Mutai. The said affidavit has attached a copy of the Memorandum of Appeal and according to the applicant he stands to suffer loss and damage and the said appeal rendered nugatory.

The respondent on its part has filed grounds of opposition stating that this application is sub judice as there is a pending application dated 6/4/1016 which is similar to this one and the same is yet to be prosecuted.

I have perused the entire proceedings herein and indeed it is true that this application is similar word for word with the application dated 6/4/2016 which is yet to be determined.

Infact on 20/4/16 the parties agreed to dispose the same by way of written submissions. Todate for reasons best known to the parties the same remains unprosecuted.

Consequently I agree with the respondent that this is an abuse of the court process. If the applicant was interested, he should have prosecuted the earlier application. This application dated 3/1/2017 is therefore dismissed with costs to the respondent.

Dated this 14<sup>th</sup> day of February 2017.

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of:**

**Waweru holding brief for Teti for Respondent**

**No appearance for the Applicant**

**Court Assistant - Kirong**