



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC NO. 153 OF 2017**

**ESTHER KIMATHI MWIMBI.....PLAINTIFF/APPLICANT**

**VERSUS**

**ZAVERIO MITHIKA.....DEFENDANT/RESPONDENT**

**RULING**

1. The brief background to this matter is that defendant had filed an application on 19.7.2017 seeking for a stay of this suit pending the hearing and determination of Meru Judicial Review case No. 7 of 2017 which case was before me. I granted the orders vide my ruling of 13.11.2017.
2. On 26.2.2018, plaintiff filed an application to set aside the earlier orders of 13.11.2017 as the Judicial Review case was over, Judgment having been delivered on 23.1.2018. I allowed the application vide the ruling of 8.3.2018.
3. Defendant is now back in court with an application filed on 13.7.2018. He is seeking for a stay of these proceedings pending the hearing of the Nyeri Appeal case No. 105/2018 filed against the decision in Judicial Review case No. 7/2017.
4. The application has been opposed vide the replying affidavit of the plaintiff.
5. I have given due consideration to all the arguments, submissions and authorities proffered by the rival parties. Applicant's claim that the hearing of this case shall render his appeal nugatory are without a basis. There are no subsisting orders against any parties as the court even disallowed plaintiff's prayer for an injunction in the ruling of 13.11.2017.
6. As rightly submitted by the plaintiff, defendant should participate in the hearing of this case and if dissatisfied with the outcome, he can lodge an appeal. As at now defendant is proceeding as if there are adverse orders in place against him, which is not the position as far as this suit is concerned.
7. I find that the application of 13.7.2018 is not merited. The same is dismissed with costs to plaintiff. Parties should ensure compliance with Order II and then the suit is to be set down for hearing.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 31<sup>ST</sup> DAY OF OCTOBER, 2018 IN THE PRESENCE OF:-**

Court Assistant: Janet/Galgalo

C. P Mbaabu for plaintiff

Mwanzia for defendant

Plaintiff

Defendant

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**