



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**JUDICIAL REVIEW APPLICATION NO. 28 OF 2017**

KALUMA M'MWERERIA.....APPLICANT

AND

1. THE LAND ADJUDICATION & SETTLEMENT

OFFICER (IGEMBE DISTRICT).....1<sup>ST</sup> RESPONDENT

2. THE LAND DEMARCATION OFFICER

(AMWATHI ADJUDICATION SECTION).....2<sup>ND</sup> RESPONDENT

3. DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT (NAIROBI).....3<sup>RD</sup> RESPONDENT

4. DEPUTY COUNTY COMMISSIONER

(IGEMBE SOUTH).....4<sup>TH</sup> RESPONDENT

**RULING**

On 1.11.17, this Court granted leave for the Ex parte Applicant to bring forth Judicial proceedings as set out in the Chamber Summons filed on 10.10.17.

The leave granted was not to operate as a STAY. This is the reason the Ex parte Applicant is back in Court seeking that the leave granted do leave operate as a stay.

Order 53 r 4 states that:-

**“The grant of leave under this rule to apply for an order of Prohibition or Certiorari shall if the Judge so directs operate as a stay of the proceedings in question until the determination of the application or until the Judge orders otherwise”.**

Leave operating as a stay is hence not automatic, it is discretionary.

I note that in paragraph 15 of the Statement to accompany the Summons for leave, the Ex parte Applicant has stated that:-

**“I seek orders to prohibit O.C.S Maua Police Station from entertaining land complaints and**

**protecting land grabbers through illegal arrest and detention of me and malicious prosecution based on lies from the land grabbers”.**

Under the provisions of Article 157 (10) it is provided that:-

**“The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority”.**

This Court hesitates to grant any Ex parte orders that may tend to be in conflict with a duly established Constitutional Office (the D.P.P)

The issue of STAY is hence to be canvassed in the main motion inter parties so that all concerned parties can get a chance to give their input on the matter.

I therefore decline to grant a stay at this stage.

**DELIVERED, DATED AND SIGNED AT MERU THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2017**

**IN THE PRESENCE OF:-**

CA Janet/Haway

E. Kimathi HB for Kioga for Plaintiff –present

**Hon. L. N. MBUGUA**

**ELC JUDGE**