



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 181 OF 2013**

**TITUS KUTO KIPUNGAR..... PLAINTIFF**

**VERSUS**

**SELINA TAMINING.....1<sup>ST</sup> DEFENDANT**

**PIUS ROTICH.....2<sup>ND</sup> DEFENDANT**

**MUSA KOSKEI.....3<sup>RD</sup> DEFENDANT**

**JAMES KIPYEGO.....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

1. The application dated 29/9/2017 has been brought by the defendants/respondents who seek that the orders of stay of execution of the court's decree herein be vacated. The application is brought on the basis that the plaintiff/applicant has failed to prosecute the appeal and that the defendants have been denied the fruits of their judgment. The application is supported by the affidavit sworn by the 2<sup>nd</sup> defendant.
2. The genesis of the application is the adoption as an order of this court of a consent order recorded by the parties on 14/3/2017 following the filing of a written consent executed by the parties on the same day.
3. The executed consent provided for a stay of execution of the decree herein pending the hearing and determination of ***Court of Appeal Civil Appeal No. 37 of 2016*** lodged at Eldoret touching on ***LR. No. West Pokot/Siyoi "A"/263***. The said consent also provided that the taxed costs of ***Kshs.120,750/=*** have been paid by the plaintiff to the defendant as a condition for stay of execution of the decree herein pending the hearing and determination of the ***Court of Appeal Civil Appeal No. 37 of 2016***.
4. I have noted that this is the consent that was confirmed by the parties on 14/3/2017. It is trite law that consent orders in suits cannot be set aside at the instance of one party unless that party files proceedings and demonstrates therein that a certain set of circumstances existed which makes the consent not tenable.
5. The orders of stay of execution in this case were not issued by the court upon application of one party. I find that those orders amount to a valid consent between the parties. For that reason they may not be as easily set aside as the orders obtained at the instance of one party.
6. I therefore find that the application dated 29/9/2017 has no merit. Consequently, dismiss the application with costs to the plaintiff.

**Dated, signed and delivered at Kitale on this 20<sup>th</sup> day of December, 2017.**

**MWANGI NJOROGE**

**JUDGE**

**20/12/2017**

**Before – Mwangi Njoroge Judge**

**Court Assistant – Isabellah**

**Mr. Majanga holding brief for Mr Nyamu for the plaintiff**

**Ms. Sitati holding brief for Ms. Arunga for the Respondent**

**COURT:**

**Ruling read in open court.**

**MWANGI NJOROGE**

**JUDGE**

**20/12/2017**