



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL APPEAL NO. 25 OF 2014**

**CO-OPERATIVE BANK OF KENYA LIMITED.....APPELLANT**

**VERSUS**

**JOSPHAT KIRIGIA ABURI.....RESPONDENT**

**RULING**

1. This appeal was filed on 31<sup>st</sup> August 2014 against the judgment delivered on 4<sup>th</sup> July 2014 in Meru CMCC NO. 910 of 2003 at the Chief Magistrates court in which it was decreed that the appellants intended sale of Land Parcel NTIMA/IGOKI/4279 is illegal irregular and void and that the appellant should discharge the plaintiffs Land Parcel No. NYAKI/THUURA/1457 and Land Parcel NTIMA/IGOKI/4279.
2. The appellant vide a Notice of Motion filed on 19.8.2014 applied for a stay of execution which was granted vide a ruling by this court dated 19<sup>th</sup> March 2015. However, the stay was premised on that the hearing and determination of the appeal be done within a year of the ruling and the appellant to deposit in court Ksh. 300,000 as security for the stay of execution.
3. It appears there were some difficulties in typing the proceedings from the lower court as the handwriting was difficult to read. Eventually, the proceedings were typed and this court on 28<sup>th</sup> November 2018 gave directions for the record of appeal to be filed and served within 30 days and the parties to file submissions thereafter. The matter was given a hearing date of 11.2.2019 in the presence of counsel for the appellant and the respondent.
4. The court in issuing these directions was cognizant of the fact that the matter ought to be dealt with expeditiously. On the date scheduled for hearing, 11.2.2019, not only was the appellant and its advocate absent, but appellant had also failed to comply with courts directions given earlier on.
5. Pursuant to the provisions of **order 42 rule 20 of the civil procedure rules, this appeal is hereby dismissed with costs to the respondent.** The lower court file is to be severed from this file and to be remitted back to the Chief magistrates court Meru for the execution of the lower court Judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 27<sup>TH</sup> MARCH, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Kirimi for appellant

A. Kimathi for respondent

Respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**