



**REPUBLIC OF KENYA**

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

**CIVIL NO. 444 OF 2012**

**TIMOTHY OTIENO OWUOR T/A NAIROBI CONNECTIONS SERVICE  
AUCTIONEERS..APPELLANTS**

**VERSUS**

**JARED OSONGO .....**

**RESPONDENT**

**RULING**

The appellant herein was a subject of the Auctioneers Licensing Board which delivered a verdict on 25<sup>th</sup> July, 2012 imposing some penalties upon him. Aggrieved by the said decision he lodged an appeal against the said decision and also a stay of execution of the same. Following an application by way of Chamber Summons dated 14<sup>th</sup> September, 2012 Onyancha J. gave an order to stay execution of the decision of the auctioneers' board on some specified conditions.

The record shows that the appellant lodged a Notice of Appeal on 15<sup>th</sup> August, 2012 and a Memorandum of Appeal dated 23<sup>rd</sup> August, 2012. Thereafter no record of appeal has been prepared or filed by the appellant to date. There is now before an application by way of Notice of Motion dated 17<sup>th</sup> October, 2013 seeking the lifting of the stay order and the sticking off of the Notice of Appeal and Memorandum of Appeal cited above.

The reasons set out are that ever since the filing of the Notice of Appeal no further action has been taken for a period of more than one year. The respondent wishes to benefit from the judgment obtained in his favour, and continues to suffer loss as a result of inaction on the part of the appellant. The continued stay of the order is an abuse of the court process.

It was incumbent upon the appellant to prepare the record of appeal, serve the respondent and move for the court for directions. This he has failed to do for a period of over two years now. It would appear that he is taking advantage of the stay order on record.

When this application came up for hearing on 13<sup>th</sup> November, 2014 the appellant was absent. The Hearing Notice filed in court shows that his counsel was served on 13<sup>th</sup> June, 2014. No explanation of their absence has been brought to the notice of the court.

In the circumstances, this appeal it cannot be sustained without causing injustice to the respondent. Accordingly, the stay order are hereby lifted and the Notice of Appeal and Memorandum of Appeal struck out as prayed. The respondent/ applicant shall have the costs of this application.

Orders accordingly.

**Dated and delivered at Nairobi this 10<sup>th</sup> Day of December, 2014.**

**A.MBOGHOLI MSAGHA**

**JUDGE**