

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 29 of 2004

CO-OPERATIVE BANK OF KENYA APPELLANT

VERSUS

MILLICENT GATHONI KABIA & 3 OTHERS RESPONDENTS

RULING

Directions were sought on the hearing of this appeal. When the matter came up for directions on 4th March 2008 the appellant was represented and also the 1st and 2nd respondent. The court directed that the appeal be heard in Nyeri. The matter was adjourned to 14th April 2008 for parties to indicate whether they were in agreement with the appeal proceeding by way of written submission. On 14th April 2008 only the Appellant's counsel was before court. He indicated to the court that he will do written submission within that day. The court then gave a date of judgment of the appeal to be 5th June 2008. On 5th June 2008 the judgment was adjourned to 30th June 2008. As I began to consider this appeal it became apparent that the respondents were not in agreement with the appeal being heard by way of written submissions. Indeed the only submissions on record are by the appellant. That being the case justice will not be served by delivering judgment in the absence of submissions of the respondent. This court therefore sets aside the order of 14th April 2008 and orders that this appeal do proceed for hearing afresh.

Dated and delivered at Nyeri this 30th day of June 2008.

MARY KASANGO

JUDGE