



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, OMOLO & SHAH, J.J.A.)

CIVIL APPLICATION NO. NAI. 206 OF 1997 (89/97UR)

BETWEEN

MARGARET WANJIKU MWATHI APPLICANT

AND

DAGRET INVESTMENT..... RESPONDENT

(An Application for stay of execution in an intended appeal
from the ruling of the High Court of Kenya at Nairobi
(Justice Githinji) dated 19th June, 1997

in

H.C.C.C. NO. 905 OF 1997)

RULING OF THE COURT

The applicant's husband was the registered proprietor of the property L.R. No. 209/8467 (the suit property). The applicant claims to be equitably interested in the suit property. The applicant's husband did not pay the amount due under a mortgage in respect of moneys lent to the husband (Mr. Mwathi) by Kenya Commercial Bank Limited (KCB). KCB auctioned the property. It does not lie in the mouth of the applicant to say that as she was in occupation KCB had no right to sell the suit property or that suit property was irregularly sold.

The applicant confirms that she and fifteen other occupants have already been evicted from the suit property. This application has been overtaken by events. Whatever the merits of the intended appeal may be we see no cause or reason now to grant the prayers sought in this application which is dismissed with costs.

Dated and delivered at Nairobi this 11th day of August, 1997.

R.O. KWACH

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JUDGE OF APPEAL

R.S.C. OMOLO

.....

JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR