



**REPUBLIC OF KENYA**

**IN THE IGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 239 OF 1990**

**MAINGI NJAU.....APPELLANT**

**VERSUS**

**MESHACK MBOGO WAMBUGU.....RESPONDENT**

*(Being an appeal from the Ruling of the Principle Magistrate at Nyeri,*

*Hon. E.B. Achieng (RM) delivered on 16<sup>th</sup> September 1985*

*in Nyeri SRMCC No. 214 of 1980 in the Case of Meshak*

*Wambugu vs. Mwangi Njagu)*

**JUDGMENT**

The appellant was sued by the respondent based an agreement between the two of them for the sale of land known as Konyu/Baricho/695 for KShs. 16,000/=. The appellant was the owner of the said parcel of land.

The plaintiff provided that the parties made an application to the Mathira Divisional Land Control Board for the subdivision and subsequent transfer of one acre by the appellant to the respondent.

The Land Control Board is said to have given the consent sought but, whereas the respondent was ready and willing to pay the purchase price, the appellant refused to transfer the said land. The respondent therefore sought the transfer of the land plus costs of the suit.

In the statement of defence the appellant denied the respondents claim but conceded that there was an agreement between him and one Sofia Nyakwea for the purchase of one acre for KShs. 14,000/=. It was his case that, if the respondent sought to enforce that agreement, he could not do so as he was not party to it. It was also his case the Land Control Board consent was not granted as he had rescinded the agreement. If any such consent was obtained it was a nullity.

The lower court gave judgment in favour of the respondent provoking the present appeal. For some reason this appeal has remained pending for quite some time and it would appear the parties may have lost interest along the way. In the Memorandum of Appeal the lower court was faulted for failing to appreciate that there was no legal relationship between the appellant and the respondent and that therefore the arbitration proceedings were a nullity *ab initio*. It was also the appellant's case that the Land Control Board consent was a nullity, having been obtained outside the statutory period of six months, and in any case the appellant did not attend the Board to give his consent.

The other grounds in the Memorandum of Appeal provided inter alia that the panel of elders dealt with matters of title and specific performance which were *ultra vires* its mandate. The appellant also faulted the magistrate for failing to address the issue of whether there was any concealment of fundamental and material fact by the respondent, and that the sale agreement of the subject matter was between the appellant and Mrs. Sophoia Nyakwea Mbogo and not the respondent who was a stranger to the sale agreement. Additionally, the magistrate failed to find that the total sum of money paid by Mrs. Sophia Nyakwea Mbogo, in consideration of the subject matter, had been fully refunded to her through her lawyers.

The record before me contains an award by a panel of elders who decided the matter in favour of the respondent. The respondent has never appeared in the proceedings relating to this appeal despite evidence that all along his advocates were served with notices to appear.

The appellant filed submissions in accordance with the directions of the court. It is clear there was never an agreement between the appellant

and the respondent in any transaction relating to land. Any transaction relating to land ought to be in writing between identifiable parties and in the absence of any such agreement between the appellant and the respondent, the respondent had no cause of action to pursue against the appellant.

A contract affects only the parties to it and cannot be enforced by or against a person who is not a party to it – see **Agricultural Finance Corporation vs. Lengetia (1982-1988) 1 KAR 772**. It is also established law that, any transaction involving agricultural land lacking the Land Control Board consent is void for all intents and purposes, unless such consent is obtained within 6 months from the date of execution of the agreement. There is was such consent in the present suit.

There was evidence that the money paid to the appellant was refunded through the lawyers of Mrs. Sophia Nyakwea Mbogo. Whatever the case, the substratum being an agreement for sale, and in the absence thereof, no suit could be sustained.

Accordingly, this appeal allowed and the lower court judgment is hereby set aside. The appellant shall have the costs of this appeal.

*Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of February, 2018.*

**A. MBOGHOLI MSAGHA**

**JUDGE**