



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KERICHO
CIVIL SUIT NO.73 OF 2001

SAMWEL KERICH.....PLAINTIFF/APPLICANT

VERSUS

JAMES MARITIM MUTAI.....DEFENDANT/RESPONDENT

R U L I N G.

(Plaintiff having filed suit to declare a sale agreement with defendant null and void for want of consent of the land control board; suit finalized in his favour; there being a caution registered for the duration of the case; whether the caution should subsist; held that the caution serves no purpose as the suit has already been finalized and same may be removed)

This is an old case commenced in the year 2001. The plaintiff's case was that through an agreement made in the year 1992, he sold 3 acres of land comprised in the land parcel Kericho/Kapsoit/2295 to the defendant at a consideration of Kshs. 165,000/= but the same did not receive the consent of the Land Control Board. In the suit, he sought a declaration that the sale agreement is null and void and an order of eviction against the defendant.

The defendant resisted the suit but lost. In a judgment delivered on 16th June 2006, the court held that the sale transaction was void for want of consent of the Land Control Board. The plaintiff was however ordered to refund the purchase price together with interest. Throughout the duration of the suit, the defendant had placed a caution in the register of the land parcel, claiming a purchaser's interest. Vide the application dated 3rd April 2013, the plaintiff has asked that the caution be removed as the suit has now been finalized and the court has held that the sale transaction cannot be upheld.

The defendant has contested this application on the reason that he has filed an appeal and that it is prudent to preserve the subject matter of the suit pending the appeal.

I have considered the documents filed by the parties alongside the submissions of counsel.

There is no question that the issue of whether or not the sale between the plaintiff and defendant can be affirmed has been determined and the holding is that the same cannot be endorsed for want of consent of the Land Control Board. It cannot now be said that the defendant has a purchaser's interest. True there is a Notice of Appeal filed, but that appeal is on the issue of interest payable to the defendant, for the court did hold that the defendant is entitled to be refunded back the purchase price with interest. That to me has absolutely no bearing on the caution. It is a question of money and is no longer an issue touching on

whether the defendant has a proprietary interest on the suit property. That has already been determined against the defendant.

In my view, there is no reason why the caution should remain in place. I therefore order the Land Registrar of Kericho District to proceed and remove the caution placed on 16th August, 2001. The plaintiff shall have the costs of this application.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 13th DAY OF NOVEMBER, 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of;

1. No appearance on part of M/s J.K.Rono & Co.Advocates for Plaintiff/Applicant.
2. No appearance on part of M/s J.K.Kirui & Co.Advocates for Defendant/Respondent.
3. Court assistant-Kenei.