



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 18 OF 2014**

**MNANG'AT STEPHEN RAMBA**

**SALOME CHEPKEMEI LOSIANGOLE.....PLAINTIFFS**

**VERSUS**

**JAMES MARIACH KOKITA**

**VERONICA C. AKOKOR.....DEFENDANTS**

**R U L I N G**

1. The first defendant/Applicant filed a notice of motion dated 30/7/2014 in which he seeks the following prayers;-
  - (a) *That the court do order that the sale agreement dated 28/12/2010 is null and void for all purposes for want of consent of Land Control Board.*
  - (b) *That judgement be entered against the first respondent in the sum of Kshs.800,000/= on admission.*
2. The first defendant/Applicant contends that he forced the second defendant to sign the sale agreement which resulted in this suit. The applicant further contends that he did not take the respondent to the land control board for consent and that he has now realised that the sale transaction is bringing problems in the family and he is thus willing to refund the purchase price.
3. The applicant's application is opposed by the respondents based on replying affidavit sworn by the first respondent on 2/10/2014. The respondents contend that the applicant did not admit any part of the respondents claim in his pleadings. The respondents further contend that the applicant should have admitted the Shs.800,000/= as well as general damages for breach of the agreement. The respondents further contend that the suit land is within Makutano township where land is not subject to the provisions of the Land Control Act.
4. The respondents further contend that the averments in the application are in direct contradiction to what is contained in the defence of the defendants and as such the application cannot be granted on the reasons advanced in the application.
5. I have gone through the applicant's application, the replying affidavit as well as the pleadings and submissions filed by the counsel for the parties. There are two issues which arise for determination. The first one is whether consent of land control board was required and secondly whether judgement on admission can be granted in the circumstances of this case.

6. The respondents contend that the area where the suit land is located does not require consent of the land control board as the land is within Makutano Municipality. The applicant on the other hand contends that the land is located 7 kilometers from Makutano Municipality and is therefore subject to provisions of the Land Control Act. Whether the land is or is not within a controlled area is a subject which can only be determined by evidence. The parties have only given rival submissions. It is not possible at this point to determine conclusively that the area is subject to provisions of the Land Control Act or not. Besides this, the respondents have made a plea that if the land is located in a controlled area then the court should extend the period within which to obtain consent of the land control board. The Land Control Act provides that a party may apply to the court to extend the time within which to obtain the consent of the board. This is an application which can be heard on its own merits. The prayer for declaration that the agreement is null and void cannot therefore be allowed.
7. On the issue as to whether judgement on admission should be entered, it is important to point out that the suit land is not registered in the name of the applicant. It is registered in the name of his wife Veronica C. Akokor the second defendant in this case. The applicant contends that he forced his wife to sign the agreement. His wife has not sworn an affidavit to state that she was forced to sign the sale agreement. I notice that the applicant signed the agreement as one of the sellers. He could have done this due to the requirement that matrimonial property cannot be sold without the consent of a spouse. The Kshs.800,000/= is at the centre of the claims by the respondents. It cannot be isolated and given as a separate relief. Though the respondents have claimed the Kshs.800,000/= as an alternative relief, this can only be granted if all their other reliefs fail. It is for the above reasons that I find that the applicant's application cannot be allowed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

**Dated, signed and delivered at Kitale on this 22<sup>nd</sup> day of October, 2014.**

**E. OBAGA**

**JUDGE**

**COURT:** Ruling delivered in court in the absence of parties who were aware of today's date.

**E. OBAGA**

**JUDGE**

**22/10/2014**