

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Miscellaneous Civil Application 12 of 2012

JACOB KIBET CHEPKWONY 1ST APPLICANT

CHRISTOPHER KIPROTICH CHEPKWONY 2ND APPLICANT

VERSUS

JOHN WACHIRA CHIRI RESPONDENT

RULING

By a notice of motion dated 19th January 2012, made pursuant to **Section 3A** and **95** of the **Civil Procedure Act**, **Order 50 rule 6**, and **Order 51 Rule 1** of the **Civil Procedure Rules**, and **section 6, 8** and **22** of the **Land Control Act**, the applicant seeks for extension of time within which to apply for consent to transfer, from the Land Control Board.

The background to these prayers is that, the applicants made an agreement to purchase land in a controlled area, on **18th January 2010**. Upon execution of the said agreement, the applicants paid the full purchase price of Kshs.500,000/=, and the Respondent undertook to facilitate the transfer of the title to the parcel of land in question into the names of the applicants upon payment of Kshs.34,000/=.

The Respondent, by an acknowledgment note dated 3/3/2010 promised to undertake the transfer of title by 08/03/2010. However in breach of the agreement, the respondent declined to transfer titles to the applicants. It is the applicant's contention that they are the legal owners of the suit land **MITI MINGI MBARUK BLOCK 3/1552 BARUT**, having purchased 1.87 hectares from the Respondent and are in possession of the same. The applicants have made numerous attempts to sign the transfer documents and seek consent from the Land Control Board but the Respondent has refused, neglected and/or frustrated the same under the guise that he is working on the process of transfer – yet a whole year has now lapsed. Meanwhile, the applicants are on the land and have developed it by fencing, building houses, planting trees and carrying out farming activities. Since the time to apply for consent from the Land Control Board has lapsed, the applicants seek that there be extension of the same to enable their request to be considered by the said Board.

The supporting affidavit sworn by H.A. Mbatia, counsel for the applicants basically reiterates what has been stated in the body of the application.

The respondent filed no response to the application, despite a request by his counsel for time to file papers, nor did his counsel attend court for hearing of the application. The matter therefore proceeded ex parte.

The applicants claim to have made several attempts to have the Respondent attend the Land Control Board and obtain consent, and to support that position they rely on two receipts issued by the Respondent for a total sum of Kshs.34,000/- indicated as Title processing fee and an acknowledgment that the Titles in respect of the applicant would be processed and ready for collection by 8th March 2010. No explanation is offered by the Respondent as to why he has not obtained the necessary consent so as to facilitate the transfer. Under section 8(1) of the Land Control Act:

“On application for consent in respect of a controlled transaction, shall be made within six

months of the making of the agreement for the controlled transaction by any party.”

This is why the applicants are anxious, because six months have lapsed, and I think they are justified in seeking the extension of time, so as to be able to complete the transaction and I accept their explanation for the delay as satisfactory.

Consequently, notwithstanding that the six months period has expired, I extend the period within which an application shall be made in relation to the suit property herein for a period of six months with effect from the date of this ruling.

Costs of this application shall be borne by the Respondent.

Delivered and dated this 27th day of July, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**