

REPUBLIC OF KENYA

High Court at Malindi

Civil Suit 28 of 2011

DISHON MUCHENE MWANGI.....PLAINTIFF

VERSUS

HAFUSWA BAKARI.....DEFENDANT

J U D G M E N T

1. This suit was brought by the Plaintiff to enforce an agreement for the sale of land parcel No. LR LAMU/LAKE KENYATTA/11/192 which was entered into between the plaintiff and the defendant on 22nd June, 2001 and 28th October, 2003. The plaintiff was the purchaser, the defendant the vendor.

The key averment in the Defence statement is that the transaction is void by virtue of the provisions of Section 6 of the Land Control Act.

2. The parties adduced evidence at the trial. I have looked at the evidence and respective submissions. This case in my view turns on the sole question whether the sale agreement (s) are capable of enforcement as prayed in the plaint.

3. Admittedly, the earliest agreement duly signed by both parties is the one dated 28th October, 2003 (P.Exh. 1b) as there is an admission by the plaintiff that the defendant never signed the agreement dated 22nd June, 2001 (P.Exh.1a)

4. Additionally, it was not until 25th April, 2006 that the final installment of the purchase price was paid. A few months later a title deed issued in the defendant's name (E.Exh.2). Meanwhile, the plaintiff had moved into the property. But the defendant became unwilling to proceed with the transfer. Hence no consent has been obtained from the Land Control Board to date even though it appears the entire purchase price has been paid.

5. The position of the law is very clear. Any transaction for the sale or transfer of land which does not receive the consent of the appropriate land control board within a period of six months is "void for all purposes" (Section 6(1)c) of the Land Control Act.

6. In this case, the plaintiff waited ten years to come to court. It is too late. The court cannot order the performance of a void agreement (**see Karuri v Gituru [1981] KLR 247: Wamukota vs Donati [1987]KLR 280, Elly Odhiambo Onyuka vs Ayub Odhiambo Migwalla Civil Appeal No. 81 of 2002 (U.R)**). The plaintiff's case therefore cannot succeed. All that he is entitled to is a refund of the purchase price. His suit is dismissed with costs.

Delivered and signed this **25th** day of **October, 2012** in the absence of parties.

Court clerks – Leah and Evans.

C. W. Meoli
JUDGE