



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL APPEAL NUMBER 187 OF 2001**

MONICA WANGUI..... ... APPELLANT

VERSUS

KAMUTHI FARMERS CO-OPERATIVE ..... RESPONDENT

SOCIETY LIMITED

**JUDGMENT**

The appellant was the plaintiff in the lower court while the respondent was the defendant. She sued the respondent in respect of a corner plot being part of LR NO. 71/10 registered in the name of the respondent. LR No. 71/10 had been subdivided and the appellant allocated plot Nos 1 to 4 of the said parcel of land.

It was her case in the lower court that she paid Kshs. 100,000/= for the corner shop plot 1 but the respondent wanted to sell the said plot to some other parties. Accordingly, she moved the court for a declaration that the said plot among others were being held by the respondent in trust for her and that the respondent should be restrained from trespassing or interfering with her property. She also sought a prayer that there be a mandatory injunction to compel the respondent to transfer the said plot to her.

It was also her case that the respondent moved into the said premises and demolished a building which she was building causing her loss and damage amounting to Kshs. 50,000/=. Her claim was denied by the respondent who asked that the suit be dismissed.

The case was heard and judgment delivered on 27<sup>th</sup> March, 2001. Aggrieved by the said judgment the appellant lodged this appeal raising six grounds set out in the memorandum of appeal dated 10<sup>th</sup> November, 2004. It is not necessary for me to set out all the grounds in the memorandum of appeal because the issues can be easily crystallized.

In dismissing the appellant case the learned trial magistrate, said as follows,

***“This court has noted the prayers in the plaint. The main issue is whether at the end of the case there is concrete evidence to prove that the plaintiff regularly purchased the corner shop from the society and therefore if she is entitled to the prayers sought for.***

***Section 3(3) of the Law of Contract Cap 23 requires that a contract for disposition of land be in writing, shall be signed and shall incorporate all the terms which the partners have expressly agreed to in one document. This was not done in the case of the corner shop.***

*There is evidence that the general meeting never approved the alleged sale of the corner shop to the plaintiff. But most important there is no evidence that the Kshs. 100,000/=, a substantial sum by any means, ever received at the society on account of the sale of the plot.....*

*The receipt purported to have been issued to the plaintiff on payment of the purchase price is dubious because it contains a different membership number from that of the plaintiff.....there is no proof at all that the purchase price was ever accounted for.....*

*The result is that there is no evidence that she purchased the plot. If at all there was any sale of the plot, the sale is null and void for having violated the society's by laws and the Law of Contract. The court therefore finds that the plaintiff has not proved her case against the defendant on a balance of probabilities. This case is therefore dismissed with costs to the defendant”.*

I have gone through the record before me. The appellant is said to have bought the suit property on 29<sup>th</sup> December, 1992. As at that time, Act No. 21 of 1990 had come into operation. That Act amended Section 3 (3) of the Law of Contract Act and provided that no suit shall be brought upon a contract for the disposition of an interest in land unless the contract upon which the suit is founded

- i) Is in writing.
- ii) Is signed by all the parties thereto and
- iii) Incorporates all the terms which the parties have expressly agreed in one document and the signatures of each party signing has been attested by a witness who is present when the contract was signed by such party.

It is clear from this record that the appellant never produced such a contract. Additionally, there was no consideration that had passed between the parties to confirm the sale. With respect therefore, having made an independent evaluation of the evidence on record, I entirely agree with the learned trial magistrate that the appellant did not prove her case against the respondent. The appeal therefore is dismissed with costs to the respondent.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 24<sup>th</sup> day of February, 2011.***

**A. MBOGHOLI MSAGHA  
JUDGE**