

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 265 of 1989

TITUS NGANGA KAMUYU.....PLAINTIFF

VERSUS

MUTHEKI MUCHONJORU.....DEFENDANT

JUDGMENT

In this old case the plaintiff claims in his plaint that by an agreement dated 15th August 1983 he bought from the defendant an excision of 5 acres out of the defendant's unsurveyed piece of land situate on Mwaki Mugi Farmers Company Ltd in Bahati for Kshs.65,000/-. He thereafter took and has since been in possession of the land. In breach of that agreement the defendant refused to complete the transaction. The plaintiff therefore prays for an order of specific performance or in the alternative a refund of the purchase prices of Kshs.65,000/- or any other relief that this honourable court may deem fit to grant.

In his defence the defendant denies that the plaintiff is in possession of the suit land and avers that this suit is incompetent for lack of the requisite Land Control Board consent for the transaction.

The suit was on 25th May 2004 heard by Justice Muga Apondi who took the evidence of the plaintiff and one other witness. Thereafter the hearing was adjourned to enable the defendant to engage a lawyer to represent him. On 3rd May 2010 when the matter came before me to complete the hearing under **Order 17 Rule 10** of the **Civil Procedure Rules**, though served neither the defendant nor his lawyer appeared in court. In the circumstances the plaintiff called his last witness and closed his case.

In his evidence the plaintiff testified that in 1983 Dr. Richard Kungu Manyara introduced him to the defendant who had a piece of land for sale. After viewing the land he agreed to purchase it for Kshs.65,000/- but as he had to urgently fly to

Britain to attend a course, he appointed Dr. Richard Kungu Manyara, PW1, to enter into an agreement on his behalf with the defendant. When he returned he took possession of the land in 1984 and grew crops on it until 1989 when the defendant's son took possession and started constructing on it prompting him to file this suit. With leave of this court he applied and obtained the requisite Land Control Board consent to that transaction. He therefore prays for specific performance of the contract and a sum of Kshs.13,000/- being liquidated damages as stated in the agreement.

Dr. Richard Kungu Manyara, PW1, corroborated the plaintiff's testimony that, on behalf of the plaintiff, he entered into the sale agreement with the defendant and paid to him the full purchase price of Kshs.65,000/-. Peter Karume Kinyanjui, PW3, testified that soon after the plaintiff bought the suit land in 1983 he employed him to work on and take care of it. He said the plaintiff grew crops on the land from 1984 to 1989 without any interruption from the defendant.

In his defence the defendant did not deny entering into the sale agreement with PW1 on behalf of the plaintiff. What he disputed was that the plaintiff was in possession of the suit land and averred that this suit was "incompetent" for lack of the requisite Land Control Board consent. Consent having subsequently been obtained pursuant to a court order I find that the transaction between the plaintiff and the defendant is valid.

As I have stated neither the defendant nor his advocate attended court for the hearing of this case on 3rd May 2010. The plaintiff's above testimony and that of his witnesses therefore stands uncontroverted. Having considered it and perused the exhibits produced I am satisfied that he has proved his case on a balance of probabilities. I therefore grant him the prayer for specific performance and also enter judgment in his favour in the sum of Kshs.13,000/- being liquidated damages for breach of contract together with interest thereon from the date of filing this suit. The plaintiff shall also have the costs of this suit together with interest thereon at court rates.

DATED and delivered this 31st day of May, 2010.

D. K. MARAGA

JUDGE.