



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 542 of 2007**

**ISAAC NG'ANG'A .....APPELLANT**

**VERSUS**

**STEPHEN WAHOME.....1<sup>ST</sup> RESPONDENT**

**DAVID NJOROGE.....2<sup>ND</sup> RESPONDENT**

**(Being an appeal against the judgment and orders of A.O. Aminga**

**Resident Magistrate delivered on 21<sup>st</sup> May, 2007 in the Limuru SRMCC.421 OF 2006)**

**ISAAC NGANGA WAMUL.....PLAINTIFF**

**VERSUS**

**STEPHEN WAHOME .....1<sup>ST</sup> RESPONDENT**

**DAVID NJOROGE .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The appellant was the plaintiff in the lower court where he brought a suit against both respondents claiming a portion of land measuring quarter of an acre out of land parcel No.Limuru/Kinale/Block 1/234 which he had allegedly purchased from the 2<sup>nd</sup> respondent through the 1<sup>st</sup> respondent who is his father.

It was his case in the lower court that he provided funds which he gave to his father, the 1<sup>st</sup> respondent, to purchase the said piece of land from the 2<sup>nd</sup> respondent and that he did so because of the close relationship between his father and 2<sup>nd</sup> respondent.

In the lower court he sought an order for the transfer of the said parcel of land and in the alternative a refund of Kshs.95,000/- which he had allegedly paid. After listening to the evidence from the parties, the learned trial magistrate in his judgment dated 21<sup>st</sup> May, 2007, dismissed the plaintiff's suit on several grounds but more significantly, on the ground that the agreement was unenforceable as it was not reduced into writing as required under Section 3(3) of the Law of Contract Act Cap 23 Laws of Kenya.

In the Memorandum of Appeal dated 11<sup>th</sup> and filed on 21<sup>st</sup> June, 2007 the appellant raises several grounds of appeal. He faults the learned trial magistrate for failing to appreciate that the 2<sup>nd</sup> respondent did admit receiving money on diverse dates for the purchase of the land. The said 2<sup>nd</sup> respondent is also said to have confirmed to the court that, he does not have any problem in transferring the land to the rightful owner who is the appellant. There was also no dispute in respect of the purchase price.

I have gone through the entire record before me and note that, it is this court that made the order for the admission of the appeal. This was deliberate because I wanted the appeal to be addressed on merit in addition to the matters that were canvassed by the parties in the lower court.

When the parties appeared before me, they asked that I follow the evidence on record and decide the matter based thereon as they had nothing else to add. The foundation of any transaction in land is an agreement which under the Law of Contract Section 3(3) of Cap 23 Laws of Kenya must be reduced into writing and witnessed accordingly. In this case, no contract in the nature envisaged under the said law was produced in evidence. Even if such an agreement were produced the subject matter herein is agricultural land which needed consent under the Land Control Act. No such consent was alluded to or produced in these proceedings.

In the circumstances the proceedings had no foundation whatsoever and the learned trial magistrate was right in finding that the agreement which was oral could not be enforced. On that ground alone, this appeal shall be and is hereby dismissed with costs to the respondents.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of September, 2010.*

**A. MBOGHOLI MSAGHA**

**JUDGE**