

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2767 of 1994

MICHAEL MUBEKA KAMAUPLAINTIFF

V E R S U S

ROBERT WANYIKA MACHINA1ST DEFENDANT

BEATRICE NJERI MACHINA2ND DEFENDANT

R U L I N G

The objector states that he bought land parcel LR. No. Mutira/Kiaga/690 from the 1st Defendant on 7th September, 1998 vide Sale Agreement "FGK 1" and paid the purchase price. The land was, however, not transferred. The title remained in the name of the 1st Defendant. It is notable that the reason why the Plaintiff herein sued the 1st Defendant was that on 27th May, 1994 he had entered into agreement to buy the same parcel and paid KShs. 400,000/= for it. The land was then charged to Kenya Commercial Bank and the loan balance was KShs. 160,000/=. Part of the KShs. 400,000/= went to repay the loan and the title was discharged.

It is clear that when the 1st Defendant purported to enter into agreement with the objector he did not have the land except for the title. He had no capacity to sell the land a second time and was therefore entering into a fraudulent arrangement. He should refund the money he received from the objector.

When the objector came to court on 6th September, 2000 he sought a declaration that the land belongs to him. The land was scheduled for auction at the instance of the Plaintiff to satisfy the decree entered against the 1st Defendant. The land still legally belonged to the 1st Defendant who had a decree to satisfy. The agreement entered into contemplated the consent of the Land Control Board. None was exhibited.

Further, the replying affidavit indicates that on 9th June, 1994 the Plaintiff had registered a caution on the land. The caution was in place at the time of the alleged sale to the objector. The Plaintiff further swore that the bank had charged the land and also registered a caution thereon. These are encumbrances the objector ought to have borne in mind. In short, the land was not available.

I dismiss the application dated 5th September, 2000 and filed on 6th September, 2000 with costs.

DATED AND DELIVERED AT NAIROBI
THIS 7TH DAY OF OCTOBER 2010

A. O. MUCHELULE
J U D G E