



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Case 9 of 2005

DANSON MWANGI KIBAKI.....PLAINTIFF

VERSUS

ROSEMARY WANJIKU MURIITHI.....1ST DEFENDANT

STANLEY MURIITHI.....2ND DEFENDANT

JUDGMENT

The plaintiff filed this suit on 25/1/2005. The plaint was amended on 15/11/2005 by deleting second defendant and replacing with another Defendant. It is pleaded that by an agreement the plaintiff took money from second Defendant being Shs.100,000/= and the security was his land plot No. Kabare/Mukarara/477 and a motor vehicle KSZ 212 Peugeot Pick Up.

The plaintiff plead that through fraud the Defendant acquired the plaintiff's land and was registered owner on 17/12/2003 particulars of fraud are set out as follows:-

1. at the time the grant was entered into the plaintiff was suffering a memory lapse to the knowledge of defendant.
2. by tricky stating in agreement that plaintiff received shs.200,000/- while he received only shs.100,000/=
3. fairly to obtain Land Board Consent
4. having the land transferred to first Defendant without a transfer form signed by the plaintiff.
5. getting the land transferred to first Defendant without documents.

The Defendants filed two separate Defences and denied the plaintiff's claims. The plaintiff exhibit one is on sale agreement which is dated the 13/12/2002 between himself as vendor and Rosemary Wanjiku Muriithi as purchaser of plot No. Kabare/Mukarara/477 and a motor vehicle KSZ 212 Peugeot Pick –Up. Engine and claims numbers given.

In his evidence the plaintiff said that the agreement to give security was drawn by a clerk which as exhibited was **Sale Agreement**. He was paid 100,000/= although the agreement said he was paid shs.200,000/-. He needed mainly to pay medical bills for his child. Purchase was subject to consent of Land Board. He did not sign the forms for Land Board Consent. Later he went to Land office and found that the land had been transferred to first Defendant.

PW2 was Registrar of Lands in Kirinyaga District. He produced the green card in respect of disputed land. He said that transfer documents and Land Board Consent are not in the lands office.

PW3 the D.O for Gichugu who chairs Land Control Board meeting gave evidence and confirmed that the disputed land was never before the Board for consent.

PW4 was Esther Wandia working as clerk in the office of Advocate Karani. She preferred and typed Exhibit 1 as it is.

For defendants the second defendant said that he negotiated the purchase of the land and motor vehicle with plaintiff. And paid the purchase price as per agreement. His wife (first Defendant) was registered the proprietor. The court has examined the pleadings of parties. There is no evidence of fraud showing the officer from the land office. Land Registrar said that he could not trace the document of transfer or the letter of Land Board consent in the lands office in connection with this transaction. He was not in office when registration was effected. However there was agreement card showing the transfer between plaintiff and the first Defendant. The witness who attended the parties at the Advocate's office said that in addition to preparing the agreement of sale there was forms for application for Land Board Consent. There is evidence that the application was not recorded at the Land Board Control offices. The plaintiff says he was suffering from memory lapse but he has not tendered any evidence to support such a proposal.

The evidence act Cap.80 Section 97 prohibits taking of any evidence in proof of terms of written contract except the document itself. There is also the major principal that a party is bound by its pleadings. The plaintiff in his paragraph 4 of the plaint pleads security not sale of his land but the evidence shows a sale agreement which was written and signed by him. The issue of whether the Land Board granted consent is between purchaser and Land Registrar. The law prohibits transaction of land to be registered without Land Board Consent therefore there is no evidence that the Land Registrar contravened the law and registered documents without Land Board Control Consent.

There is no evidence to challenge the terms of the contract so as to get the same cancelled. It looks straight forward and entered into at arms length. The plaintiff says there was trickery but none is shown.

I find the plaintiff has not proved his case on a balance of probabilities and I dismiss the suit with costs to the Defendant.

Dated this 16th May, 2008.

J. N. KHAMINWA

JUDGE

16/5/2008

Khaminwa – Judge

Njue – Clerk

Plaintiff present in person

Defendant Stanley Muriithi present

Read in open court.

J. N. KHAMINWA

JUDGE

Later Ms Thungu appears for plaintiff states: I apply for copy of proceedings and Judgment for purpose of appeal.

J. N. KHAMINWA

JUDGE

Order: Let the copies be supplied soon upon payment of court typing charges.

J. N. KHAMINWA

JUDGE