



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

**AT NYERI**

**Civil Case 21 of 2001 (O.S.)**

**JULIUS GITHIGE KIRAGU ..... PLAINTIFF**

**VERSUS**

**GATHUKA MURATHI ..... DEFENDANT**

**RULING**

The plaintiff filed this action against the defendant seeking a declaration that he had acquired title over 0.5 acres of parcel No. Mwerua/Githumbu/343. The defendant denied the plaintiff's claim. He however admitted having sold to the plaintiff 0.5 acres of that land but that the same had not been completed because of lack of land control board consent. The defendant further stated in his defence that the plaintiff had filed a previous suit namely HCCC No. 306 of 1999 seeking the orders of specific performance of the contract of sale of that land. That action was filed prior to the present action. When this matter came up for hearing the parties entered into a partial consent. On 7<sup>th</sup> February 2008 the parties recorded by consent that the defendant do transfer 0.5 acres out of parcel No. Mwerua/Githumbu/343 upon receiving from the plaintiff Kshs.6000/-. The parties were unable to agree on who should pay the costs of the suit. They chose to submit on that issue before court for the court to determine. The plaintiff in submission stated that indeed there had been agreement for sale of that land and in that agreement the defendant had acknowledged that he had given the plaintiff possession of 0.5 acres. In that agreement they had also agreed that the transfer would be effected on obtaining the land control board consent. It was argued on behalf of the plaintiff that the defendant had refused to play his part in that transaction to effect the transfer as agreed. In so doing that the defendant was taking advantage of the provisions of Cap 302. On behalf of the defendants it was argued that the parties had entered into a further agreement where the plaintiff had agreed to pay Kshs.6000/- before the transfer. That agreement was annexed to the submissions. It was dated 20<sup>th</sup> October 1989. This was on a date before the filing of his action. The defendant's argument was that plaintiff had failed to pay the agreed Kshs.6000/-. Section 27 of the Civil Procedure Act provides that costs should follow the event unless the court otherwise orders. What I need to determine in this case in which party succeeded so that the costs can follow the event. It is clear that there was a further agreement between the parties for further payment to be made by the plaintiff. From reading the affidavits in the matter it does also look like the defendant was retracting from the agreement. Bearing that in mind and balancing the scales of justice I am of the view that the just decision would be that each party bear their own costs. My order therefore is that each party will bear its own costs.

***Dated and delivered at Nyeri this 30<sup>th</sup> day of June 2008.***

**MARY KASANGO**

**JUDGE**