



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

**Civil Suit 4060 of 1985**

**HIGH VIEW LIMITED.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**GEORGE NDUNGU MWICIGI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**DANIEL NJAI MIGWI.....DEFENDANT/APPLICANT**

**R U L I N G**

The applicant brought this Notice of Motion dated 29<sup>th</sup> June 2006 seeking the following orders namely that the transfer of the suit property being LR NO 11453/1/Thika Municipality to the respondent be cancelled and the suit property do revert back to the applicant and in the alternative the respondent do pay the applicant a sum of Kshs 1.75 million being the purchase price of the suit land with interest.

The facts which gave rise to this litigation briefly may be stated. By a Sale Agreement entered into between the applicant and the respondent on 17<sup>th</sup> January 1985, the applicant agreed to sell and the respondents agreed to purchase the suit property at a purchase price of Shs. 1.750,000/=.

The completion date was fixed as 15<sup>th</sup> April 1985 or thirty days after the necessary consents of the Land Control Board had been obtained. On 11<sup>th</sup> February 1985 the Muranga Land Control Board gave the necessary consent and on 19<sup>th</sup> February 1985 the respondent in accordance with a verbal agreement with the applicant took possession of the suit property. On the same day the respondent informed the advocates who were acting for both parties of the consents of the Land Control Board having been obtained and instructed them to prepare the necessary transfer. The advocates by their letter dated 25<sup>th</sup> July 1985 however informed the respondent that the applicant no longer wished to complete the transaction. The respondent confirmed with the applicant that the applicant no longer wished to complete the sale and was forced to file a suit in court for specific performance in the High Court being Civil Case No 4060 of 1985. The court granted the respondent specific performance of the contract and ordered the applicant to transfer the suit property to the respondent on condition that the respondent tendered the balance of the purchase price to the applicant.

The applicant being dissatisfied with the said judgment appealed to the Court of Appeal being Civil Appeal No. 139 of 1989 which appeal was dismissed with costs.

The respondent remitted the full amount of the purchase price to the applicant's advocates on record namely Mukuria & Co. Advocates. The applicant despite knowledge of the said funds having been remitted to his Advocates failed and or refused to collect the said funds.

Mr. Kinoti for the applicant submitted that the respondent having failed to remit the full amount of the purchase price to the applicant as ordered by the court the transfer of the suit land to the respondent was irregular and ought to be cancelled. But Mr. Monyo for the respondent in response to the applicant's submission submitted that after the applicant's appeal was dismissed he requested the applicant to execute the transfer document but the applicant refused to do so. He was compelled to seek the intervention of the court which ordered the applicant to execute the transfer documents and in the event he declines to do so the Deputy Registrar was authorized to execute the transfer document on behalf of the applicant which was done and the transfer was effected.

After considering the applicant's application in light of the affidavit +evidence on record and the submissions by both counsel I find no merit in the applicant's application. The applicant having lost in the High Court and in the Court of Appeal this court has no jurisdiction to interfere with the decree so issued and therefore this application fails.

Accordingly the applicants notice of motion dated 29<sup>th</sup> June 2006 is dismissed with costs.

Dated and delivered at Nairobi this 9th day of October 2008.

**J. L. A. OSIEMO**

**JUDGE**