



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

Civil Appeal 32 of 1996

HARRISON KIIO KALANDI.....APPELLANT

VERSUS

NTHITU MUNUVE.....RESPONDENT

(From the judgment and Decree of G.J.K. Kiia, DMI in Makueni District

Magistrate's Court Civil Case no. 5 of 1991)

JUDGEMENT

The appellant/defendant bought a piece of land from the Respondent/Plaintiff at a price of Kshs. 22,000/= on 14.11.1997. The appellant paid to the Respondent a total of KSHS. 16,900/= and remained with a balance of Kshs. 5,100/= to complete. The sale was reduced into a written agreement. In 1987 the respondent repudiated the agreement and sought to refund the purchase price. The appellant who had taken up possession, refused to take back his money. The Respondent then filed this suit at the lower court, seeking orders to refund the purchase price and keeping his land. He claimed that he had repudiated the contract because the appellant had breached the contract by failing to clear the purchase price.

The lower court found in favour of the Respondent's. The court nullified the contract, ordered a refund of the sum of Kshs. 16,900/= from the respondent, ordered the appellant to accept back his money. He also ordered the appellant to immediately vacate the land. The appellant appealed, and the appeal has been pending since 1996.

I have considered the facts on record and the arguments raised by counsel representing either party. It was admitted by the appellant that he had failed to clear the balance of Kshs. 5,100/= being part of the purchase price. The trial Magistrate confirmed that fact and ruled that the conduct was a breach of the sale contract which entitled the Respondent to walk out of the contract. Since the appellant did not dispute the breach, the trial Magistrate, in my view, was entitled to reach the conclusion he did and to nullify the sale contract. On that ground alone, this appeal has no merit.

However, had the trial Magistrate found that the contract might need not be nullified, this court would still have nullified the sale contract on the ground that the contract was null and void. This is so because there is no evidence brought forward by the appellant to the effect that the written sale contract of the land in dispute, was granted the consent of the Land Control Board as required by Section 6(1) of the Land Control Act. Although this issue was raised by Mr. Mulwa, for the Respondent, Mr. Kisongoa avoided to respond to it. He tarried on the issue that the trial Magistrate had no jurisdiction to entertain the claim upon the ground that the value of the land was more than the trial Magistrate could handle.

In my view even if there could be a point in his argument and I do not say so, the same was not raised in the lower court. Nor could it be of help to the appellant who to date lacks the mandatory consent of the Land Control Board.

For the above reasons, this appeal must fail. It is dismissed with costs to the Respondent.

Orders accordingly.

Dated and delivered at Machakos this 17th day of March, 2006.

D.A. Onyancha

JUDGE