



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 558 of 2006 (O.S.)

IN THE MATTER OF THE LAND CONTROL ACT

AND

IN THE MATTER OF LAND REGISTRATION NUMBER

NAKURU/OL'RONGAI PHASE 11/34

AND

**IN THE MATTER OF AN AGREEMENT FOR SALE BETWEEN MATHIAS KIMNYOLE
LANGAT AND COVE INVESTMENTS LIMITED**

AND

IN THE MATTER OF AN APPLICATION BY COVE INVESTMENTS

LIMITED FOR THE EXTENSION OF TIME WITHIN WHICH TO LODGE

AN APPLICATION FOR CONSENT UNDER SECTION 8(1) OF THE LAND CONTROL ACT

COVE INVESTMENTS LIMITED.....APPLICANT

VERSUS

MATHIAS KIMNYOLE LANGAT.....RESPONDENT

RULING

The applicant by way of this Originating Summons expressed to be brought under Section 8 *1) of the Land Control Act and Order XXXVI Rule 3 of the Civil Procedure Rules seeks orders that the time allowed for the application for consent from the Land Control Board be extended for a period of 6 months from the date of such order in respect of the Agreement for Sale of land parcel LR NO. NAIROBI OL ONGAI/PHASE II/34 executed by the parties herein on 27th March 1999.

The application is supported by an affidavit sworn by Kenneth Kiplagat in which he has deponed among others that after signing of the Sale Agreement and payment of over Shs.15 million, the vender has failed to lodge the Land Control Board consent application and the applicant has made extensive searches at the registry of the Land Control Board Offices and has not seen any evidence of such application.

Section 8(1) of the Land Control Act provides as follows:

An application for consent in respect of a controlled transaction shall be made in a prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereof:

“Provided that the High Court may notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit”.

In the verifying affidavit to this application the applicant avers that there is in existence a suit between the parties herein being **NAKURU/HCCC NO. 158 OF 2005**.

In paragraph 9 of the Defence therein the defendant avers thus:

“9” In actual fact the plaintiff did procure the consent of the Land Control Board and indicated to the Defendant that he would hand over the title document and requisite consents when the plaintiff was ready to complete the transaction herein.”

And in the paragraph 26 of the Counterclaim the defendant avers thus:

“26” The plaintiff’s conduct is unreasonable and the Defendant will at the earliest moment apply to this Honourable Court for extension of time for the Defendant to procure Land Control Board consent in view of the plaintiffs’ conduct.”

In reply to Defence and counterclaim paragraph 12, the plaintiff avers thus:

“12” With regard to paragraph 9, 26 and prayer (a) of the counter claim, the plaintiff avers that the Defendant’s pleadings are inconsistent and it cannot purport to plead the existence of a Land Control Board consent in one hand allegedly obtained at the execution of the contract and at the same time seek extension of time within which such consent can be obtained. Such a prayer in any event is not available to the Defendant.”

Since the issue of consent of the Land Control Board is raised in the pleadings by both the plaintiff and the defendant, the orders sought if granted ex parte will substantially and drastically change the mode of the pleadings. This application ought to have been filed in the already existing Civil Suit so that the plaintiff would be accorded an opportunity to challenge the same as indicated in paragraph 12 of Defence to the Counterclaim.

In the result this application fails and the same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 26th June 2006.

J.L.A. OSIEMO

JUDGE