



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

**AT NAKURU**

**Civil Suit 137 of 2003 (O.S.)**

**UNICAB HOUSING CO-OPERATIVE SOCIETY..... PLAINTIFF**

**VERSUS**

**PRICILAH NJOKI KIONDO.....1<sup>ST</sup> DEFENDANT**

**JOSEPH NJUGUNA KIONDO.....2<sup>ND</sup> DEFENDANT**

**DAVID GITAU KIONDO.....3<sup>RD</sup> DEFENDANT**

**BENSON NJAU KAYAI**

**T/A NJAU KAYAI & CO. ADVOCATES.....THIRD PARTY**

**JUDGMENT**

The plaintiff filed an Originating Summons under Order XXXVI Rule 1 a, c, and g seeking orders that the defendants as administrators of the estate of the late George Kiondo Kihati be directed and/or compelled to execute the transfer documents and/or the necessary documents to facilitate the transfer of **NJORO/NGATA BLOCK 1/257** to the plaintiff as per the Grant of Letters of Administration. In the alternate, the plaintiff prayed that the Deputy Registrar of this court be authorised to sign the same.

The application was supported by an affidavit sworn by Mr. John Magatu Ijobwa, the secretary to the plaintiff society. He deposed that on 4/12/2002 the defendants were granted letters of administration of the estate of George Kiondo Kihati and one of the assets that formed part of the said estate was a parcel of land known as **NJORO/NGATA BLOCK 1/257** (hereinafter referred to as "**the suit property**"). By a sale agreement made on 4/10/2000, the plaintiff bought the suit property for a sum of **Kshs.2,567,500/-** which sum was fully paid by the plaintiff to the third party, Benson Njau Kayai T/A Njau Kayai & Co. Advocates. The said advocate was acting for both the vendor and the purchaser in the said transaction. In the said grant, the court directed that the suit property be registered in the name of the plaintiff. However, the defendants had failed to do so.

The defendants through Priscilla Njoki Kiondo swore a replying affidavit. They admitted that the plaintiff paid all the purchase price to the said advocate but the advocate paid to them **Kshs.400,000/-** only. They said that they were ready to execute transfer documents as soon as the third party paid to them the balance of the purchase price. The defendants had commenced recovery proceedings against the third party, Nairobi **HCCC No. 748 of 2003 (O.S.)**.

The third party notice was served on 17<sup>th</sup> January, 2004 and the third party entered appearance on 22/6/2004 but since then he did not file any defence or affidavit.

There is no dispute that the third party was acting for both the plaintiff and the defendants in the said transaction. There is also no dispute that the plaintiff paid the full purchase price to the third party for his onward transmission to the defendants upon completion of the conveyance process. The third party paid to the defendants a sum of **Kshs.400,000/-** and failed to pay the balance. The plaintiff is not to blame for

the said default on the part of the third party. The plaintiff is in occupation of the suit property and the defendants have filed a suit against the third party seeking payment of the balance of the purchase price. The plaintiff has got nothing to do with that suit and if the defendants were to succeed in that case as I hope they will, it is them who will execute the decree and not the plaintiff. The plaintiff had already discharged its obligation under the sale agreement. The defendants should therefore execute all the transfer documents in favour of the plaintiff. I direct that they do so within the next ten (10) days from the date hereof failing which the Deputy Registrar of this court shall execute the same.

I therefore allow the plaintiff's application with costs as against the defendant. As between the defendant and the third party, I believe that the latter has no defence to the defendant's claim. The total purchase price was **Kshs.2,567,500/-** and the third party paid **Kshs.400,000/-** only leaving a balance of **Kshs.2,167,500/-**. I enter judgment for the defendant against the third party in the sum of **Kshs.2,167,500/-** plus costs and interest.

DATED, SIGNED AND DELIVERED at Nakuru this 21<sup>st</sup> day of October, 2005.

**D. MUSINGA**

**JUDGE**

Judgment delivered in the presence of Mr. Cheche for the third party, Mr. Gatumu for the plaintiff and N/A for the respondent.

**D. MUSINGA**

**JUDGE**

**21/10/2005**