



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

**AT NAKURU**

**Civil Case 191 of 2004**

**WAIRIMU GITUKIO MUCHUNU.....PLAINTIFF**

**VERSUS**

**ESTHER NJAMBI KIOI.....DEFENDANT**

**JUDGMENT**

The plaintiff filed a suit against the defendant saying that on 27<sup>th</sup> March, 2000 she sold to the defendant half and acre of a parcel of land known as Bahati/Bahati Block 1/864 at an agreed purchase price of Kshs.165,000/- and the defendant paid a sum of Kshs.145,000/- and she was given possession of the said portion of land. On 10<sup>th</sup> February, 2003 she wrote a letter to the Chairman of Nakuru Land Control Board requesting the board to stop all dealings with the said parcel of land. The plaintiff said that the defendant stopped the Land Control Board from giving its consent to the said transaction because she was not satisfied with the manner in which the sub-division was carried out. She further stated that she was willing to refund the money so far paid to her and urged the court to order the defendant to vacate the said parcel of land since the said transaction was subject to consent of the Land Control Board which was never obtained and was therefore null and void.

The defendant was on 22<sup>nd</sup> July 2004 served with the plaint and summons to enter appearance but did not do so nor file any defence and the plaintiff prayed for interlocutory judgment which was entered on 21/10/04 and so the matter came up for formal proof only.

I am satisfied that the plaintiff has established her claim on a balance of probabilities. Under the provisions of Section 9(2) of the Land Control Act Cap 302 Laws of Kenya, an agreement for sale of agricultural land becomes void unless the Land Control Board for the land control area where the land is situated has given its consent.

The Court of Appeal so held in **GITHU VS KATIBI** [1990] K.L.R. 634 where such a transaction becomes void, only the purchase price is refundable. The plaintiff should therefore refund to the defendant a sum of Kshs.145,000/- which she paid and the defendant should thereafter vacate the said premises.

The plaintiff shall have the costs of this suit.

DATED, SIGNED & DELIVERED at Nakuru this 9<sup>th</sup> day of December, 2005.

**D. MUSINGA**

**JUDGE**

**9/12/2005**

Judgment delivered in open court in the presence of Mr. Mbiyu holding brief for Mr. Ikua for the plaintiff and N/A for the defendant.

**D. MUSINGA**

**JUDGE**

**9/12/2005**