



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU  
CIVIL SUIT NO. 121 OF 1999**

**SHUA KAVULANI AMBOGA.....PLAINTIFF**

**VERSUS**

**JOHN SHILOLORO MAKHOLA.....DEFENDANT**

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**JOHN SHILOLORO MAKHOLA.....DEFENDANT**

**JUDGMENT**

In this case, the plaintiff and defendant had cohabited in the former's premises as man and wife from 1991 upto 1998 when the latter abandoned the said premises. According to the plaintiff on 30th November, 1992, she advanced the defendant Kshs.62,000 to purchase land parcel No. Bahati/Engorusha Block 1/682 and to cause the same to be registered in the name of the plaintiff. Consequently, around 1993, the plaintiff built a permanent house on the suit land and developed the property extensively. Upto now, she resides on the said premises. To prove the above, the plaintiff produced receipts – Ex.1 totalling Kshs.800,000 which show the building materials that she had bought. In addition, she also produced the wiring Agreement – Ex.2 for Kshs.24,500.

- Plumbing Agreement for Kshs.13,000.
- Septic tank and soak pit Agreement – Ex.4 for Kshs.16,700.
- Painting Agreement – Ex.5 for Kshs.8,000.
- Filling Agreement – Ex.6 for Kshs.12,500.
- Repair work for windows – Ex.7 for Kshs.8,000.

Subsequently, the parties differed on how the purchases were being conducted and hence the plaintiff then stopped the defendant from supervising the work.

Around 1st august, 1997, the defendant without any colour of right or the plaintiff's consent fraudulently secretly and unlawfully caused a title deed to issue for Title No. Bahati/Engorusha Block 1/682 in his name with full knowledge that the property belongs to the plaintiff.

On being asked about the above transaction, the defendant took off from the suit premises. Consequently, on 22nd September, 2000, Hon. Lady Justice Sarah Ondeyo while delivering her judgment in Divorce Cause No. 4 of 1999 declared the purported marriage contracted by the parties on 17th December, 1992 as void ab initio . She also held that there was no marriage between the parties to enable the Court to dissolve.

Though the defendant was duly served through his Advocate viz, Mr. Ashioya the latter received the same under protest on the grounds that he was no longer acting for the defendant.

Though I perused the Court file meticulously, I never saw any application by the said Counsel to withdraw from this case. Neither did I see any Court order granting them leave to withdraw from the case. For all intents and purposes, the defendant was duly served through his Advocate of choice. Having said the above, it is apparent that the plaintiff's evidence remains unchallenged and unopposed.

After carefully perusing the evidence on record, the Court hereby finds that the plaintiff has proved the particulars of the defendant's fraud as listed out in paragraph 6 of the amended plaint.

The upshot is that the plaintiff has proved her case on a balance of probabilities and hence I hereby enter judgment in her favour on the following terms:

(a) It is hereby declared that Title No. Bahati/Engorusha Block 1/682 belongs to the plaintiff and the Title Deed issued to the defendant is nullified.

(b) I hereby issue a perpetual injunction restraining the defendant, his agents and/or servants from taking possession wasting, selling and/or alienating the suit land.

(c) The defendant is hereby condemned to pay the costs of the suit.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of Mr. Waiganjo.

MUGA APONDI

JUDGE

12TH MARCH, 2004