

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 110 OF 2002

SIMON MUTHAMIA MUTIEPLAINTIFF

VERSUS

PETER MBITHI KIMEUDEFENDANT

RULING

Mr. Matata brought an application dated 2.10.2002 under VI rule 13 and S3A of the Civil Procedure Act as well as S.6(i) of the Land Control Act cap 302 of the Laws of Kenya. He has prayed that the defendants defence filed on 17.8.2002 be struck out for being an abuse of the process of the court and that the same discloses no reasonable defence.

He also prays that the judgement be entered against the defendant as prayed i.e., a declaration that the agreement of sale between the plaintiff and the defendant is null and void and that an order of injunction permanently disallowing the defendant from occupying and working on plot no. 400, 401 and 402 situated at Konza Ranching and Co-operative Society Ltd. Mr. Matata prays for costs.

According to Mr. Matata the defendants defence is not a good defence at all. According to the plaintiff he and the defendant entered into a sale agreement on 7.8.2000 wherein the plaintiff agreed to sell his share no. 435 in the said Co-operative Society at an agreed price of Kshs.210,000/=. (I see exhibit RMMI). This share translated into share no. 400, 401 and 402 measuring 8 acres. The plaintiff was paid 150,000/= leaving a balance of 60,000/=. The balance was payable on or before the 6th day of October, 2000. The defendant claimed to have paid him this balance a matter which the plaintiff disputes hence this suit.

Mr. Matata has argued that S. 6(1) (c) of the Land Control Act which deals with transactions over Agriculture Land becomes matter void such transactions unless consent of the Land Control Board is obtained within 6 months from the time the same was entered into. Mr. Matata argued that the sale transaction became void on account of the land control Act. The **case of Karuri versus Gituro civil application 25/80 KLR page 247** was quoted in support of this application. Since no consent was applied for within this period and none was given the sale transaction between the plaintiff and the defendant cannot be enforced according to the plaintiff since the agreement was in respect of Agricultural land. The case of Gideon Mbwonoka Mweka versus James Muthui Kioko MKS HCCC 134/97 was also referred to.

Mrs. Isika opposed the applications arguing that the defendant has been in possession since the sale took place. She has argued that it was the plaintiffs duty to go for the consent of the land control board and not the defendants duty. She argues that the case should go to full hearing because the defendant could as well have obtained land control consent on his own. She argues that the defence raises tangible issues such as breach of contract.

I have carefully considered Mr. Matatas application. It is not disputed that the land which was the subject of the sale agreement was subject of the land control Act. So long as the consent to transfer the land was not obtained within 6 months I am in agreement with Mr. Matatas submissions that the transactions was rendered null and void under S. 6(1) of the Land Control Act. The two authorities cited on the issue are quite clear on the matter as well as the relevant legal provisions. If the defendant obtained consent of the Land Control Board to have the sale agreement and the transfer enforced, it is unfortunate that he has not deponed to this effect in his replying affidavit dated 1st October, 2002.

I am in agreement with Mr. Matata that the defendants defence does not raise any triable issues and ought to be struck out with costs to the applicant. The defendants is however entitled to sue the plaintiff for a refund of his purchase price and to claim compensation for the developments made on the land. I therefore allow the prayers sought by the applicant plaintiff in his pleadings dated 2nd September, 2002.

Order accordingly.

R. M. MUTITU

JUDGE