



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1755 OF 1988**

**WANYOIKE KIBICHO .....PLAINTIFF**

**VERSUS**

**KAMAU NGANGA ..... DEFE NDANT**

**JUDGMENT**

The original file has never been traced. I have before me a reconstructed file which the advocate kindly provided me further with the copies of their pleadings. This was unable to show the various amendments in the pleadings made by different links.

This suit is a land matter. A brief outline from the evidence on record and pleadings are as follows:-

Kamau Nganga is the defendant in this case. He alleged in evidence that he is now 101 years old. He most certainly looks a very strong man for his age. In 1985 when the matters in issue began in this case the would have been 86 years old.

Wanyoike Kibicho is a bit younger and is the plaintiff in this matter. He sues Kamau Nganga for a declaration that the plot No.001 Kanyagia settlement scheme be excised and declared as his.

That an order of transfer of the property to him be made.

He prays for his mesne profits, costs and interest. He prays that the Deputy Registrar of the High court be authorised the signing of all documents.

A prayer for any other relief had also been sort.

In 1985 both the plaintiff and defendant entered into an agreement for the sale of land belonging to the plaintiff. Out of the 20 acres 10 acres was to be sold at the rate of Ksh.10,000/- per acre. The plaintiff paid the defendant Ksh.4000/- on the 24.9.95, Ksh.3,400/- on the 24.10.85.

Both appeared at the land board. The defendant did not bring his wife. He was requested to bring his wife. The second time they appeared before the land board his wife was present and consented to the said sale. The Board (Land control) approved the sale of land and directed that they appear before a chief or a lawyer. They duly appeared before the chief on the 28.8.86. The plaintiff paid by bankers cheque a sum of Ksh.62,000. He added Ksh.600/- to facilitate the opening of the bank account.

A balance of Ksh.30,000/- was left. This was to be paid at the end of the month. It was to meet the costs of the surveyors.

When the plaintiff and his friend (PW2) went to pay the moneys the defendants refused to accept it. The transfer forms, the consent forms were all signed by the defendant. All that was left was for the surveyor to do his part.

From the evidence of the defendant and his witness DW2 (also his son); it seems that the defendant had entered into the land transaction on his own with the plaintiff. He did not consult any of his children (4 sons and 3 daughters). He did consult his wife and is the reasons why she appeared before the land board to give her consent (She has since died and the son, who was not there denied she gave her consent).

The reasons that the defendant wished to sell the land was that he needed the money. His son informed him that they were able to get that money for him.

It seems that the sons rushed to the bank and retrieved the cheque that had been banked in the defendants account. It is the son who rushed to the land control board and was given advise by clerks. The effect of his action meant that the plaintiff was unable to register the land although he had paid the purchase price and received the transfer forms.

The son stated that he took the cheque to the DC's office. That he caused the DC to ask the plaintiff to come and collect his money. He further paid 7,700/- in cash as due and owing to the plaintiff.

The plaintiff filed this suit in 1988. The case has been pending in these court corridors since then.

None of the advocates relied on any case law. The advocate for the defendant stated he would rely on the Land Control Board Act Cap.302 which I shall deal with in answering the agreed issue.

### **Issue No.1**

I am satisfied that the parties had entered into a sale agreement during the year 1985 for plot number 001 Kanyagia at the rate of Ksh.10,000/- as alleged in the Plaintiff.

### **Issue No.2**

I am also satisfied that the plaintiff paid moneys in consideration as alleged in the Plaintiff.

### **Issue No.3**

The question arises as to whether the transaction is null and void, illegal and violates the provision of the Land control Act Cap.302 Laws of Kenya?

The advocate for the defendant stated that the agreement must first of all be in writing. He relied on section 8(1) of the Land control act.

“An application for consent in respect of a controlled transaction SHALL be made in the prescribed form to the appropriate land control board within 6 months of the making of the agreement for the controlled transaction by any party thereto”.

First and foremost, there must be an agreement. This agreement must be in writing. In this case there was no agreement in writing until August of the following year after the board passed its approval.

As such whatever the board had done and or approved it was null abinitio.

None of the advocates referred me to Cap 23 Laws of contract. This act provides that certain contents are to be in writing. In 1961 section 3(3) of the Law of contract provided that:

- “No suit shall be brought upon a contract for the disposition of an interest in land

unless the agreement upon which the suit is forwarded or some memorandum or not thereof is in writing and is signed by the party to be changed or by some person authorised by law to sign it:

Proviso \_\_\_\_\_

i) \_\_\_\_\_

ii) \_\_\_\_\_”

This section was deleted by act 21 of 1990. It did not come into operation. It was further amended by Act 5/96. I further found that the transaction with the Land Control Board was correctly obtained. There was no fraud and or illegality about it.

I find from the evidence that the written agreement was drafted in the chiefs office.

What actually is the situation is that the defendants son, who is not a registered owner of the suit land protested to the sale transaction. He cannot do this. Only his mother and wife of the owner of the land can. She did not protest during the land board transaction. What should have occurred is for the defendant to rescind the said agreement as it was too late to negotiate with the plaintiff and offer him an alternative land or money.

The son admitted he never spoke with the plaintiff over this matter.

I would enter judgement for the plaintiff as prayed in the plaint on prayer (a), (c) and (e).

As to prayer (b) this was not proved. I would hereby dismiss the same with costs.

Dated this 28th day of June 2000 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**