



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2137 of 1999

PIUS MUTINDA KITHOME.....
.....PLAINTIFF

VERSUS

ONESMUS MUSYOKA MBALI.....
DEFENDANT

RULING

Plaintiff seeks an order of injunction to restrain defendant from alienating, transferring, charging, developing or in any other way dealing with 10 acres which is part of plot no. 18.

He has filed a suit for an order of specific performance of the agreement of sale by which defendant agreed to transfer the 10 acres sold to the plaintiff.

There is no dispute that defendant by an agreement of sale dated 14.12.94 agreed to sell 10 acres of plot no. 18 Kitanga Mua Hills to plaintiff at a consideration of shs 400,000 which plaintiff paid and which was acknowledged as received in the Agreement of sale. The evidence shows that plot no. 18 is owned by Mutisya Nthiwa and is 65 acres. But it is submitted that defendant owns 16 of the 65 acres and he sold 10 acres of his share to the plaintiff.

In the certificates of urgency filed on 9.11.99, plaintiff states that the land is Agricultural Land and is subject to Land Control Act cap 302 plaintiff further states in the same certificate that defendant represented to him that he would procure the Land Control Board consent for the transfer.

Further plaintiff pleads in para 6 of the plaint that the Land is Agricultural land subject to Land Control Act. He however avers the prayer for specific performance of the Agreement that Grant of Consent of the Land Control Board is a merely formality.

It is conceded that the application for consent of the Land Control board has not been made and that the consent of the Land Control Board has not in fact been given.

By section 8(1) of the Land Control Act, the application for consent should be made to the land Control board within 6 months of the making of the Agreement. And by s. 6 months of the making of the Agreement. And by s. 6(1) of the land control Act the transaction inter alia for sale of agricultural land which is a controlled transaction is void for all purposes unless the Land Control board has given its consent in accordance with the Act.

The time for making an application for consent of the Land control Board expired six months after the Agreement of 14.12.94. The Land Control Board has not given its consent to the transaction. So the contract of sale between plaintiff and defendant w\has become void for all purposes.

It is trite law that a court of law cannot give the remedy of specific performances for controlled transaction unless the consent of the Land Control Board has been given indeed Court cannot order specific performance of a transaction made void by statute.

The consent of the Land Control board is not a mere formality. It goes to the validity and enforceability of a contract of sale of Agricultural Land if the sale is a controlled transaction. It is the statue (land control Act) which Controls the transaction and if the transaction is not in accordance with the statute it is unenforceable.

The application for interlocutory injunction is founded on the plaint. Plaintiffs has not proved a prima facie case with probability of success for specific performance as the consent of the Land Control board was not applied for or given.

So there is no legal foundation for an order of injunction.

Consequently I dismiss the application with costs and discharge the interim order of injunction given on 10.11.99

E. M. Githinji

Judge

1.12.99

Miss Sharmen present

Mr. Mwangi holding brief for Mutura present

17.10.2000

coram: Kasanga Mulwa J

Anne court clerk

Maluki for applicant

We ask for an early date for the amendment of this plaint because the first application is brought under certificate of urgency

Court: Hearing of the application for amendment 27.10.200

Kassanga Mulwa

Judge

27.10.00

Coram: C.K. Njai PDR

Court Clerk susan Kariuki