



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 528 OF 2017**

**(Formerly Nairobi Milimani ELC Case No. 773 of 2016)**

**PARIKIEN OLE NAIKUNI OSEUR.....PLAINTIFF**

**VERSUS**

**AGRICULTURAL FINANCE CORPORATION.....1<sup>ST</sup> DEFENDANT**

**NKOSERA KILELU SIRERE.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before Court for determination is an Objection raised by the Plaintiff in respect to the 2<sup>nd</sup> Defendant's production of a Sale Agreement executed between the Plaintiff and himself. The Plaintiff insists the Sale Agreement dated 5<sup>th</sup> October, 2000 cannot be produced as an exhibit since it was not stamped by the Land Registry in accordance with section 19 of the Stamp Duty Act. He contends that the said document is not admissible.

The 2<sup>nd</sup> Defendant opposed the objection and stated that under section 20 of the Stamp Duty Act, it allows for post stamping of a Sale Agreement and an affected party can pay a fine for it. Further, failure to stamp does not invalidate a Sale Agreement. He reiterated that the Plaintiff sought to rely on technicalities.

The only issue for determination is whether the Sale Agreement dated the 5<sup>th</sup> October, 2000 can be deemed inadmissible since it was not stamped by the Land Registry.

Section 19 (1) (a) and (b) of the Stamp Duty Act provides that: ' **Subject to the provisions of subsection (3) of this section and to the provisions of sections 20 and 21, no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except—**

**(a) in criminal proceedings; and**

**(b) in civil proceedings by a collector to recover stamp duty, unless it is duly stamped.'**

Under the repealed Registered Land Act which was the law in place at the time the suit land was registered in the 2<sup>nd</sup> Defendant's name, it provides under section 108 as follows: ' **(1) 'Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.(2) Leases and charges shall be presented for registration in triplicate.(3) Instruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.'**

Further section 43 of the Land Registration Act provides that: ' **(1) Every instrument effecting a disposition of land under this Act shall be in the form prescribed in relation to that disposition under this Act or any other written law. (2) No instrument effecting any disposition of an interest in land under this Act shall operate to sell or assign land or create, transfer or otherwise affect any land, lease or charge until it has been registered in accordance with the laws relating to the registration of instruments affecting the land in respect of which the disposition has been made. (3) The provisions of subsection (2), shall not apply to any disposition that is exempt from registration. (4) This section shall not apply to or affect the operation of any contract for a disposition under this Act.'**

From a reading of these two provision, it is evident that an instrument for disposition of land has to be in the prescribed form. In my

considered view I hold that a Sale Agreement is a contract as per the provisions of section 3(3) of the Law of Contract Act but for disposition of land, a prescribed transfer form which is duly executed is what is presented for registration and stamped in accordance with the Stamp Duty Act. Further, It is trite that in disposition of land Stamp Duty is charged on transfer form and not on the sale Agreement.

Based on my analysis above , I beg to differ with the Plaintiff that the Sale Agreement is inadmissible as it was not stamped at the Land Registry. I opine that the said Sale Agreement was a contract between the parties herein. I find that the Plaintiff is merely seeking to rely on technicalities which is a defeated avenue in accordance with the provisions of Article 159(2)(d) of the Constitution.

It is against the foregoing that I proceed to dismiss the objection.

Costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 26th day of February, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**