



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**MISCELLANEOUS APPLICATION NO. 2 OF 2020**

**FRANCIS GACHERU MWAL.....APPLICANT**

**VERSUS**

**KELVIN MUCHIRA KARIUKI.....RESPONDENT**

**RULING**

1. By Chamber Summons dated 29th January 2020, the applicant seeks the following orders:

1. *THAT the Applicant be granted extension of time within which to obtain the relevant Land Control Consent pursuant to the provisions of Section 8 of the Land Control Act, Cap. 302.*
2. *Any further order(s) that this Honourable Court may deem just and expedient to grant in the interest of justice.*

2. The application is brought under **Section 8** of the **Land Control Act** and is supported by an affidavit sworn by the applicant. He deposed that both the respondent and himself are members of the Kenya defence Forces and that the respondent is the registered proprietor of the parcel of land known as Dundori/Lanet Block 5/2273 (Kiamunyeki "A") which is agricultural land. That he and the respondent entered into a sale agreement dated 7<sup>th</sup> October 2017 pursuant to which the respondent sold to him the suit property at a consideration of KShs 1,000,000 which sum he has paid in full. That despite the payment and despite reminders to the respondent to complete the transaction, the respondent has refused to comply. He added that the six months period provided for obtaining consent of the Land control Board has since lapsed and that the delay is partly due to the fact that both of them have been engaged on duty in Somalia at different times and places. In his general assessment however, the respondent has been unwilling to facilitate issuance of the consent. He annexed a copy of the sale agreement, bank transaction slip, Mpesa statement and letter dated 8<sup>th</sup> November 2019 from Nyagaka S. M. & Company advocates to the respondent and letter dated 13<sup>th</sup> November 2019 from E.K. Njagi & Company advocates to the applicant.

3. Although duly served with the application, the respondent neither filed any response nor attended court at its hearing. Consequently, counsel for the applicant urged the court to allow the application as being unopposed.

4. I have considered the application and the material before the court. I am persuaded that indeed the parties herein entered into sale agreement dated 7<sup>th</sup> October 2017 pursuant to which the respondent sold to the applicant an agricultural parcel of land known as Dundori/Lanet Block 5/2273 (Kiamunyeki "A") (the suit property) at a consideration of KShs 1,000,000 out of which a deposit of KShs 400,000 was paid as at the date of execution of the agreement. A perusal of the letter dated 13<sup>th</sup> November 2019 from E.K. Njagi & Company advocates confirms existence of the agreement and payment of the deposit. Parties agreed that the balance of KShs 600,000 was to be paid on or before 30<sup>th</sup> March 2018. While the applicant contends that he has fully paid the purchase price, the respondent seems to be of the contrary view. However, full payment of the purchase price is not a material consideration for purposes of this application since all that the applicant seeks is extension of time within which to obtain consent of the Land Control Board. Once parties successfully apply and obtain

the consent, they can then deal with issues of completion as per the terms of the agreement between them. Put differently, granting the present application does not amount to completion itself.

5. The application is brought under **Section 8** of the **Land Control Act** which provides:

**8. Application for consent**

*(1) An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereto: Provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.*

*(2) The land control board shall either give or refuse its consent to the controlled transaction and, subject to any right of appeal conferred by this Act, its decision shall be final and conclusive and shall not be questioned in any court.*

*(3) For the purposes of subsection (1), an application shall be deemed to be made when it is delivered to the authority prescribed in the manner prescribed.*

*(4) An application under subsection (1) shall be valid notwithstanding that the agreement for the controlled transaction is reduced to writing, or drawn up in the form of a legal document, only after the application has been made.*

6. The transaction between the parties herein being one of sale of agricultural land, is a controlled transaction pursuant to **Section 6 (1) (a)** of the **Land Control Act**. Parties ought to have sought consent of the land control board within six months of the making of the sale agreement. The sale agreement herein being dated 7<sup>th</sup> October 2017, the consent ought to have been sought by 7<sup>th</sup> April 2018. It is therefore apparent that the time within which consent was to be sought lapsed. The applicant has explained that the delay in seeking consent was partly due to the fact that both he and the respondent have been engaged on official duty in Somalia as well as unwillingness on the part of the respondent. I am persuaded that these constitute sufficient reasons to warrant extending time. Nevertheless, I note that the present application ought to have been filed as far back as 7<sup>th</sup> April 2018. While the respondent is largely blamed for the delay, the applicant ought to have moved the court earlier than the 29<sup>th</sup> January 2020 when he filed the present application. Owing to that delay, I will order that each party bears own costs.

7. In view of the foregoing, I make the following orders:

**i) Time within which to obtain consent of the Land Control Board in respect of the transaction comprised in sale agreement dated 7<sup>th</sup> October 2017 between the applicant and respondent is hereby extended by a period of 6 (six) months from the date of delivery of this ruling.**

**ii) Each party to bear own costs.**

8. This ruling is delivered remotely through video conference and e-mail pursuant to the Honourable Chief Justice's "Practice Directions for the Protection of Judges, Judicial Officers, Judiciary Staff, other Court Users and the General Public from the Risks Associated with the Global Corona Virus Pandemic" (Gazette Notice No. 3137 published in the Kenya Gazette Vol. CXXII—No. 67 of 17<sup>th</sup> April, 2020).

**Dated, signed and delivered at Nakuru this 30<sup>th</sup> day of April 2020.**

**D. O. OHUNGO**

**JUDGE**