

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1346 OF 1997

SAMUEL NJOROGE WARUHIU.....PLAINTIFF

VERSUS

STEPHEN THIONGO MACHARIA.....DEFENDANT

R U L I N G

By an agreement dated 20th July, 1995 the plaintiff herein agreed to sell to the defendant his land known as title number GITHUNGURI/GITHIGA/1740. The agreed price was Kshs.660,000 of which sum of Kshs.300,000 was to be paid to the plaintiff on him obtaining the Land Control Board consent of the property. The defendant took possession but did not pay Kshs.300,000/- neither was consent of the Land Control Board obtained.

The plaintiff has now moved the court by way of Notice of Motion under Order 35 R1(b) of the Civil Procedure Rules for orders that summary judgment be entered in favour of the plaintiff against the defendant as prayed in the plaint and that the costs be borne by the defendant. When this application came up for hearing it became clear that the order being sought by the plaintiff was for vacant possession for failure to contract. Both learned counsel have addressed the court on the issue and I have their submissions on record.

This sale involves Agricultural land and the Land Control Board Consent was crucial in the transaction. If the Land Control Board consent is not obtained within six months from the date of the agreement of sale then the transaction is void.

In the instant case, none was obtained neither was extension to obtain the same sought by the parties. It is immaterial now that the defendant was to pay Kshs.300,000 upon the plaintiff obtaining the said consent. The fact is, without consent, the agreement for sale is void.

Some address has been made to the effect that the defendant has spent a substantial sum of money since taking possession of the land which is the subject of these proceedings. However, this is not a sufficient ground to entitle him to hold over unto the property whose basis, the agreement for sale, has become void for lack of consent.

If it is true that he spent any money, then he is at liberty to file proceedings to recover the same. As for now, the transaction must be declared null and void and plaintiff granted the order for vacant possession forthwith. The plaintiff shall also have the costs of this application. If there are any other matters remaining for argument the same can be adjudicated in the main hearing.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of July 1998

A. MBOGHOLI MSAGHA

JUDGE

Mr Igeria for plaintiff/applicant

Mr Patel for Thuo for defendant/respondent

