

REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT KISUMU**

**(CORAM: CHESONI, C.J GICHERU & AKIWUMI, JJ.A
CIVIL APPEAL NO. 25 OF 1997**

BETWEEN

WILLIAM ABIRA KEBAKI.....APPLICANT

AND

1. EDWARD OBINO KENYARIRI

2. BARCLAYS BANK OF KENYA LTD.....RESPONDENT

**(An appeal from the judgment of the High Court of Kenya
at Kisii (Justice Mbaluto) dated 11th August, 1995**

in

H.C.C.C. NO. 31 OF 1981)

JUDGMENT OF CHESONI, C.J.

This case involved a transaction in agricultural land which was subject to the Land Control Act (Cap.302, Laws of Kenya). The facts and sequence of events are set out in the judgment of my learned brother Gicheru, J.A., so I shall not repeat them.

In the agreement of sale made between Augustino Omwamba Okundi (the seller) and William Abira Kebaki (the appellant Purchaser) the parties agreed to go to the land board for consent after the final instalment of the purchase price had been paid.

The payment of the purchase price itself was spread over a period of two years. Section 8(1) of the Land Control Board provides as follows:-

"8 (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."

The parties had therefore by their own agreement put themselves outside the period for obtaining the land board's consent to the transaction. I agree with the superior court (Mbaluto, J.'s) observation that:

"The position therefore is that there is no evidence that the plaintiff obtained the necessary land control board consent for the transaction he entered with the 1st defendant to purchase plot No. Nyaribari Masaba/Bomobea/1464 and 1463 as provided by Section 6 of the Land Control Act the transaction between him and the 1st defendant became void for all purposes after the expiry of 6 months of the agreement between him and the 1st defendants."

I would for the reason given above dismiss the appeal with no order as to costs.

Safe for Akiwumi J.A's order on costs as Gicheru and Akiwumi, JJ.A agree the appeal is dismissed in the terms proposed in Gicheru, J.A's judgment. Order accordingly.

Dated and delivered at Kisumu this 23rd day of November, 1998.

Z. R. CHESONI

CHIEF JUSTICE