



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL 153 OF 1996**

**STANLEY MBUGUA GACHIE.....APPELLANT**

**AND**

- 1. LAKELI WAITHERA.....1<sup>ST</sup> RESPONDENT**
- 2. STEPHEN NDUNGU WAICHUNGO.....2<sup>ND</sup> RESPONDENT**
- 3. GEORGE GATITU WAICHUNGO.....3<sup>RD</sup> RESPONDENT**

**(Appeal from the judgment of the High Court of Kenya**

**at Nairobi (Mwera, J. ) dated 14<sup>th</sup> November, 1995**

**in**

**H. C. C. C. NO. 1851 OF 1991)**

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**JUDGMENT OF THE COURT**

The litigation before the superior court between the respondents and the appellant principally proceeded on the basis that the first respondent's now deceased husband, Josephat Waichungo Ngeche, who before his demise was the first defendant in the said litigation was suffering from senile dementia syndrome and therefore not in control of his mental faculties when he sold 0.5 of an acre out of land parcel number Gatamaiya/Kamuchege/494 measuring approximately 1.73 acres or thereabouts (0.7 hectare) and registered in his name to the appellant at a purchase price of K. Shs. 22,000/= According to the respondents, in view of his illness, he had no capacity to enter into any transaction relating to the disposition of any part of his land. The appellant's contention in the proceedings before the superior court, however, was that the first defendant was compos mentis when he entered into the sale transaction of the portion of his land as is referred to above and that he received the consideration of K. shs. 22,000/= in respect thereof.

Although in his judgment dated and delivered on 14<sup>th</sup> November, 1995 the learned trial judge observed that the appellant had not demonstrated that there was a sale transaction involving the piece of land in question as he had not exhibited any written memorandum or anything to show that there was such an agreement between him and the first defendant in that regard, pages 68, 69 and 70 of the record of this

appeal contains a document the full contents of which are as follows:

“15-4-1982

AGREEMENT BETWEEN JOSEPHAT WAICHUNGO NGECHE AND STANLEY MBUAUA GACHIE OVER LAND TITLE NO. 394 GATAMAIYU/KAMUCHEGE

Today dated 15/4/82, I Josephat Waichungo Ngeche ID/4309317 or KBU/129014 and Stanley Mbugua Gachie ID/2974636 or ID/487931/610 have agreed that I Waichungo will sell half an acre of land to Mbugua worth Kshs. 22,000/- only (Twenty Two Thousand Shillings only).

Today dated 15/4/1982 he has paid me (Waichungo) Kshs. 8,600/- (Eight Thousand Six Hundred Shillings) remaining a balance of 13,4000/- (Thirteen Thousand Four Hundred shillings only).

We have agreed that on 31/5/82 he will add Kshs. 1400/- (One Thousand Four Hundred Shillings) so that he can finish the first payment of Kshs. 10,000/- only (Kenya Shillings Ten Thousand).

**WITNESSES:**

1. Samuel Muiruri Ndura ID/4488883
2. Esther Wanjiku Mburu ID/4489934
3. Margaret Njeri Mburu ID/0899171

Seller

Buyer

The writer of the letter for both sides is Michael Karuri Mathu.

Today dated 31/5/1982 the agreement that was agreed on 15/4/1982 of Josephat Waichungo Ngeche and Stanley Mbugua Gachie of the money that had remained 1,400/- Shs. He has paid the amount today 31/5/1992. Now the amount paid is 10,000/- shs.

The balance remaining now is 12,000/- Shs (Twelve Thousand Shillings) from the Twenty two thousand shillings of the agreement.

**WITNESSES:**

1. Samuel Muiruri Ndura ID/4488883
2. Esther Wanjiku Mburu ID/4489934
3. Margaret Njeri Mburu ID/0899171

Seller

Buyer

The writer of both sides is Nancy M. Mburu.

Today dated 31/5/1982 we have agreed the second agreement between Josephat Waichungo Ngeche and Stanley Mbugua Gachie that the second payment of twelve thousand shillings of which he will pay half of it Six thousand shillings (shs. 6,000/-) only either on 30/6/1982 or 3/7/1982.

The agreement that was agreed for 30/6/82 or 3/7/82 for second payment has been fulfilled today dated 31/7/82. He has paid six Thousand Shillings(Ksh. 6,000/-). The amount by now is sixteen thousand shillings (Kshs. 16,000/-) The balance by now is Six thousand shillings (Kshs. 6,000/- only.

WITNESSES:

1. Samuel Muiruri Ndura ID/4488883
2. Esther Wanjiku Mburu ID/4489934
3. Margaret Njeri Mburu ID/0999171

Seller

Buyer

The writer for both sides is Nancy M. Mburu.

The balance remaining six thousand shillings for the third payment we have agreed that Stanley will pay two thousand on 2/10/1982 for the third payment.

The agreement between Josephat Waichungo and Stanley Mbugua Gachie for the Six Thousand shilling s (Kshs. 6,000/- only balance, he has paid one Thousand shillings (Kshs. 1,000/- only remaining a balance of Five Thousand Shillings (Kshs. 5,000/- ) of which he will pay Ksh. 2,000/- (Two thousand) on 4/12/82 so that the balance that remains is three thousand shillings so as to finish the agreed agreement as 22,000/-.

WITNESSES:

1. Samuel Muiruri Ndura ID/4488883
2. Esther Wanjiku Mburu ID/4489934

Seller

Buyer

The writer for both sides is Joseph Chuchu Mburu.

Today dated 28/3/83 I have given Josephat Waichungo shs. 1,500/- only for the agreement of selling land to me Stanley Mbugua Gachie Title Number Gatamaiyu/Kamuchege/394.

The whole amount now is 19,000/-

The balance being 3,000/- so as to add up to 22,000/- only to end the agreement of buying the land.

WITNESSES:

1. Samuel Muiruri Ndura ID/4488883
2. Esther Wanjiku Mburu ID/4489934

Seller

Buyer

The agreement between Josephat Waichungo Ngeche and Stanley Mbugua Gachie for the balance of three thousand shillings from the agreed 22,000/- only I have today (30/8/85) paid 21,600/- only and remained a balance of 400/- only. We have agreed that since the land had a caution the balance will be paid after demarcation.

So by now the money which has been paid to title Deed number Gatamaiyu/Kamuchege/394 which is half an acre is 21,600/-

The agreement ends there.

WITNESSES PRESENT:

1. Samuel Muiruri Ndura ID/4488883/67

2. Esther Wanjiku Mburu ID/4489934

The seller and the buyer have agreed that they will sign their agreement after demarcation and that is when the buyer will pay the balance of Kshs. 400/-

Seller Josephat Waichungo Ngeche ID/4309317/67

Buyer Stanley Mbugua Gachie ID/2974636”.

This document in its tenor and intent is certainly an agreement of sale to the appellant by the first defendant of 0.5 of an acre of land referred to at the beginning of this judgment at a consideration of K. Shs. 22,000/- notwithstanding the land title number cited therein as 394 instead of 494 which former is clearly an error considering in totality the contents of the said document.

It is evident from the document whose contents are set out above that the agreement relating to the transaction concerning the sale of the piece of land referred to above was entered into on 15<sup>th</sup> April, 1982 and payment of the purchase price was made in stages until 30<sup>th</sup> August, 1985 when the appellant had paid the first defendant a total sum of K. Shs. 21,600/- with only K.shs. 400/- outstanding before completion, The piece of land the subject of sale to the appellant was an agricultural land within a land control area under section 8(1) of the Land Control Act, Chapter 302 of the Laws of Kenya, an application for consent in respect of sale of that piece of land to the appropriate land Control board should have been made in the prescribed form within six months of the making of the agreement , to wit, with effect from 15<sup>th</sup> April, 1982. That was not done until 21<sup>st</sup> November, 1985- three years and over seven months later – and under section 6(1) of the aforesaid Act, the transaction concerning the piece of land in question was void for all purposes and the consent of Githunguri Land Control Board given on 19<sup>th</sup> February, 1986 pursuant to the aforementioned application was without validity whatsoever. In law therefore , besides all else, the appellant’s appeal must fail and the same is dismissed with costs to the respondents.

Dated and delivered at Nairobi this 19<sup>th</sup> day of September, 1997

**J. E. GICHERU**

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**JUDGE OF APPEAL**

**A.M. AKIWUMI**

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**JUDGE OF APPEAL**

**A.A. LAKHA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**