

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO 118 OF 1991

MARGARET APIYOAPPELLANT

VERSUS

JOTHAM CHEMWA MATAYO.....RESPONDENT

JUDGMENT

In the lower court the appellant had sued the respondent for recovery of Kshs 39,000/- being the purchase price of land parcel No Shamberere/ Kabras/1509. The appellant alleged that she entered into a sale agreement with the respondent in 1986 for the purchase of the suit land at Kshs 40,000/-. The respondent paid Shs 1000/- as part payment and never paid the balance. He then used tricks to have the land registered in his name. She claimed that she never appeared before the Land Control Board to facilitate consent. But the respondent in his evidence claimed that the appellant had accompanied her to the Land Control Board for consent and it was given on 24.12.1987. The respondent also produced the sale agreement which was dated 26.1.86 as well as the application form for consent. The nature of transaction was indicated as "transfer of whole land by way of gift". The provisions of the Act the applicant reveals the nature of the transaction whether sale, lease, subdivision etc and if it is sale the consideration must be shown. The respondent ought to have shown the nature of transaction as "sale" and the amount he paid for consideration as he claims.

The suit land was agricultural land whose transactions require consent of the Land Control Board which must be given within 6 months from the date of the agreement. Sec 8 (1) cap 302 provides as follows: An application for consent in respect of a controlled transaction shall be made on the prescribed form to the appropriate Land Control Board within six (6) months of the making of the agreement for the controlled transaction by any party thereof.

The Act defines what a controlled transaction is. Sec 2 cap 302, "Controlled transaction" means one of the transactions specified in sec 6(1) and not excluded by sec 6 (3). Sec 6 (1) provides as follows:

"Each of the following transactions:

(a) The sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area is void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act."

The sale agreement was entered into on 26.1.86 while the Land Control Board consent was given on 14.12.87 which was by and the statutory period. By the time the consent was purportedly given the transaction had become void for all purposes and therefore it was a nullity. The learned trial magistrate found and rightly so that the sale transaction between the appellant and the respondent was void by virtue of sec 6 of the Land Control Act (cap 302) but went ahead and gave the land to the respondent and ordered payment of Shs 25,000/- to the appellant for the sale of the suit land. Unless an agreement to sell agricultural land is consented to by the Land Control Board, the would be purchaser has no claim of title to the land after 3 months (as it then was) from the date of the agreement. The Court of Appeal so restated the law in the case of *Gabriel Makokha Wamukota* (appellant) vs *Sylvester Nyongesa Donati* (respondent) Civil Appeal No 6 of 1986.

The agreement to be a party to a controlled transaction becomes void for all purposes at the expiration of

6 months after the making of the agreement if the application for consent has not been made within that time. In the present case the consent was purportedly given after over one year and 10 months. At this time the sale transaction had become void for all purposes and therefore no valid consent could be obtained.

The result, therefore is that the respondent did not purchase this land and therefore the title of the appellant Margaret Apiyo over land parcel No Shamberere / Kabras / 1509 was not affected.

As far as respondent's agreement to purchase the land was concerned, it was void for all purposes, whether legal or equitable nature his only redress being that he would recover the money or valuable consideration paid in the cause of controlled transaction by virtue of section 7 of the Land Control Act.

For the above reason I would set aside the judgment of the lower court and I would substitute therefore judgment for the plaintiff / appellant.

The Registrar is herein ordered to reinstate the name of the appellant on the register. I would also order the respondent to vacate the land within 6 months of the date of the order being read in the open Court.

I would also grant the appellant the costs of this appeal and the costs of the lower court. Orders accordingly.

Dated and delivered at Kakamega this 29th day of October, 1992

J.L OSIEMO

JUDGE