



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: WICKS, MADAN & POTTER JJA)**

**CIVIL APPEAL NO 7 OF 1979**

**SENNIK.....APPELLANT**

**V**

**REPUBLIC OF CHILE.....RESPONDENT**

**RULING**

This is an appeal against the ruling of Miller J (as he then was) delivered on a summons filed under order XXXVI rule 3 of the Civil Procedure Rules by the appellant as plaintiff which claimed to be the purchaser under a contract dated October 7, 1976 for the purchase of L.R.3734/ 874 from the respondent/defendant for the determination of the following question:-

“What part of the agreed purchase price of the land was paid by the plaintiff to the defendant on or before the signing of the contract.”

Under the provisions of order XXXVI rule 3 the power of the court is limited to answering a question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).

The learned judge said in his ruling that he considered the court must limit itself to the single question before it. He then proceeded as follows:-

“The court rules:-

- (1) That on the related evidence before it, and for the reasons given above, the respondent is stopped from denying that he received Kshs 500,000 as the 50% part of the purchase price in the intended sale.
- (2) The sum of Kshs 500,000 50% of the agreed purchase price of the land was paid by the appellant to respondent on or before the signing of the contract.
- (3) The respondent is entitled to pursue whatever remedies are still open to him.”

While the learned judge may be said in his answer (2) above to have answered the question submitted to the court in the summons, he answered three questions instead of one, two of them being extraneous to the proceedings therefore without jurisdiction. It is certainly arguable that having answered two issues not before him there was no true determination of the issue before the court; conversely, his first answer may have unconsciously, even automatically, led him to answer the issue before the court in his second answer without a full and independent consideration of the matters relating to it.

In the circumstances we feel no useful purpose will be served by our hearing the appeal until the question in the summons has been determined separately as a single issue. We therefore order the proceedings to be remitted to the High Court to hear and determine the submitted issue by another judge.

At this stage, we would reserve the question of costs.

**Dated and delivered at Nairobi this 8th day of October, 1979**

**S.J WICKS**

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**JUDGE OF APPEAL**

**C.B MADAN**

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**JUDGE OF APPEAL**

**K.D POTTER**

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**JUDGE OF APPEAL**

**Cases**

No cases referred to.

**Statutes**

Civil Procedure Rules order XXXVI rule 3