



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC NO E007 OF 2024

SAMUEL KAHIRO MUGECHA.....PLAINTIFF
=VERSUS=
DAVID MAINA.....DEFENDANT

JUDGMENT

(1)The Plaintiff seeks the following reliefs against the Defendant.

- (a) **The Court be pleased to enlarge the time within which the Land Control Board consent may be applied for/or obtained.**
- (b) **An order directing the Defendant to obtain the Land Control Board consent to transfer L.R. No. Loc. 8/Theri/1332 and execute all relevant documents, forms and/or instruments of transfer of the suit land to the Plaintiff.
In the alternative, if the Defendant refuses to obtain the said consent to transfer, the Deputy Registrar of this Court or the relevant officer of the Court be authorized to do it.**
- (c) **An order to the Defendant to give vacant possession of the land and in the alternative judgment be entered for the Plaintiff against the Defendant for Kshs 780,000/= being the amount paid to the Defendant by the Plaintiff for the suit land.**
- (d) **Costs of the suit and interest.**
This is as per the plaint dated 8-3-2024.

(2)The Plaintiff's case is as follows.

Firstly, on 5-10-2020 he entered into a sale agreement with the Defendant for the purchase of **L.R. No. Loc. 8/Theri/1332**. The purchase price was Kshs 760,000/= for a portion measuring 0.240 hectares. Secondly, the Defendant was to transfer the land to the Plaintiff and put him in possession of the same. He has failed to do as agreed in the agreement for the sale of land. The Plaintiff has done everything he could to have the matter settled out of Court amicably by

appearing before the Chief of Murarandia location but nothing has worked prompting the filing of this case.

(3) In support of the case, the Plaintiff filed the following evidence.

- (i) **Witness statement dated 8-3-2024.**
- (ii) **Copy of title deed and copy of certificate of official search dated 21-5-2019 and 22-8-2023 respectively.**
- (iii) **Copy of sale agreement dated 5-10-2020.**
- (iv) **Acknowledgments by the Defendant of receipt of the following amounts on various date.**

<u>Amount received</u>	<u>Date received</u>
Kshs 20,000/=	26-6-2021
Kshs 92,000/=	25-1-2022
Kshs 48,000/=	16-5-2022
Kshs 65,000/=	26-10-2022
Kshs 55,000/=	11-2-2023
Kshs 450,000/=	5-10-2020
Kshs <u>50,000/=</u>	20-4-2023
Total <u>780,000/=</u>	

(4) The Defendant, in a letter dated 23-4-2025 which the Court treated as his defence stated as follows. Firstly, he admits receiving Kshs.780,000/= from the Plaintiff as stated. Secondly, his explanation is that his land is only 0.5930 acres and he was not selling the whole of it but only 0.30 acres. It is because of the fraud of the Plaintiff that he has been reluctant to attend the Land Control Board. He could not possibly have been selling the whole land because some of his kin are buried thereon. He has been willing to transfer the agreed 0.3 acres to the Plaintiff.

(5) At the trial on 29-7-2025, the Plaintiff testified as per his pleadings reiterating that he was claiming the whole land. On the other hand, the Defendant restated that he sold only 0.3 acres and not the whole land. He is suspicious of the Plaintiff and that is why he is hesitant about

visiting the Land Control Board because he might lose all his land. His wife, Agnes Wangechi Kuria said that the Defendant was only selling 0.3 acres and his intention to buy alternative land in the Rift Valley did not work because the Plaintiff did not pay the purchase price in lumpsum. Finally, the Defendant has no other land and selling the whole land would render him landless.

(6)I have carefully considered the evidence adduced in this case by both sides including the witness statement, the testimony at the trial as well as the pleadings. I find that the following issues arise.

(1) Whether the Court can compel the Defendant to apply for the consent of the Land Control Board to transfer the whole of the suit land to the Plaintiff.

(2) Whether the Court can order the Defendant to surrender the suit land to the Plaintiff and become landless.

(7)Regarding the first issue, I find that it is only under the proviso to **Section 8(1)** of the **Land Control Act** that the Court may extend time. The subsection 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: provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.”

For the Court to extend the time, there must be an application in the first place made by the registered owner and the time must have expired. In this case there is no application made by the Defendant. That being the case, and since the Defendant is unwilling to transfer the suit land to the Plaintiff, the Court cannot compel him to transfer the land or to apply for the consent to transfer.

(8)As for the second issue, it would disturb the conscience of the Court to order that the Plaintiff occupies the suit land and throws out the Defendant. It would be unconscionable to render the Defendant landless. The Plaintiff was under a duty to ensure that by buying the suit land, the

Defendant was not rendered landless. There is no evidence presented by the Plaintiff to prove that the Defendant has any other land anywhere in Kenya.

Under **Section 9(1) (b) (iii)** of the **Land Control Act**, one of the reasons why the Land Control Board may refuse to grant its consent in respect of a controlled transaction is,

“Where the terms and conditions of the transaction including the price to be paid are markedly unfair or disadvantageous to one of the parties to the transaction.”

If the Land Control Board is under an obligation to ensure that controlled transactions are not disadvantageous to any of the parties to the transaction, this Court is under a higher duty to ensure that it does not issue unconscionable orders.

(9)I am satisfied that the Defendant did not intend to sell the whole of the suit land and be left landless. I am convinced that he only intended to sell **0.3 acres** thereof. I also find that the Plaintiff did not pay the purchase price in one lumpsum and this affected the ability of the Defendant to use the money paid to him in a meaningful and beneficial manner.

For the above stated reasons, I **dismiss** the Plaintiff’s suit. Since the Defendant has admitted that he is willing to transfer **0.3 acres** of the suit land to the Plaintiff, I will enter judgment for the Plaintiff against the Defendant for **0.3 acres** of the suit land as admitted by the Defendant. The Deputy Registrar of this Court is therefore authorized to execute all the necessary documents and instrument to ensure that **0.3 acres** of the suit land is transferred to the Plaintiff.

No order as to costs.

Dated, Signed and Delivered virtually at Murang’a this 1st day of December, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -
Court Assistant – Mwangi Njonjo.
Plaintiff’s Counsel – Miss Maina
Defendant’s Counsel – Present in person