



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 182 OF 2014**

**WILLY KIPLAGAT KIRUI.....PLAINTIFF**

**VERSUS**

**KIPKOECH ARAP MATE.....DEFENDANT**

**JUDGMENT**

***(Suit by plaintiff seeking enforcement of an agreement for sale; sale being of agricultural land; no consent of the Land Control Board; transaction void and cannot be enforced; judgment only entered for the plaintiff for refund of purchase price)***

1. This suit was commenced by way of a plaint which was filed on 24 June 2014. In his plaint, the plaintiff has pleaded that in the month of November 2004, he purchased from the defendant, 3 acres of land to be excised from the land parcel Molo South/Ikumbi Block 5/57, at a consideration of Kshs. 230,000/= which he states that he paid in full. Despite being paid, it is pleaded that the defendant has refused to execute the transfer documents in favour of the plaintiff. In the suit, the plaintiff has asked for the following orders :-

- (a) An order compelling the defendant to excise 3 acres of land from the land parcel Molo South/Ikumbi Block 5/57.
- (b) An order extending the time within which the parties may apply for the relevant Land Control Board consent.
- (c) That the defendant do comply with court orders above within 14 days from the date of service of the decree and in default, the Court's Deputy Registrar be authorized to execute the necessary conveyance documents to give effect to the decree.
- (d) Kshs. 69,000/= being 30% of the purchase price, the cost of the penalty for defaulting and/or breaching the agreement.
- (e) Costs of this suit.
- (f) Interests on (b) and (c) at court rates.
- (g) Any other orders that this Honourable Court may deem fit to grant.

2. Despite being served, the defendant did not enter appearance and did not participate at the hearing of the suit.

3. The plaintiff, as the sole witness, testified that he entered into the sale agreement in issue on 23 November 2004. He testified that the land Molo South Ikumbi Block 5/57 (hereinafter referred to as "the suit land") is about 6.4 acres and he was purchasing 3 acres of this land. The consideration was Kshs. 230,000/= and he paid Kshs. 116,000/= into the defendant's loan account with the Agriculture Finance Corporation, and the balance of Kshs. 114,000/= was paid to the defendant's advocate. He stated that they took a surveyor to the land and a mutation was done but the seller later changed his mind. He did not take possession of the land as the defendant's sons restrained him. I questioned him on his prayer for extension of time on the Land Control Board (LCB) consent and he stated that they did make an application but the seller failed to appear before the LCB. He was in agreement that this was agricultural land.

4. I have considered the pleadings and the evidence tabled. I have seen the agreement dated 23 November 2004 that the plaintiff had with the defendant. The agreement provides that the plaintiff will purchase 3 acres of the suit land at the consideration of Kshs. 230,000/=. The agreement acknowledges that the vendor has received the full purchase price. The agreement also has a clause of a 30% penalty for any party who will be in default.

5. Now, it is not in question that the suit land is agricultural land. The provisions of the Land Control Act, Cap 302, therefore apply. It is a requirement under Section 6 of the said statute that transactions over agricultural land be subjected to the consent of the LCB, and where

consent is not given, such transactions are declared void. The said law is drawn as follows :-

**6 (1)** 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;

(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 for the time being apply;

(c) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land 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.

6. Thus without having obtained the LCB consent, the transaction between the plaintiff and defendant is void. The LCB consent is supposed to be applied for within 6 months of the transaction as provided by Section 8 of the same statute which is drawn 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.

7. There is indeed a window for the extension of the 6 months period on application to the High Court, which is what apparently the plaintiff has done in this case. However, I do not think that I should exercise my discretion to extend the time. Firstly, the plaintiff did not produce the title deed or current search of the property so that I may know the prevailing registration status of the land. I do not know if the suit land is still owned by the defendant or whether it is now owned by somebody else. I also do not know if there are any encumbrances on the property. It will be dangerous to extend the time when I have no knowledge of these material facts.

8. The position of the plaintiff's case is that he has an agreement which has been declared void by operation of law. His remedy lies in refund of the purchase price which is what is provided for under Section 7 of the Land Control Act provides. The same is drawn as follows :-

7. If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.

9. Section 22, cited above, does not help the plaintiff as it provides for an offence where a person continues with a void transaction.

10. From the above law, what the plaintiff is entitled to is a refund of the money that he paid under the transaction which is the sum of Kshs. 230,000/=. He is not entitled to damages of 30% of the purchase price as the agreement is void, and he cannot claim a right under it.

11. I am in the circumstances unable to grant the plaintiff his prayers for transfer of the land and only enter judgment in his favour for the sum of Kshs. 230,000/=. The plaintiff shall also have the costs of this suit.

12. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of May 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Andama for the plaintiff.

No appearance on the part of the defendant.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**