



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL APPEAL NO. 39 OF 2013

RICHARD MUTUA MAKUMBIAPPELLANT

VERSUS

LEONARD MUMO WAMBUARESPONDENT

(Being an appeal from the Ruling of Machakos Chief Magistrate's Court in

Civil Case No. 412 of 2012 delivered on 19th February, 2013 by

Hon. P.M. Mugure – R.M)

JUDGMENT

1. The suit in the lower court was commenced by the Respondent herein. In the Complaint dated 12th April, 2012, the Respondent averred that on 16th August, 2008, he entered into a land sale agreement with the Appellant to buy a parcel of land for Kshs. 400,000.
2. It was alleged in the Complaint that the Appellant herein refused to transfer the suit land and also denied the Respondent to access the land that he had purchased.
3. The Respondent prayed for a refund of Kshs. 350,000 and the costs that he had incurred in improving the land. The Respondent also prayed for general damages for the breach of contract.
4. The Appellant filed a Defence and denied the allegations in the Complaint, save that he only received Kshs. 250,000 from the Plaintiff.
5. It was the Appellant's case that the sale agreement was null and void for want of the consent of the Land Control Board.
6. In the meantime, the Respondent (*Plaintiff*) filed an Application dated 30th October, 2012 seeking for injunctive orders.
7. When the Appellant was served with the Application dated 30th October, 2012, he filed a Notice of Preliminary Objection in which he averred that the court did not have jurisdiction to deal with land matters; that on 20th September, 2012, the Chief Justice had issued directions that all matters relating to land should be dealt by the land court and that on that basis, the Application should be struck out.
8. The objection by the Appellant on the Preliminary point of law was dismissed by the learned magistrate.

9. In his Memorandum of Appeal, the Appellant has averred that the learned magistrate erred in dismissing the objection and in allowing the Notice of Motion dated 30th October, 2012; that the magistrate erred by failing to find that the Application sought for an injunction, which was not a relief in the Plaint and that the magistrate erred by not holding that the suit land was not sufficiently described in the Plaint.

10. In his submissions, the Appellant's advocate submitted that the suit land is within a controlled area; that the Agreement of sale between the Appellant and the Respondent was null and void for want of the consent of the Land Control Board and that the injunctive order should not have been issued by the court.

11. On his part, the Respondent's advocate submitted that the magistrate had the jurisdiction to hear land matters; that the value of the land was approximately Kshs. 400,000 and that the directions by the Chief Justice dated 9th November, 2012 allowed magistrates to hear and determined such matters.

12. I have gone through the Record of Appeal and the original file in the lower court but I have not come across the Ruling of the lower court.

13. Indeed, after the parties filed their submissions in respect to the Application and the Preliminary Objection, the court reserved its Ruling for 19th February, 2013.

14. Although the record shows that both the Appellant's and the Respondent's advocates appeared before the court on 19th February, 2013, the record is silent on what transpired on that day.

15. The Appellant has exhibited in the Record of Appeal an order that was given on 19th February, 2013 and issued on 22nd February, 2013. However, the Ruling which gave rise to the said order is not on record.

16. In the absence of a typed or handwritten Ruling, this court is unable to ascertain the circumstances under which the order of 19th February, 2013 was given.

17. Indeed, this court does not have the benefit of knowing the reasons that the learned magistrate relied on to arrive at the order of 19th February, 2013.

18. Considering that neither the Appellant nor the Respondent addressed this anomaly, and in view of the fact that this court is unable to trace the decision of the learned magistrate, I find and hold that the Appeal before me is incompetent.

19. In the circumstances, I strike out the Appeal with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE