



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.45 B OF 2013

ANNAN WARIMU MWANGI.....PLAINTIFF

=VERSUS=

DAVID KAMAU KIMANI.....DEFENDANT

J U D G M E N T

1. The Plaintiff's suit was commenced by way of a Plaint dated 23rd March 2013. In the Plaint, the Plaintiff averred that he is the legal and absolute proprietor of parcel of land known as Lamu/Hindi/Magogoni/386 measuring 4.0 hectares which has since been sub-divided into four parts and allocated numbers 1200, 1201, 1202 and 1203 respectively.
2. The Plaintiff has averred that she entered into a sale agreement with the Defendant for the purchase of 2.0 acres and 1.0 acres but the parties disagreed. It is the Plaintiff's averment that the Land Board Consent was not thereafter obtained.
3. The Defendant subsequently lodged cautions on the suit property.
4. The Plaintiff's claim is for an order that the District Land Registrar, Mpeketoni to remove the cautions filed by the Defendant on Lamu/Hindi/Magogoni/386.
5. The Defendant deponed in his Defence that it was the responsibility of the Plaintiff to obtain the consent of the Board; that he registered the caution on the whole land to protect his interests having paid to the Plaintiff a deposit of Kshs.200,000 and that he underwent financial and economic strain after taking a loan
6. In the counterclaim, the defendant is claiming for a refund of kshs.200,000 together with interest of Kshs.18% from 9th February 2011 until payment in full.

The Plaintiff's case:

7. The Plaintiff, PW1 informed the court that the suit property is registered in her name. It was the evidence of PW1 that although she wanted to sell the suit property to the Defendant, the transaction fell through.
8. PW1 admitted that she received Kshs.200,000 from the Defendant which she used to discharge the property.

9. The evidence of PW1 is that although she was to sell the Defendant a portion of the suit property, the Defendant registered a caution on the whole property which she wants this court to lift.

The Defendant's case:

10. The evidence by the Defendant, DW1 was that he entered into an agreement with the Defendant to purchase a portion of the suit property.

11. DW1 Informed the court that the Plaintiff reneged on the agreement after received a deposit of Kshs.200,000.

12. It was the evidence of DW1 that when the Plaintiff refused to obtain the consent of the Board, he registered a caution against the entire land.

Analysis and findings:

13. It is also not in dispute that in fulfillment of the said agreement, the Defendant paid a deposit of Kshs.200,000/- to the Plaintiff.

14. Considering that the suit property is agricultural land, a fact which has not been denied by the Defendant, the parties were under an obligation to obtain the consent of the Land Control Board of the area that the suit property is situated within six months. The period within which the consent of the land control board should have been obtained lapsed on 8th August 2011.

15. There is a long chain of decisions by the High Court and the Court of Appeal where it has been held that where the consent of the Land Control Board has not been obtained, the sale of agricultural land becomes void for all purposes.

16. In Malindi HCCC No. 118 of 2012; **Franciscar Mbuchu Tinga vs Changawa Baya Nyndo and 5 others**, I held as follows;

“The provisions of section 6(1) [of the Land Control act, Cap 302] are mandatory in nature, and this court, like all the other courts are bound by it. This section has been a subject of many legal disputes owing to the fact that many people dealing in agricultural land have negligently or ignorantly failed to seek the consent of the board thus rendering the transaction void for all intents and purposes under the Act.”

17. In the same case, this court quoted the case of **Onyango and Another vs Luwayi (1986) KLR 513-516** in which the Court of Appeal defined what the phrase “void for all purposes” means as follows.

“An agreement that is held to be void for all purposes could not be the basis for a reference to a panel of elders. If a transaction is void for all purposes, nothing of it is left that could constitute a case of a civil nature. No complaints of any nature remain to be resolved after a transaction related to agricultural land is held to be void. For that reason, the appellant's case that there was an issue of trespass which could be referred to elders is unsuitable. The words “void for all purposes” must be interpreted to mean what they say.”

18. The Defendant is in agreement with the above position of the law. For that reason, he has filed a counter-claim in which he is seeking for a refund of the deposit that he paid to the Plaintiff. That is the only recourse that he has having failed to obtain the consent of the Board within six months after signing the sale agreement.

19. The money that the Defendant is entitled to is what he paid. In view of the fact that there was no agreement on the payable interest, the Defendant can only have interest on the deposit paid at court rates from the date the counterclaim was filed until payment in full.

20. Consequently, both the Plaintiff and the Defendant succeed in their respective claims in the following terms:

(a) An order be and is hereby issued directing the District Land Registrar, Lamu, to remove the caution registered on parcel of land known as Lamu/Hindi/Magogoni 386.

(b) An order of permanent injunction be and is hereby issued restraining the Defendant by himself agents assigns and or employees or anyone claiming through him from selling, charging, subdividing, entering into, remaining or lodging a caution or in any other manner interfering with the plaintiff's ownership, quiet possession and enjoyment of Lamu/Hindi/Magogoni/386 now subdivided into title numbers 1200, 1201, 1202 and 1203.

(c) The Plaintiff to pay to the Defendant Kshs.200,000 together with interests at court rates from the date of filing the Defence and counterclaim until payment in full.

(d) Each party to bear his or her own costs.

Dated and delivered in Malindi this 17th day of July 2015.

O. A. Angote

Judge