



Case Number:	Environment & Land Case 24 of 2013
Date Delivered:	09 Mar 2016
Case Class:	Civil
Court:	High Court at Bungoma
Case Action:	Ruling
Judge:	Samwel Ndungu Mukunya
Citation:	Thomas Bukhebi Wanjala v Simon Peter Munayi & another [2016] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Bungoma
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT & LAND CASE NO.24 OF 2013**

**THOMAS BUKHEBI WANJALA.....PLAINTIF F**

**VERSUS**

**SIMON PETER MUNAYI.....1<sup>ST</sup> DEFENDANT**

**SALOME FELISTA MAKOKHA WAKALA.....2<sup>ND</sup> DEFENDANT**

**RULING**

The plaintiff herein Thomas Bukhebi Wanjala had problems with his children's school fees in August 2009. He had no reliable income. He resolved to sell a portion of 1.5 acres his land North Wanga/Kholera/599. The land was still in his father's name, the late Wanjala Mangoli. He met the defendants who were husband and a wife. An agreement was reached in writing on 15/8/2009 to sell the 1 ½ acres for Ksh.270,000. A down payment was made of Kshs.190,000/- leaving a balance of Ksh.80,000/-.

[1]. The plaintiff used part of the money to file Kakamega High Court Succession case No.707 of 2009. He obtained the grant on 14<sup>th</sup> April 2011. He never mentioned in the confirmed grant that the beneficiaries of LR No. North Wanga/Kholera/599 included the defendants herein as purchasers.

He has filed this suit for orders that the agreement between the parties dated 15/8/2009 be declared null and void and that the defendants be compelled to pay the damages for breach of contract and costs of the suit.

[2]. The defendants filed a defence and counterclaim. They state that the plaintiff filed Succession cause in Kakamega High Court without involving the defendants. They set out the particulars of Breach of contract on the part of the plaintiff. They deny that there is no remedy known in law as general damages for breach of contract and that the plaint does not raise any reasonable cause of action.

The defendants argue that the sale agreement became void after the expiry of 6 months for lack of the necessary land control consent and the purchase price is now payable as a Civil debt. They counterclaimed for Kshs.190,000/- as refund of purchase price plus interest and costs.

[3]. The plaintiff filed a notice of motion dated 8<sup>th</sup> May 2014 praying for orders that the plaint be amended to remove the claim for general damages for breach of contract. Further that the counter claim be struck out with costs and judgement be entered against the defendant for Kshs.190,000/-.

[4] There is no doubt that the plaintiff entered into an agreement for sale of his land, when he was in trouble with school fees of his children. He infact used part of the purchase price to file Kakamega High Court Succession case No.707 of 2009. He did not involve the defendants in that case. This transaction was subject to land control. He did not apply for the same to facilitate him to transfer the 1 ½

acre to the defendants. He now want to have the defendants counter claim be dismissed and that, he be awarded Ksh.190,000/- that the plaintiffs paid to him.

In other words he wants to ride on the Defendants back all through. Indeed, it was his idea to sell the land to raise the school fees of his children. He also used the money to file Succession Cause to obtain letters of administration of his father's property. All that was done at the defendants' expense! This is abuse of the process of the Court of the highest order. This Court cannot condone or countenance such behavior.

[5] This application is without merit and shall be dismissed with costs to the defendants.

This suit shall be fixed for hearing on merit forthwith, and at the earliest opportunity.

It is so ordered.

**DATED at BUNGOMA this 9<sup>th</sup> day of March 2016**

**S. MUKUNYA**

**JUDGE**



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