**BTB Insurance Agencies Limited v NITIN Shah and others**

[2006] 2 EA 26 (CCK)

**Division:** Milimani Commercial Court of Kenya at Nairobi

**Division:** Milimani Commercial Court of Kenya at Nairobi

**Date of judgment:** 6 October 2006

**Case Number:** 560/01

**Before:** Ochieng J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Civil practice and procedure – Application to strike out – Plaint.*

*[2] Land law – Whether all agricultural land transactions must have consent of the Lands Control*

*Board – Effect of failure to get the Board’s consent.*

**Editor’s Summary**

The defendant filed an application to strike out the plaint under Order VI, rule 13(1)(*a*)(*b*) and (*d*); as

well as Order VI, rule 16 of the Civil Procedure Rules; and section 6(1) and 22 of the Land Control Act.

It was the defendant’s case that the entire claim was based on the agreement for sale of shares dated

10 February 2000. The said sale would have given the plaintiff rights over some agricultural property and

thus, the transaction ought to have been consented to by the Land Control Board pursuant to section 6(1)

of the Land Control Act and thus, the entire transaction was void for lack of cause of action.

**Held** – Failure to obtain the necessary Land Control Board consent automatically vitiates an agreement

to be a party to a controlled transaction. Section 6 of the Land Control Act prohibits any dealing with

agricultural land in a land control area unless the consent of the Land Control Board for the area is first

obtained and any such dealing is not only illegal but absolutely void for all purposes. This position is

constant even in situations in which the plaintiff, in a case involving agricultural land in a land control

area, has made payments for the purchase thereof, and thus, no estoppel arises. If the transaction is

subject to the provisions of section 6(1) of the Land Control Act, then, it does not matter that the plaintiff

might have been induced to enter into the Agreement, as the said Agreement would be void in any event.

(*Wambua v Wathome* [1968] EA 40; *Hirani Ngaithe Githire v Wanjiku Munge* [1979] KLR 50; *Simiyu v*

*Watambamala* [1985] KLR 852; *Kariuki v Kariuki* [1983] KLR 225 applied).

The amended statement of defence however asserts that the suit property had nothing to do with the

suit herein. This pleading gave rise to the possibility that the plaintiff may prove that it has an agreement

for the purchase of shares. Whether such purchase, if proved, would have any bearing on the suit

property would then need to be determined, in the light of the defendant’s contention that the shares and

the suit property were not interlinked. In the circumstances there is yet to be provided evidence to prove

or disprove the nexus between the sale of shares and suit property. There is thus a possibility that the trial

court could come to the conclusion that the shares were not linked to the suit property as asserted by the

defendant. If that were to happen, there would be no need for the transaction in the shares being

sanctioned by the Land Control Board.

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Furthermore, even if the transaction should be found to be subject to the consent of the Land Control

Board, it was arguable whether or not the plaint could be amended so as to enable the plaintiff to recover

the consideration it may have paid to the first defendant. (*Njamunyu v Nyaga* [1983] KLR 282; *Simiyu v*

*Watambamala* [1985] KLR 852 considered).

Application dismissed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Hirani Ngaithe Githire v Wanjiku Munge* [1979] KLR 50 – **AP**

*Kariuki v Kariuki* [1983] KLR 225 – **AP**

*Njamunyu v Nyaga* [1983] KLR 282 – **C**

*Simiyu v Watambamala* [1985] KLR 852 – **AP** and **C**

*Wambua v*