**Kahia v Nganga**

**Division:** Court of Appeal of Kenya at Nairobi **Date of ruling:** 19 March 2004 **Case Number:** 16/01 **Before:** O’Kubasu, Githinji JJA and Onyango Otieno AJA **Sourced by:** LawAfrica **Summarised by:** C Kanjama *[1] Civil procedure – Interest – Interest awarded at higher rate without pleading or proof – Whether trial court had properly determined the question of interest. [2] Land – Transfer – Consent of land control board not obtained – Purchaser moved into possession but subsequently evicted – Transfer void for all purposes – Whether purchaser entitled to recover his purchase price. [3] Limitation – Transfer of land – Claim for refund of purchase price – Purchaser entered into possession – Contract void for all purposes – Purchaser subsequently evicted – Whether time begins to run from time of transfer or from time of eviction.*

**Editor’s Summary** The Appellant was the administrator of the estate of the former owner of the land in question. The Respondent entered into a land purchase agreement with the deceased. He paid substantially the whole purchase price and entered into possession. However, the deceased failed to facilitate the obtaining of Land Control Board consent prior to her demise. The land sale agreement was therefore void for all purposes for failure to obtain consent of the Land Control Board. The Appellant, the deceased’s son, subsequently evicted the Respondent. The Respondent sued to recover the purchase price. The trial court gave judgment in favour of the Respondent, and also awarded interest at 25%. The Appellant appealed, contending that the limitation period had accrued, that the Respondent’s evidence was faulty, that the sum awarded was not due and that the rate of interest awarded had not been pleaded and proved.

**Held** – The land transaction in this case required Land Control Board consent and became void for all purposes in the absence of that consent. Any money or consideration paid in the course of the transaction became recoverable as a debt by the person to whom it was paid. However, no general or special damages save for the purchase price were recoverable (*Kariuki v Kariuki* [1983] KLR 225 followed). The period of limitation for the recovery of the purchase price in the land transaction began to run when the proposed purchaser was evicted from the land, and not when the money was paid. The cause of action was therefore brought well within time. The purchaser had not sought interest at any special rate. In such circumstances, the rate of interest would be at court rates. Since the purchaser had neither pleaded nor led evidence to prove interest at 25%, it was inappropriate for the trial judge to order interest at 25%. The appeal was partially upheld, in that the interest rate was reduced to 12%.

**Cases referred to in judgment** (“**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) *Cheboo v Gimunyigei* [1978] LLR 4079 (CAK) *Gandy v Caspair* [1956] EACA 139 *Kariuki v Kariuki* [1983] KLR 225 – **F** *Karuri v Gituru and others* [1980] LLR 2218 (CAK) *Kenya Commercial Bank Limited v Mbaluka and others* [1997] LLR 638 (CAK) *Nkalubo v Kibirige* [1973] EA 102 *Odd Jobs v Mubia* [1970] EA 476 *Selle v Associated Motor Boat Company Limited* [1968] EA 12