



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.65 OF 2014**

**BEATRICE WANJIKU NDUGI.....PLAINTIFF**

**=VERSUS=**

**JACQUELINE WANGUI HILL.....DEFENDANT**

**J U D G M E N T**

1. In her Complaint dated 4<sup>th</sup> April, 2014, the Plaintiff is claiming for an order of specific performance of the agreement dated 8<sup>th</sup> January, 2013.
2. In the Complaint, the Plaintiff has averred that the Defendant is the registered proprietor of L.R. No. 4805; that on or before 8<sup>th</sup> January, 2013, she entered into an agreement of sale with the Defendant to sell to her one apartment and that she paid the final installment of Kshs.3,000,000 as per the agreement.
3. According to the Plaintiff's Complaint, the Defendant has refused to take the balance of Kshs.436,200 and to complete transaction.
4. Although the Defendant was served with the summons to enter appearance, she neither entered appearance nor filed a Defence.
5. PW1 informed the court that she entered into an agreement with the Defendant on 8<sup>th</sup> January 2013 for the purchase of Apartment Number 5 on the second floor of Block A and that the purchase price was Kshs.6,000,000.
6. According to PW1, she paid the purchase price through the firm of Mr. Gicharu (PW2) in cash.
7. It was the evidence of PW1 that the Defendant received the money from her advocate which she acknowledged in writing. The evidence of PW1 is that the Defendant has since declined to complete the transaction.
8. The Plaintiff's advocate in the transaction, PW2, informed the court that he paid the Defendant the purchase price of Kshs.6,000,000 in two installments of Kshs.3,000,000 each which she acknowledged in writing.
9. However, when they called for the completion documents from the Defendant's advocate, the advocate told them that they had no instructions in the matter.
10. The Plaintiff's advocate filed brief written submissions and authorities which I have considered.
11. PW1 produced in court the Agreement for sale drawn by the Defendant's Advocate dated 8<sup>th</sup> January 2013.
12. In the agreement, the Plaintiff was purchasing Apartment number 5 on the second floor of block A situated on L.R. Number 4805, 4806, 4807 and 4808.

13. The purchase price is indicated as Kshs.6,000,000, which amount was supposed to be paid in full to the vendor upon execution of the agreement.
14. According to the acknowledgment note dated 4<sup>th</sup> January 2013, and signed by the Defendant, she received Kshs.3,000,000 being the final installment from the Plaintiff's advocate's office.
15. In the e-mail dated 17<sup>th</sup> January, 2013, the Defendant's advocate acknowledged the fact that his client had received the entire purchase price.
16. The Plaintiff's evidence has not been controverted. Indeed, the Defendant has not traversed the allegations raised in the Plaint.
17. Having considered the evidence before me, I find and hold that the Plaintiff has proved his case on a balance of probabilities.
18. For those reasons, I allow the Plaint dated 4<sup>th</sup> April, 2014 as prayed.

Dated and delivered in Malindi this **13<sup>th</sup>** day of **November** 2015.

**O. A. Angote**

**Judge**



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