

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL SUIT 87 OF 2011

LABAN MBOGO KIHARA

ROSE MUTHONI MWAURA.....PLAINTIFFS

-VERSUS-

JOHN NGANGA NJOGU.....DEFENDANT

JUDGEMENT

1. On 7th August, 2010 the two Plaintiffs entered into an agreement with the Defendant for the sale of 5 acres out of a land parcel LR LAMU/HINDI/MAGOGONI/310 owned by the Defendant. The agreed purchase price was Kshs.650,000/-. It is the Plaintiff`s case that the Defendant has breached the sale agreement by offering the entire land parcel to a third party despite receiving an advance payment of Kshs.150,000/-.
2. The Plaintiff`s prayer is for specific performance or in the alternative, the refund of monies paid over, interest thereon and a penalty in terms of special condition No. 6 of the sale agreement.
3. The Defendant did not enter appearance or file a defence and an interlocutory judgement was entered on 4/8/11. During formal proof, the Plaintiffs adduced oral and documentary evidence in support of their claim. They asked the court to order specific performance against the Defendant.
4. There is no doubt that the Plaintiffs entered into the sale agreement with the Defendant. The Plaintiffs have through their evidence proved the allegations of breach particularized in the plaint.
5. A specific remedy for breach was prescribed by the parties in their agreement, as stipulated in special condition No.6. The Plaintiffs are clearly entitled to a refund of monies paid to the Defendant pursuant to the agreement, that is Kshs.150,000/-. They are also entitled to the agreed penalty being 25% of the purchase price, which is Kshs.162.500/-.
6. Regarding interest, the same will only apply to the sum of Kshs.150,000/- proven as paid over to the Defendant, starting from the date of this judgment.
7. The Plaintiffs are awarded the costs of the suit. Judgement is entered accordingly for the Plaintiffs against the defendant.

Delivered and signed on this **22nd** day of **February, 2012** at Malindi

in the presence of Mr. Ochieng holding brief for Mr.

Nyabicha for plaintiff, No appearance for defendant.

C. W. Meoli
JUDGE