



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

**AT MALINDI**

**ELC CIVIL CASE NO. 228 OF 2014**

**JOHN MWAURA MUKURA.....PLAINTIFF**

**=VERSUS=**

**JOSPHAT MWAI GACENGA.....DEFENDANT**

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

1. In the Plaintiff dated 10<sup>th</sup> December, 2014, the Plaintiff averred that on 31<sup>st</sup> March, 2007, he executed a contract of sale of a portion of parcel of land known as Lamu Lake Kenyatta 11/236.
2. According to the Plaintiff, the purchase price was agreed at Kshs.20,000 per acre; that he paid Kshs.40,000 as per the agreement and that he took actual possession of the land and commenced developments.
3. It is the Plaintiff's case that the Land Control Board gave its consent for the transfer of the land to him but the Defendant has refused to transfer the land to him.
4. The Plaintiff is claiming for an order compelling the Defendant to execute the transfer document and in the event he refuses, the Deputy Registrar of this court to execute the said documents in respect of two (2) acres of parcel of land known as Lake Kenyatta/11/236.
5. In his Defence, the Defendant averred that it is the Plaintiff who filed a restriction on the land thus stopping the subdivision of the land; that the Plaintiff cannot file a restriction on the land then run to court for an order of specific performance and that the Plaintiff should pay for the cost of the suit.
6. Although the Defendant was served with a hearing notice, he did not attend court to testify.
7. The Plaintiff, PW1, reiterated the averments that are in his Plaintiff. The Plaintiff also produced the sale agreement that he entered into with the Defendant dated 31<sup>st</sup> March, 2007.
8. PW1 also produced in evidence the Title Deed and the official search showing that the Defendant is the registered owner of the parcel of land known as Lamu/Lake Kenyatta 11/236 measuring 4.9 Ha.
9. The Defendant has not denied that he sold a portion of the suit property to the Plaintiff. In his Defence, the Defendant averred that it is the Plaintiff who registered a restriction on the land thus making it impossible for him to subdivide the land.
10. I have perused the official search that was produced by PW1. Indeed, the search shows that the Plaintiff registered a restriction against the title on 24<sup>th</sup> December, 2013.
11. Considering that the Land Control Board gave its consent for the sub-division of the suit property on 4<sup>th</sup> December, 2013, the restriction by the Plaintiff caused the delay of the said subdivision. In the circumstances it is the Plaintiff who should be blamed for the delay in the finalisation of the transaction.
12. It is for the reasons that I have given above that I allow the Plaintiff's Plaintiff dated 10<sup>th</sup> December, 2014 with no orders as to costs.

Dated, signed and delivered in Malindi this 14<sup>th</sup> day of July, 2016.

**O. A. Angote**

**Judge**