

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 43 of 2008

JOSEPH TOMU OTANGA.....PLAINTIFF

VERSUS

FELICITY WANJIRA KING'ORI.....DEFENDANT

RULING

This is an interlocutory matter to grant restraining orders. Applicant claims in adverse possession some portion of the land registered in the name of the Respondent. It is shown that the Applicant entered into the Respondents property by consent of the Respondent and has been residing on the land as an employee for some time (he says 19 years.)

Upon my perusal of the material now before the court, I cannot say that the Applicant has demonstrated chances of the success on his case a person who has entered land with the consent of owner is not in a diverse possession. Also no irreparable damage has shown that cannot be compensated his damages. I find no good reason to restrain a proprietor of land from using her land as she wishes. She has guaranteed rights under registered land Act Cap 300.

I therefore dismiss this application. However the order shall be stayed for a period of 4 weeks to enable the Applicant to find his way out. Costs to the Respondent.

Dated this 16th May, 2008.

J. N. KHAMINWA

JUDGE