

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. 2644 OF 1993 (0.S.)

JAMES KAMURU KAMAU.....PLAINTIFF

VERSUS

LUCY MUTHONI KABATA.....1ST DEFENDANT

JOHN KAMAU KABATA.....2ND DEFENDANT

RULING

By his Notice of Motion, filed on 29/9/2000, the applicant seeks for an order of inhibition, inhibiting any registration or any dealing with land parcel number Nyandarua/Njabini/465 until the final determination of his suit which is based on a claim under adverse possession:

This current application is based on the grounds that the applicant believes that the respondents are negotiating for the sale of the subject land to third parties.

The application is opposed. In his replying affidavit, Johnson Kamau Kabata depones that the applicant's claim is res judicata, as the matter was concluded in Nairobi RMCC No. 2116 of 1978 and further that the applicant has never been in occupation of the suit premises.

Upon perusal of the pleadings herein I note that in the matter before the Senior Resident Magistrate pertained to a land purchase transaction.

The matter in issue here relates to adverse possession. This was not raised or even addressed in the Resident Magistrate's Court. The issue of res judicata can not therefore arise, as the matters in issue in this suit, are not substantially the same as in the other suit. The proprietor of the subject land who was the defendant in that other suit, and who is now deceased, had admitted at the hearing, that the applicant who was the plaintiff therein was in occupation of a portion of 5 acres of the subject land and that he had erected a house thereon. Although judgment had been entered against the deceased the terms of the said judgment have remained unsatisfied and the applicant claims that he has remained in possession of a portion of the subject land, and hence his claim for adverse possession in this suit.

Having taken into account the submissions of both counsel and the pleadings herein, I am convinced that the applicant has a prima facie case with a probability of success.

I therefore do grant an order to pray No.1 of the said application. The respondents shall bear the costs of this application.

Dated and delivered at Nairobi this 20th day of January 2001.

JEANNE GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of Mr. Kinyanjui holding brief for Mr. G.B. M. Kariuki for the

plaintiff/applicant.