

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 3136 OF 1997

SAMMY MWANGI KARIETHE.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD

NYERI BRANCH.....DEFENDANT

R U L I N G

After the court dismissed the plaintiff's application for an injunction, some parcels of land were sold to satisfy the decree. Soon thereafter the plaintiff applied to the court for injunction orders under Order 39 Rules 1 and 2 of the Civil Procedure Rules to restrain the respondent from transferring the sold properties and from advertising for sale the remaining properties.

The thrust of the application is that the properties were sold at way below the market or reserved prices.

The learned counsel for the respondent has raised the point that the matter is res-judicata. I have listened to both learned counsel. The provisions of section 7 of the Civil Procedure Act do not apply and, with respect, the matter is not res judicata. However, this is not the end of the problem for the plaintiff applicant. The plaintiff has to comply with order 21 Rules 78 and 79 of the Civil procedure Rules. And so, whereas I have held that the matter is not res-judicata, I now invite the plaintiff to show that he has complied with the said provisions.

Dated and delivered at Nairobi this 26th day of February, 1998.

A. MBOGHOLI MSAGHA

JUDGE