



**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**MISC. CIVIL APPL. NO.380 OF 2010**

ANTHONY NGANGA ..... 1<sup>ST</sup> APPLICANT

SUSAN NGANGA ..... 2<sup>ND</sup> APPLICANT

VERSUS

THE CHIEF LAND REGISTRAR ..... RESPONDENT

**RULING**

The applicants are proprietors in common in equal shares of plot **No.NAKURU MUNICIPALITY/BLOCK 5/239** having acquired it on 5<sup>th</sup> October, 2001.

They have now learnt that on **7<sup>th</sup> July, 2005** the Land Registrar registered a restriction against the suit property barring any transaction or dealing with the suit property except with the Registrar's consent or order.

The applicants have averred that before the registration of the restriction the Registrar did not involve or notify them. The applicants have brought the instant application for orders that the restriction in question be removed, lifted and/or varied. The application and the hearing date were duly served upon the respondent who neither filed a response nor attended the court when the application was canvassed. It is common ground that the applicants are the registered proprietors of the suit property. It is equally not in dispute that a restriction in dealing with the suit property has been registered. The suit property is, of course registered under the **Registered Lands Act**. By dint of **Part VIII, Section 136**, for the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land;

**“ . . . . . after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restraining dealings with any particular land . . . . .”** (Emphasis supplied)

By section 137(1) the Registrar . . .

**“ . . . . . shall give notice in writing of a restriction to the proprietor affected thereby.”** (Emphasis added)

It has been deposed, without being controverted that the Registrar did not give notice to, or hear the applicants before registering the restrictions thereby contravening the law.

This court has powers donated by **section 138(2)** of the **Registered Land Act**, upon application by any proprietor affected by the restriction and upon notice to the Registrar, to remove or vary the restriction.

The Registrar having failed to follow the procedure as demonstrated above, this court orders that the restriction registered on the **7<sup>th</sup> July, 2005** by the Registrar be and is hereby forthwith removed. I make no orders as to costs.

**Dated and delivered at Nakuru this 4<sup>th</sup> day of February, 2011.**

**W. OUKO**  
**JUDGE**