



**Beth Ndorongo t/a Beth Ndorongo & Co Advocates v Ndung'u (Environment and Land Appeal E011 of 2023) [2025] KEELC 6006 (KLR) (9 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6006 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E011 OF 2023  
AK BOR, J  
SEPTEMBER 9, 2025**

**BETWEEN**

**BETH NDORONGO T/A BETH NDORONGO & CO  
ADVOCATES ..... APPELLANT**

**AND**

**SAMUEL KARANJA NDUNG'U ..... RESPONDENT**

**JUDGMENT**

1. This appeal was lodged against the judgment of Hon J.A Otieno, Senior Resident Magistrate, delivered in Embu ELC Case no. 66 OF 2021 Samuel Karanja Ndung'u v Beth Ndorongo T/A Beth Ndorongo & Co. Advocates on 5/7/2023. The Respondent instituted that suit in the magistrates' court seeking to remove a restriction which he claimed the Appellant registered against his parcel of land known as Ngandori/Kirigi/5551. He claimed that the Appellant placed the restriction against his land without any colour of right and without disclosing on whose instructions and interest she acted upon.
2. In her defence, the Appellant averred that the restriction was lodged on behalf of the Respondent's son, John Kimani Kamau. She averred that the Respondent should have instituted a suit against John Kimani Kamau and not her since she was acting on his behalf and had no personal interest in the land in question.
3. The trial court in its judgment found in favour of the Respondent and observed that the details of the restriction revealed that the Appellant was the one who placed the restriction and that it was incumbent upon the Appellant to call the client as a witness to explain why the restriction should not be removed. The trial court observed that the Appellant's failure to call the client as a witness meant that the defence had not offered a rebuttal to the Respondent's case. The court directed the Land Registrar, Embu to remove the restriction placed against the suit land. That is what led to this appeal.



4. In the memorandum dated he Learned Magistrate was faulted for failing to find that the Land Registrar was the point of call in the removal of restriction under Section 78 (1) and (2) of [Land Registration Act](#) and Regulations 81 (4) & (5) of the Land Registration (General) Regulations, 2017. The trial court was also faulted for directing the Land Registrar to remove the restriction yet the Land Registrar was not a party to the suit and was not given a notice in accordance to Section 78(2) of [Land Registration Act](#).
5. The other grounds were that the Learned Magistrate erred by condemning the Appellant to pay costs of the suit yet the Appellant was carrying out the instructions of her client and that the Respondent did not issue a notice to the Appellant before filing suit; that the trial court failed to find that the Respondent should have sued the Appellant's instructing clients who were well known to him; that the trial court failed to observe the principles of natural justice in that the party against who the restriction was placed was not given an opportunity to be heard either before court or the Land Registrar; and lastly, that the trial court failed to find that the Appellant did not have any personal interest in the subject matter and he was only carrying out the instructions of her client and there was no negligence on her part.
6. The issue for determination is whether the appeal has merit. It is not in dispute that there is a restriction placed against the suit land by the Appellant's law firm. The Appellant maintained that she registered the restriction on behalf of her client, John Kimani Kamau. That client was neither called as a witness nor a party to the suit to explain the reasons for retaining the restriction against the suit land. As the trial court rightly observed, it was the Appellant's responsibility to call her client to explain the purpose of the restriction.
7. Restrictions serve a legitimate purpose of protecting the rights of a party with an interest in land or to prevent adverse dealings. They are meant to last for a particular period, or until the occurrence of a certain event or until further orders as provided for in Section 76(2) of the [Land Registration Act](#). In this case, the basis for the restriction remains unclear since the Appellant disclaimed any personal interest in the land and declined to avail the person on whose behalf she claimed to have acted on their behalf.
8. The Appellant contended that the trial court erred by failing to give all parties affected by the restriction an opportunity to be heard. This Court finds no merit in that argument. The Appellant registered the restriction. If she did it on behalf of a client then it was her duty to present that client to court to justify the restriction or provide evidence that she was acting on the client's instructions. What she tendered in evidence was a letter addressed to the Land Registrar to register a restriction on behalf of John Kimani Kamau.
9. The court notes that that the Appellant's letter dated 20/8/2013 referred to a different parcel of land being Kagaari/Kigaa/7564 indicated to be registered in the name of Joseph Kamau Njeru, and John Kimani Kamau was indicated as the Appellant's client for whose benefit the Land Registrar was requested to lodge a restriction. As matters stand, there is no evidence that the Appellant was instructed to lodge a caution against the Respondent's land being Ngandori/Kirigi/5551.
10. The Appellant also faulted the trial court for failing to appreciate that the Land Registrar is the proper authority to determine the removal of restrictions pursuant to Section 78(1) and (2) of the [Land Registration Act](#) and Regulation 81(4) & (5) of the Land Registration (General) Regulations. Section 78 (1) of the [Land Registration Act](#) provides the Registrar may, at any time and on application by any person interested or at the Registrar's own motion, after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction. Subsection 2 states that upon receipt of the application by a proprietor affected by a restriction, and upon notice to the



Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.

11. The trial court rightly held that Section 78(1) is permissive, not mandatory. Section 78(2) clothes the court with the jurisdiction to remove restrictions but requires that notice be given to the Land Registrar. In this case, there is no doubt that no such notice was issued. While it may not be necessary to join the Land Registrar as a party to the suit, the law requires that a notice must be served upon the Land Registrar before the court is moved by the proprietor to remove the restriction.
12. The Appellant argued that since the Respondent did not issue a notice of intention to sue then he was not entitled to the costs of the suit. Generally speaking, costs follow the event under Section 27 of the [\*Civil Procedure Act\*](#). As the successful party in the proceedings before the trial court, the Respondent was entitled to the costs of the suit.
13. The appeal fails and is dismissed with costs.

**DELIVERED VIRTUALLY AT EMBU THIS 9<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**K. BOR**

**JUDGE**

In the presence of:

No appearance for the Appellant

Mr. Samuel Karanja Ndungu- the Respondent

