



REPUBLIC OF KENYA



**In re RMM (Environment and Land Miscellaneous Application  
E003 of 2022) [2022] KEELC 2584 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2584 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2022  
CK NZILI, J  
JULY 6, 2022  
IN THE MATTER OF AN APPLICATION BY RMM  
AND  
IN THE MATTER OF AN APPLICATION TO LIFT A RESTRICTION  
OVER TITLE NO. ABOOTHUGUCHI/MAKANDUNE/XXXX**

**RULING**

1. The applicant seeks the court to lift a restriction registered against title no. Abothuguchi/Makandune/xxxx over whose title deed was issued on 29.1.2013 while the applicant was a minor but is currently of the age of majority.
2. The application is supported by an affidavit sworn on 14.1.2022 by RMM attaching copies of his birth certificate, identity card and a title deed.
3. When the matter came up for hearing on 1.3.2022, the applicant was granted leave to put in a supplementary affidavit within 7 days so as to include a recent search certificate.
4. From the copy of the title deed it is apparent the title deed was issued to three parties among them two adults HNW, ANN and the applicant who at the time was described a minor going by the attached birth certificate and ID cards. The applicant was born on 16.1.2003. So, at the time the title deed was issued, he was aged 10 years.
5. Section 47 of the *Land Registration Act* allows a minor to hold title to land through a trustee while Section 47 thereof provides that the name of a person under the age of 18 years may be entered in the register.
6. In this instance it is not clear the circumstances under which the applicant was registered as a co-proprietor to the property.
7. The other two co-proprietors have not been made parties to this application. In absence of any instructions to the contrary Section 91 (3) of the *Land Registration Act* presupposes the three co-



proprietors hold the interests thereof as tenants in common in equal shares with an undivided share in the whole.

8. Section 91 (6) of the Act provides that no tenant in common shall deal with their shares, except with the consent in writing of the other tenants. Further the Act provides under Section 93 that joint tenants may execute an instrument in the prescribed form signifying their agreement to sever or partition the joint ownership.
9. Other than the name minor in the title deed, the encumbrance section does not include any restriction to the title, notwithstanding the law allows a land register to place a restriction on every parcel of land where a minor is registered as a proprietor. In this case the title deed is endorsed with the word minor to notify the members of the public that the land is co-owned with a minor.
10. The applicant herein deposes he has now attached the statutory capacity to deal with the subject land after attaining the age of 18 years.
11. Rule 66 of the Land Registration (General) Regulations 2017 provides that a transfer by a trustee shall be in form LRA 52 as set out in the sixth schedule for any undivided share by joint proprietors in common.
12. Section 70 of the *Land Registration Act* however grant the court the power to remove or lift any restrictions upon the expiration of the time stated in the inhibition. The land registrar has powers to cancel the inhibition once satisfied of the occurrence of any event stated in the inhibition.
13. As regards restrictions, Section 76 of the *Land Registration Act* provides that the same endures for a particular period or until the occurrence of a particular event or until a further order is made. The Land Registrar under Section 78 of the Act upon an application by an affected party may order the removal or variation of a restriction. Section 78 (2) of the Act also grants the court the power to order for the removal of the restriction.
14. As indication above, the applicant has not served or made the co-proprietors parties to the application. The applicant has not served or made the co-proprietors parties to the applicant nor has he explained the circumstances under which the suit property was registered under their joint names.
15. It is not the duty of the court to make pronouncements on unpleaded issues and or grant orders which have not been sought for.
16. Be that that as it may and given the events leading to the placement of the restrictions being the age of the applicant at the time of registration of the title deed, I see no useful reason why the restriction should subsist since the applicant is now a major.
17. I proceed to allow the application. The restriction over the title to the suit property is hereby lifted in terms of the name minor appearing thereof. There would be no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 6<sup>TH</sup> DAY OF JULY, 2022**

In presence of:

C/A: Kananu

No appearance

**HON. C.K. NZILI**



**ELC JUDGE**

