



**Brothers of Our Lady Mother of Mercy Registered Trustees v Land Registrar,
Nakuru Land Registry (Environment and Land Miscellaneous Application
E001 of 2025) [2025] KEELC 4590 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4590 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025
MAO ODENY, J
JUNE 19, 2025**

BETWEEN

**BROTHERS OF OUR LADY MOTHER OF MERCY REGISTERED
TRUSTEES APPLICANT**

AND

LAND REGISTRAR, NAKURU LAND REGISTRY RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 14th January 2025 by the Applicant seeking the following orders:
 - a. Spent
 - b. That an order of mandamus be issued against the Respondent to remove and/or lift the restriction pursuant to the provision of Section 78 (1) and (2) of the [Land Registration Act, 2012](#) to all that property known as land reference Number Nakuru Municipality Block 23/523.
 - c. That cost of this Application be provided for.
2. The application was supported by the affidavit of Brother Elijah Agilo, the Provincial Representative of the Applicant who deponed that on 10th May, 2016, the Nakuru Residents Association (NAKA) placed a restriction on the parcels of land in the guise of the said land being public land. He further deponed that they filed a case ELC No. 10 of 2018 [Brothers of Our Lady Mother of Mercy Registered Trustees v National Land Commission & Chief Land Registrar](#) where the Honourable Court made a finding on 19th January 2019 that they are the legal owners of the parcel of land known as Nakuru Municipality / Block 23/523.



3. The Applicant's Provincial Representative further deponed that they have sought the removal of the said restrictions and written numerous correspondences to the Respondent but their request has never been acted upon.

Applicant's Submissions

4. Counsel for the Applicant filed submissions dated 4th February, 2025 and identified the issues for determination as follows:
 - a. Whether the court should issue an order of mandamus to remove the restriction placed on Nakuru Municipality Block 23/523 pursuant to Section 78 (1) and (2) of the [Land Registration Act, 2012](#)?
 - b. Who should bear the cost of this proceedings?
5. On the first issue, counsel submitted that the Applicants are the legal owners of the suit property and they therefore qualify to enjoy their proprietary rights as stipulated under Article 40 of the [Constitution](#). Counsel submitted that the Applicants followed the requirements as stated under Section 78 of the [Land Registration Act, 2012](#) and applied through the Respondent to lift the restriction placed on their land but the Respondent did not act but rather claimed that there were no orders directed at them to lift the said restriction.
6. It was counsel's submission that the Respondent is duty-bound by provisions of statute to order the removal of a restriction upon application by any person interested or at the Respondent's own motion and after giving the parties affected by the restriction an opportunity to be heard. Counsel relied on Section 24 of the [Land Registration Act, 2012](#) and asked the court to allow the orders sought. Counsel also relied on Article 47 of the [Constitution of Kenya](#) and Sections 76 and 77 of the [Land Registration Act](#).
7. Ms. Angano relied on the cases of [Sedani & Another v County Land Registrar, Kisumu & Another](#) (Constitutional Petition 4 of 2022) [2023] KEELC 111, [David Macharia Kinyuru v District Land Registrar, Naivasha](#) eKLR [2017], [Jane Wanjiru Nyota & 2 others v Land Registrar, Kajiado County & Another](#) [2020] eKLR, [Njara v Nyabururu Land Registrar](#) (Environment & Land Miscellaneous Case E010 of 2021) [2022] KEELC 3 374 (KLR), [Kenya National Examination Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others](#) [1997] eKLR and [Republic v Land Registrar, Nakuru Land Registry; Kimari & 2 others \(Ex parte Applicants\) \(Administrators of the Estate of the Late Kenneth Kimari Kabura\)](#) (Environment and Land Judicial Review Case E 3 of 2021) [2023] KEELC 17298 (KLR) and urged the court to allow the Application as prayed with costs.

Analysis and Determination

8. The issue for determination is: whether this court should issue an order for the removal of the restriction placed on Nakuru Municipality Block 23/523 pursuant to Section 78 (1) and (2) of the [Land Registration Act, 2012](#).
9. Section 78 of the [Land Registration Act](#) provides as follows:
 1. The Registrar may, at any time and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.



2. Upon the application of 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.
10. It was the Applicant's submission that they applied through the Respondent to lift the restriction placed on their land but the Respondent did not act but rather claimed that there were no orders directed at them to lift the said restriction.
 11. The Applicant has attached a copy of the decree issued and it is dated 3rd March 2023 where the court ordered and decreed as follows:
 1. That the Petitioner be and is hereby declared the legal owner of all that parcel of land known as Title Number Nakuru Municipality/Block 23/523.
 2. That a declaration be and is hereby issued restraining the Respondent by themselves, servants and agents from interfering in any way with the register relating to suit property Nakuru Municipality/23/523.
 3. That an order be and is hereby issued quashing the decision of the Respondent to revoke a title in the names of Brothers of Our Lady Mother of Mercy (Registered Trustees) herein the petitioner through a Gazette Notice Vol CXIX- No 97 Nairobi, contained in the Kenya Gazette Special Issue dated 17th July, 2017.
 4. That an order be and is hereby issued that the Respondent by themselves, servants, agents to cancel any entry on the Petitioner's certificate of title made as a consequence to or in furtherance of their action on all that parcel of land comprised in the title number Nakuru Municipality/ Block 23/523.
 5. That costs of the petition to the petitioner.
 12. In the case of *John Kamau Kinyanjui v Thika District Land Registrar* [2017] KEELC 714 (KLR), the court stated as follows:

“It is apparent therefore that the court has discretion to make an order for removal of any restriction placed on a title. However as usual, the said discretion must be exercised judicially.”
 13. The Respondent although served, did not appear before this court to explain why the restriction should continue being in the register. The Respondent was served and an affidavit of service sworn by Hebron Odhiambo Omolo on 20th January, 2025 was filed in court.
 14. There is a judgment and decree that the Applicant is the legal owner of the suit land which they are entitled to enjoy under Article 40 of the *Constitution*. I find that the Notice of Motion Application dated 14th January, 2025 has merit and consequently, issue the following specific orders:
 - a. The Land Registrar Nakuru is hereby ordered to lift the Restriction placed on the property known as land reference Number Nakuru Municipality Block 23/523 within 14 days hereof.
 - b. Costs are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

