



Karasha & another (Suing as the Administrators and Personal Representatives of William Lemaiyan Karasha) v Kingangir (Sued as Personal Representative of Kingangir ole Ntiamput) & another; Land Registrar, Kajiado West (Interested Party) (Environmental and Land Originating Summons E004 of 2024) [2025] KEELC 7218 (KLR) (15 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2024
LC KOMINGOI, J
OCTOBER 15, 2025**

BETWEEN

MARY NASHILU KARASHA 1ST PLAINTIFF

ERICK KURAMPE KARASHA 2ND PLAINTIFF

**SUING AS THE ADMINISTRATORS AND PERSONAL REPRESENTATIVES
OF WILLIAM LEMAIYAN KARASHA**

AND

**NASHEPAE ENE KINGANGIR (SUED AS PERSONAL REPRESENTATIVE OF
KINGANGIR OLE NTIAMPUT) 1ST DEFENDANT**

CHIEF LAND REGISTRAR 2ND DEFENDANT

AND

LAND REGISTRAR, KAJIADO WEST INTERESTED PARTY

JUDGMENT

1. This suit instituted by way of Originating Summons dated 28th June 2024 seeks:
 - i. That this Hon. Court be pleased to issue an order declaring and vesting all that property known as title Kajiado/Loodariak/1155 in favour of the Administrators of the Estate of William Lemaiyan Karasha (deceased).
 - ii. That this Hon. Court be pleased to issue an order directing the Interested Party to register all that property known as title Kajiado/Loodariak/1155 in favour of the Administrators of the Estate of William Lemaiyan Karasha (deceased).



- iii. That this Hon. Court be pleased to issue an order for removal of the restriction lodged at the behest of the 2nd Defendant on 26th April 1994 on such condition as it may deem fit to give effect to the above orders.
 - iv. That costs be provided for.
2. The Plaintiffs through the Supporting Affidavit sworn by Erick Kurampe Karasha state that sometime in the year 1994, the late William Lemaiyan Karasha (hereinafter referred to as “Karasha”) acquired suit parcel; Kajiado/Loodariak/1155 measuring approximately 38.4 hectares from the late Kingangir Ole Ntiamput for Kshs. 100,000. The parties obtained a consent to transfer from the Oloolaiser Land Control Board on 4th January 1994. The late Karasha paid the whole purchase price and the parties the appeared before Richard Ongeche Onyango (Advocate) now deceased and signed the transfer form. This together with the original title deed and other completion documents were then handed over to the purchaser to effect the transfer.
 3. However, when the late Karasha was about to book the transfer for registration, he learnt that the 2nd Defendant had caused a restriction to be registered against the suit property on 26th April 1994. The purchaser, Karasha, nonetheless, assumed possession of the suit property and continued to reside thereon until his demise in 2012.
 4. After the demise of the seller -the late Kingangir Ole Ntiamput, the suit property became subject of a dispute which was lodged by the 1st Defendant at the Kajiado North Land Disputes Tribunal. After the hearing, the Tribunal rendered its decision dated 9th May 2012 in favour of the purchaser, William Lemaiyan Karasha and the decision was forwarded to the Magistrate’s Court for adoption of the award as the judgement of the Court. Unfortunately, Karasha passed away on 4th May 2012 before the decision of the tribunal and the award was not filed for adoption. Thereafter, the Land Disputes Tribunal Act was also repealed rendering the Tribunals defunct.
 5. The Plaintiffs therefore sought that the suit property be vested to the purchaser since the conditions for sale had been met, and the decision of the tribunal was never challenged.
 6. The Defendants who were served by way of substituted service by advertisement in the local dailies neglected and or refused to file a response to the Originating Summons.
 7. On the 20th November 2024 the court directed that the Originating Summons be canvassed by way of written submissions.

Submissions of the Plaintiffs

8. Counsel submitted that it was unrefuted that there was a valid sale between the late Karasha and the late Kingangir, the whole purchase price had been paid but the transfer could not be registered owing to a restriction placed by the 2nd Defendant on 26th April 1994. However, the late Karasha took possession of the property and resided on it until his demise in 2012. As such, the issues for determination were whether the Plaintiffs were entitled to an order vesting the title of the suit property in their names and whether the restriction placed on the suit property should be removed for registration of the property.
9. On whether the Plaintiffs were entitled to an order vesting the title of the suit property in their names, it was submitted that in the case of *Re Santaben Devshi Mulji Shah & Anjali Devshi Mulji Shah (Ex parte Applicants) [2024] KEELC 3375 (KLR)* the court held that equity regards as done, that which ought to have been done. In this regard, the purchaser had done everything regarding the transaction save for registration. On the issue of absence of a written sale agreement, counsel submitted that constructive trust and proprietary estoppel were applicable and enforceable doctrines from case to case in matters



of land as held in *Arvind Shah & others vs Mombasa Bricks and Tiles Ltd and Willy Kimutai Kitilit vs Michael Kibet* (2018) eKLR. As such, the Court should allow the Plaintiffs to finalise the registration of the suit property in favour of the Estate of the Late Karasha since failure to finalise the registration was due factors beyond the control of the purchaser.

10. On whether the restriction placed on the suit property should be removed for registration of the property, counsel submitted that when the late Karasha visited the Lands Registry he found that the 2nd Defendant had caused a restriction to be registered against the land and this prevented him from registering his interest in the property. Counsel submitted that the restriction had been lodged for an inordinate period with the Plaintiffs not being given the basis of the restriction was akin to breach of rules of natural justice citing *R vs Land Registrar & Another Ex parte Joyce Odhiambo & 5 others' National Land Commission & another (Interested Parties)* [2022] eKLR. As such, the court should grant the orders sought.

Analysis and Determination

11. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited and find that the issues for determination are:
 - i. Whether an order ought to be issued vesting title; to Kajiado/Loodariak/1155 in favour of the Plaintiffs as Administrators of the estate of William Lemayian Karasha;
 - ii. Whether the restriction entered on 26th April 1994 ought to be removed to allow registration of the property;
 - iii. Who should bear costs of this suit?
12. The Plaintiffs approached this court seeking a declaration and registration of the Land known as Kajiado/Loodariak/1155 in favour of the late William Lemayian Karasha. It is their case that the late William Lemayian Karasha purchased the said property measuring approximately 38.4 hectares sometime in the year 1994 from the late Kingangir Ole Ntiamput. All documents were obtained and the late William Karasha took possession of the property. As proof of this claim, a consent from the land control board dated 4th January 1994 and duly executed transfer form were produced.
13. It is their case that, when he lodged the documents at the Kajiado Lands registry for registration, it was discovered that a restriction had been registered against the title. A certificate of official search produced as exhibit confirms that a restriction was placed by the Chief Land registrar on 26th April 1994 vide a letter referenced as Kjd/A/10 Vol. III/188 dated 25th April 1994. This letter was not produced. Hence the reason for the restriction is not clear. The said William Karasha took possession of the land and had been in possession since 1994 until sometime in 2012 when the 1st Defendant lodged a complaint against him.
14. The evidence of the plaintiffs has not been controverted. The Plaintiff have proved that there was a valid transaction between the late William Karasha and Kingangir Ole Ntiamput in the year 1994. And that the transfer and registration was not effected due to the restriction order.
15. On the issue of the restriction order, the law applicable at the time was the Section 136 of the Registered *Land Act*, which stated thus;

“ 136.

- (1) 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, lease or charge, 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 restricting dealings with any particular land, lease or charge.

- (2) A restriction may be expressed to endure-
 - (a) for a particular period; or
 - (b) until the occurrence of a particular event; or
 - (c) until the making of a further order.

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

- (3) The Registrar shall make a restriction in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

137.

- (1) The Registrar shall give notice in writing of a restriction to the proprietor affected thereby.
- (2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.”

16. Section 76 of the *Land Registration Act*, 2012 also provides that a Registrar can cause a restriction, prohibiting or restricting dealings with any particular land, lease or charge. It states as follows;

- “(2) A restriction may be expressed to endure-
- (a) for a particular period;
 - (b) until the occurrence of a particular event; or
 - (c) until a further order is made,

and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.”

17. The above provisions, gave the Chief Land Registrar a mandate to place a restriction on the suit property for purposes of preventing any dealings adverse to the suit property. However, this restriction was placed in 1994 which is over three decades ago. The Court is of the opinion that a restriction is supposed to serve an intended purpose but should not unjustly prevent the owner from exercising their rights. Section 78 of the *Land Registration Act* which is a replica of Section 138 of the repealed Registered *Land Act* provides:

“78.



- (1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.
- (2) Upon the application of any proprietor affected by a restriction, and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.”

18. The Plaintiff has approached court seeking the lifting of the restriction, and the Court is empowered to order for such removal if it deems fit. The Court having held that the restriction placed on 1994 has been in place for an inordinate amount of time and that restrictions should not be placed indefinitely. I agree that if this practice is allowed and sanctioned, it would amount to unfair limitation of fundamental human rights such as access and utilisation of the property.
19. The next issue for consideration is whether the Court should order that property Kajiado/Loodariak/1155 be transferred and registered in the name of the late William Lemayian Karasha. This Court has found that there is uncontroverted evidence that the late William Karasha duly acquired the suit property and had requisite documents to effect the transfer and registration, but did not complete the transaction due to the restriction. There is no reason to decline to grant the said relief.
20. In conclusion, I find that the Plaintiffs have proved their case on a balance of probabilities as against the Defendants.
21. Accordingly, Judgement is entered in favour of the Plaintiffs in the following terms;
 - i. That the Land Registrar Kajiado West is hereby ordered to remove the restriction lodged at the directive of the 2nd Defendant on 26th April 1994.
 - ii. That the Land Registrar Kajiado West is hereby ordered to register the land known as Kajiado/Loodariak/1155 in favour of the Administrators of the Estate of the late William Lemayian Karasha.
 - iii. That the 1st Defendant by herself, her assignees, agents or anyone claiming in her names are hereby restrained from interfering with the said property; Kajiado/Loodariak/1155.
 - iv. That there be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15TH DAY OF OCTOBER, 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Wachira for the Plaintiffs.

N/A for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant – Peter.

