



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiku & 2 others v Mwaniki (Environment and Land Case
289 of 2018) [2025] KEELC 7178 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7178 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 289 OF 2018**

JA MOGENI, J

OCTOBER 9, 2025

BETWEEN

LYDIA WANJIKU 1ST PLAINTIFF

SOLOMON NJAU KAMUNGE 2ND PLAINTIFF

MARGARET WACUKA GITHINJI 3RD PLAINTIFF

AND

RICHARD NJUGUNA MWANIKI DEFENDANT

RULING

1. On 25/07/2023, the Applicant namely Richard Njuguna Mwaniki filed an Application by way of Notice of Motion of the even date under Order 51 Rule 1 of the Civil Procedure Rules 2010 Sections 1, 1A, 3 and 3A of the *Civil Procedure Act* (Cap 21 Laws of Kenya), against the 1st and 2nd Respondents namely Lydia Wanjiku and Solomon Njau Kamunge respectively. He is seeking the following Orders:-
 - a. That the restriction registered against Kabete/Nyathuna/1522 placed on 13th day of September 2002 be lifted
 - b. That raising orders do issue to order removal of a restriction against Kabete/Nyathuna/1522 by the Kiambu Land Registrar
2. The Application is supported by an eight (8) paragraphed Supporting Affidavit sworn on the even date by the Applicant and an annexed title deed issued to the Applicant on 5/07/2001 marked “RNM1” and a copy of the Green Card marked “RNM2” with an annexure of the Judgment delivered in this Court dated 20/12/2022.
3. The Application is also premised on grounds which include:-



1. That the Applicant is the registered and legitimate title holder of the parcel of land being Kabete/Ny Athunal1522.
 2. That the register of the said parcel of land has been registered with a Registrar's restriction dated 13th September 2002 which was registered at the request of the Plaintiffs.
 3. That the Applicant has requested the Plaintiffs herein to remove the said restriction from the register to enable the Applicant deal with the parcel of land but the request has been declined by the Plaintiffs for no reason.
 4. That the Applicant herein is in the dire need of utilizing the land and the restriction bars him from engaging in any dealings as long as the restriction is in place.
 5. That the Applicant herein is highly prejudiced by the failure to remove the said restriction and has not preferred any reason as to why the said request by the Applicant has been declined.
 6. That it is just and fair that the raising orders sought herein be issued to protect the integrity of the title to the parcel of land herein.
4. The Respondents did not oppose the Application herein and therefore it is unopposed. Further the Applicant asked the Court to consider the Notice of Motion as filed with the pleadings since he was not going to file any submissions.
 5. 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.
 6. I have considered the entire Application, the issues for determination are whether the Applicant is entitled to the orders sought and whether the Court is enjoined to grant the orders.
 7. The Applicant contended that he is the absolute and indefeasible proprietor of the suit land as shown on the document marked 'RNM 1' to his Application. At paragraph 2 of his Supporting Affidavit, he averred inter alia, that he is the registered owner of the suit land.
 8. He further averred that he has requested the Plaintiffs to remove the said restriction from the register to enable him deal with the parcel of land but the request has been declined by the Plaintiff for no reason. That he is in the dire need of utilizing the land and the restriction bars him from engaging in any dealings as long as the restriction is in place.
 9. He also attached a Judgment delivered by this Honorable Court that found the Plaintiffs/Respondents as having no locus to have brought the matter before this Court. The Applicant thus avers that he is entitled to enjoy all rights accorded to him thereon.
 10. Notably interest conferred on registration and rights of a proprietor are secured under Sections 24 and 25 of the Land Registrations Act, 2012 respectively. More fundamentally, the right to property is jealously protected under Article 40 (1) of *the Constitution* of Kenya, 2010.
 11. It is common ground that a restriction was registered in respect of the suit land on 13/09/2002 as shown on Green Card entries marked 'RNM2' and annexed to the Application. As already stated above, the Land Registrar has the discretion to make an order for a restriction under Section 76 (1) of the *Land Registration Act*, 2012.



12. In the case of Republic v Land Registrar, Nyeri County Registry & Another Markerryl Company Limited (Exparte Applicant) [2025] KEELC 2928 (KLR), the Court pronounced as follows at paragraphs 24 and 25:

“24. It was also apparent that when the Applicant came to learn of the restriction, they wrote a letter to the Respondents herein dated 8th April, 2024 seeking for the removal of the restriction. It is the Applicant’s case that the 1st Respondent has to-date failed to act upon and/or respond to the said request. It is to be noted that the removal of a restriction is provided for under Section 78(1) of the Land Registration Act as follows:

“78. Removal and variation of restrictions.

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.”

25. Arising from the foregoing, it was again clear to me that upon receipt of the Applicant’s letter, it was incumbent upon the Land Registrar to conduct a hearing to give all the parties affected by the restrictions an opportunity of being heard and thereafter order the removal or variation or retention of the restriction. By failing to notify the Applicant of the imposition of the restriction and again failing to hear them when they applied for its removal, the 1st Respondent acted illegally and failed to comply with the mandatory provisions prescribed by the empowering statute law to the detriment of the Applicant.”

13. In this case, the Plaintiffs were served with the Summons but, neither responded nor appeared in Court to explain why the restriction should continue being in force. 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.”

14. The Applicant’s averments are uncontroverted and he has ably demonstrated that he is the absolute and indefeasible proprietor of the suit land. There is no material placed before the Court to show that either overriding interests or exceptions under Section 26 of the Land Registration, Act 2012, exist to the title he holds in respect of the suit land.

15. In view of the above cited authorities, I do find the restriction made on 13/09/2002 over the suit land unsustainable. The Application is merited.

16. In the result and for those reasons, I find the Notice of Motion Application merited and is therefore allowed as prayed and I make the following specific orders: -

a. That the restriction registered against Kabete/Nyathuna/1522 placed on 13th day of September 2002 be and is hereby lifted.



- b. That raising orders are hereby issued for removal of a restriction against Kabete/ Nyathuna/1522 by the Kiambu Land Registrar.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 9TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

1st, 2nd and 3rd Plaintiffs – Absent

Mr. Kereu holding brief for Mr. Muturi for the Defendant

Melita – Court Assistant

