



REPUBLIC OF KENYA



Wekasa v Land Registrar Kakamega (Miscellaneous Application E019 of 2024) [2025] KEELC 8637 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E019 OF 2024
EC CHERONO, J
DECEMBER 4, 2025
IN THE MATTER OF WITHDRAWAL OF RESTRICTION
ON TITLE NUMBER NORTH KABRAS/LUANDETI/1704**

BETWEEN

JOHN MARAKA WEKASA APPLICANT

AND

LAND REGISTRAR KAKAMEGA RESPONDENT

RULING

1. By an Originating Summons brought under the provisions of Order 51 Rule 1 of the Civil Procedure Rules, and Section 73(1) of the [Land Registration Act](#) 2012 and all enabling provisions of the law dated 26th day of March, 2024 the Applicant hereinto seeks for the following orders;-
 - a. That the application herein be certified urgent and the same be heard during this current High Court Vacation 2024.
 - b. That the Honourable court be pleased to direct the Land registrar Kakamega (Respondent) to withdraw the Restriction placed on the Applicant's land North Kabras/Iluandeti/1704 on 4th October, 2000.
 - c. That costs of the application be in cause.
2. Upon service of the said application, the Respondent filed a notice of preliminary objection on the following grounds;
 - a. That the Applicant has not exhausted the mechanisms provided for under Section 78 (1) of the [Land Registration Act](#), 2012.



- b. That in the premises, the court herein lacks jurisdiction as the suit is premature, a waste of judicial time and an abuse of the court process.
 - c. That the applicant seeks substantive orders in a Miscellaneous Application which is not founded upon any substantive pleading.
3. When the matter was first presented before the trial court in ELC Kakamega (Justice D. Ohungo), the Applicant was asked why he had not moved the Land Registrar in the first instance pursuant to the provisions of the Land Registration Act. The Applicant was to inform the court on the progress of the principle of exhaustion before the trial Judge and update the court during the next court action. Before the next court action, this matter was transferred to this Honourable court for want of jurisdiction. However, instead of proceeding as had been guided by the Judge, the Applicant proceeded to have the application fixed for hearing before this court.
4. From the foregoing and the proceedings on record, it is apparent that the applicant has not invoked the provisions of section 78(1) of the Land Registration Act which requires that an application for removal of caution / restriction be made to the Land Registrar in the first instance. The said Section 78 stipulates 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.'
5. Having observed and made a finding that the procedure under section 78(1) of the Land Registration Act was not exhausted, the inevitable conclusion is that the Application herein is premature and this court has no option but to decline jurisdiction at this stage.
6. The upshot of my finding is that application dated 26th day of March 2024 is devoid of merit and the same is hereby struck out for want of jurisdiction. Costs are awarded to the Respondent.
7. It is so ordered.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 04TH DAY OF DECEMBER, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. M/S Khayo for Applicant.
2. Respondent/Advocate-absent
3. Bett C/A.

