

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC MISC. APPLICATION NO. E044 OF 2025

FRANCIS CHEPLAITI
APPLICANT

VERSUS

LAND REGISTRAR 1ST
RESPONDENT
OFFICE OF THE CHIEF
KIMONING LOCATION..... 2ND
RESPONDENT

RULING:

1. The Applicant herein filed a Notice of Motion dated 19th September, 2025, against the Applicants seeking the following orders: -
 - i. Spent.
 - ii. THAT the restriction registered on 19th March, 2018 against all that parcel known as Property Title No. TEMBELIO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY)/212 (hereinafter the “suit property”) by the Land Registrar at the instance of the Area Chief be and is hereby removed forthwith.
 - iii. THAT the Land Registrar Uasin Gishu County be directed to rectify the register accordingly.
 - iv. THAT costs of this Application be provided for.
2. The application is based on the 8 grounds on its face thereof and on the applicant’s Supporting Affidavit sworn on even date.

3. The applicant deponed that he is the registered proprietor of all that parcel known as TEMBELIO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY)/212 (hereinafter the “suit property”) and maintained that there is no dispute as to ownership or any other interest pending before any court of law.
4. It is his claim that sometimes on 19.03.2018, a restriction was registered against the suit property at the instance of the 2nd respondent, allegedly following a meeting convened at the Chief’s Office.
5. He thus contends that the registration of the said restriction was unlawful, irregular and without any legal basis since the 2nd respondent had not demonstrated any proprietary, beneficial or equitable interest in the suit property to warrant the lodging of such restriction within the meaning of sections 76 and 77 of the Land Registration Act, 2012.
6. It is also his claim that the said restriction was expressly unlimited in duration. That since the registration of the restriction on 19.03.2018, no claim of interest has ever been lodged, pursued or prosecuted by any person thus rendering the continued existence of the restriction unlawful and prejudicial on his rights as the registered proprietor.
7. In addition, it is his contention that the 2nd respondent has no statutory authority under the Land Registration Act, 2012 to determine ownership or to cause the registration of a restriction in the absence of a lawful claim.
8. It is now his claim that the said restriction has remained in force for over 7 years without justification, thereby unjustly

fettering his proprietary rights. He deponed that he is gravely ill and urgently require to utilize the suit property to raise funds for his medical treatment.

9. In conclusion, he averred that unless the said restriction is removed forthwith, he stands to suffer grave prejudice and denial of his constitutional right to property as guaranteed by the law. He thus urged the court to allow the application and grant the orders sought.
10. The application was opposed. The Respondents filed a Grounds of Opposition dated 23.10.2025 in response to the present application.
11. They explained that the restriction registered on 19.03.2018 was lawfully and procedurally entered pursuant to section 76 of the Land Registration Act, following a report and request from the Area Chief, Kimoning Location, for purposes of preserving the register pending the resolution of an ongoing ownership dispute.
12. They thus maintained that the 1st respondent acted within his statutory powers, in good faith and for a proper purpose to prevent illegal transactions, safeguard the public interest as well as preserve the property until an amicable settlement or formal adjudication of the dispute. He dismissed the allegations of unlawful registration as unfounded and unsupported by any material evidence.
13. It is their claim that pursuant to section 78(1) of the Land Registration Act, the applicant first ought to have applied to the Land Registrar for removal of the restriction before

approaching the court and therefore the present application offends the doctrine of exhaustion of remedies.

14. They further stated that the purpose of the restriction has not ceased to exist nor has the applicant shown that the parties have reached an agreement, as contemplated in the restriction itself.
15. It is therefore their contention that if the prayers sought are granted, then the same would amount to directing the Land Registrar to rectify the register without a proper evidentiary basis or trial, which would contravene the respondents' statutory independence and the due process requirements under the Land Registration Act.
16. They thus argued that the application is premature, incompetent and amounts to an abuse of the court process and is intended to circumvent the due process and undermine the statutory procedure.
17. In conclusion, they maintained that it is in the interest of justice and orderly land administration that the restriction remains in force pending the lawful resolution of the dispute.
18. They urged the court to dismiss the application with costs and find that the same is misconceived, speculative, without merit and an abuse of the court process.
19. The application was canvassed by way of written submissions. The applicant filed his submissions dated 10.11.2025 together with authorities while the respondents did not file submissions either within the time granted by the court or at all.

Analysis and Determination:

20. Having carefully considered the grounds in the application, the supporting affidavit and the annexures thereto, the grounds of opposition as well as the submissions filed in totality, it is my considered opinion that the sole issue arising for determination is whether the applicant has proved his case to the required standard to warrant the removal of the restriction registered on 19.03.2018 against the suit property.
21. The applicant avers that he is the actual, beneficial and registered owner of the suit property and he annexed a copy of the title deed in support of the said averment. That since the registration of the restriction against the title of the suit property over 7 years ago, no claim of interest as ever been lodged, pursued or prosecuted by any person.
22. The respondents on the other hand raised the issue of exhaustion of remedies. It is their claim that the application has been filed prematurely.
23. They further contend that the purpose of the restriction has not ceased to exist and thus argued that the restriction should remain in force pending the resolution of the ongoing ownership dispute
24. Section 78 of the Land Registration Act provides for the removal and variation of restrictions. The said section provides as follows: -

78. Removal and variation of restrictions

(1) The Registrar may, at anytime 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 that 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. (emphasis added)

25. Before delving into the substantive merits of the issue herein, I wish to address the issue of exhaustion of remedies as raised by the respondents. It is the respondents claim that section 78(1) of the LRA provides that an application for the removal of a restriction should first be made before the Land Registrar before the same is filed in court.
26. The doctrine of exhaustion of remedies ousts the jurisdiction of the court to hear and determine disputes in the first instance. Where a statute provides an elaborate procedure on the hearing and determination of disputes, the said procedure must be followed and exhausted before the dispute can then be referred to court for determination.
27. From a reading and understanding of section 78 of the LRA above, the same in my considered opinion provides for 2 instances for the removal of a restriction; either through an

application to the Land Registrar as provided under section 78(1) or by an order of the court as provided under section 78(2).

28. It is therefore the finding of this court that the doctrine of exhaustion of remedies does not apply in the instant case and that this court is vested with the requisite jurisdiction to entertain the application herein. I will now proceed to the merits of the substantive issues herein.
29. The applicant has annexed to his application a letter dated 01.09.2025, to the Land Registrar Uasin Gishu County referenced an 'Application to remove restriction on Title No. Tembelio/ Elgeyo Border Block 5 (Ex-Tooley)/212'. He has also annexed the relevant Form LRA 78 on Application to Remove Restriction dated 11.06.2025 which is duly signed and verified. Though not clear whether the said were duly received and acted upon by the 1st respondent, the said documents clearly demonstrate the effort and steps made by the applicant in complying with the provisions of section 78(1) of the LRA.
30. The applicant has urged this court to order the removal of the restriction registered on 19.03.2018, which has been in existence for a period of over 7 years without any justifiable cause or reasonable explanation.
31. Although I acknowledge the statutory duties of the Land Registrar (1st respondent) and which includes the registration of restrictions, this court is also cognizance of the

constitutional right to own and use property and the duty not to arbitrary deprive one's right without any lawful excuse and justifiable cause.

32. It is the respondents' claim that the purpose of the restriction has not ceased to exist and further that there is no evidence of an agreement reached as indicated in the restriction. However, there is no material before this court to support the said averments. This court cannot ascertain the existence of the said dispute on ownership. It is also not clear who are the parties to the said dispute and the steps that have been taken over the years in solving the alleged ownership dispute.
33. Further, from the Certificate of Search annexed herein, it is evident that the Restriction was lodged on the application of the 2nd respondent vide his letter. However, the said letter was never adduced to enable this court clearly ascertain the reason why the restriction was placed and whether the same falls within the provisions of section 76(1) of the Land Registration Act. It is not enough for the Respondents to merely state that the purpose of the restriction has not ceased to exist without providing sufficient material evidence in support of the said averments.
34. Moreover, the 2nd respondent who caused the restriction to be placed did not also swear an affidavit to shed more light on the reason for making the application for restriction.

35. Therefore, in the absence of any evidence to support the claims on the existence of an ownership dispute, this court finds no justifiable reason and legal explanation for the restriction to remain in force on the title of the suit property. A restriction cannot be in existence indefinitely.
36. Justice E. K. Wabwoto J in the case of **Sammy Ng'ang'a Ngatiri v George Ngatiri Mbugua & 2 Others [2021] eKLR** held that a caution should only serve as a temporary measure and should not be used to limit or deprive the Applicant of his right to property indefinitely.
37. In view of the foregoing, this court finds that the application for the removal of restriction is merited.

Costs:

38. On the issue of costs, the general rule is that costs shall follow the event unless the court directs otherwise. In this case, having held that the applicant has sufficiently proved his claim for removal of the restriction to the required standard, I find that he is entitled to costs.

Conclusion:

39. In view of the foregoing, I accordingly find that the Notice of Motion Application dated 19th September, 2025 is merited and is hereby allowed on the following terms: -
- a) The application dated 19.09.2025 is hereby allowed.
 - b) An Order be and is hereby issued that the restriction registered on 19th March, 2018 against all that parcel

known as Property Title No. TEMBELIO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY)/212 by the Land Registrar at the instance of the Area Chief be removed forthwith.

c) An order be and is hereby issued directing the Land Registrar Uasin Gishu County to rectify the register accordingly.

d) Costs of the suit to be borne by the Respondents.

40. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 19TH day of FEBRUARY, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the virtual presence of: -

Mr. Ojalla for Applicant.

No appearance for Respondents.

Court Assistant - Laban