



Shah v Ethics and Anti-Corruption Authority & another (Enviromental and Land Originating Summons E008 of 2025) [2026] KEELC 521 (KLR) (5 February 2026) (Judgment)

Neutral citation: [2026] KEELC 521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2025
CK YANO, J
FEBRUARY 5, 2026**

BETWEEN

JAYENDRAKUMAR KESHAVJI SHAH PLAINTIFF

AND

ETHICS AND ANTI-CORRUPTION AUTHORITY 1ST DEFENDANT

LAND REGISTRAR, UASIN GISHU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit by way of Originating Summons dated 17th March, 2025 seeking a determination of the following issues:-
 1. Whether the restriction lodged and registered by the Defendants on 13.6.2023 was exercised within the law
 2. Whether due process has been complied with after registration of the restriction
 3. Whether notification of the registration of the restriction has been served upon the Plaintiff in keeping with the rules of natural justice and the provisions of the Act
 4. Whether the registration of the restriction on 13.6.2023 is tenable in view of the inordinate inaction by the Defendant
 5. Whether the particulars of the alleged corrupt acquisition of the land has been given the Plaintiff, who is 2nd generation purchaser without notice of defect to title has been served
 6. Whether the Land Registrar has acted within his/her mandate under the laws respecting disposal of the restriction.
 7. Whether due and fair administrative justice has been afforded to the Plaintiff.



8. Whether the Plaintiff is prejudiced by the indefinite restriction
 9. Whether the delay of almost 2 years is justified or fair and in the interest of the Plaintiff who as ordinarily used the title to secure loans to fund his business.
 10. Whether the restriction should be lifted and removed and the further charge be registered
 11. That the costs of the summons be awarded to the Plaintiff.
2. The grounds in support of the Summons are set out in the Plaintiff's Supporting Affidavit of even date. The Plaintiff deponed that he is the registered proprietor of a leasehold interest in land parcel no. Eldoret Municipality/Block 7/230 (the suit property herein) which he bought from one Dhanji Manji Patel in 1994. He averred that after purchase, he settled his family on the suit property where they stay to date. That in August, 2024 he was offered further banking facilities of KShs. 10,000,000/-, however, his lawyers have been unable to register the further charge due to a restriction placed on the title by the 1st Defendant on 13.6.2023.
 3. The Plaintiff claims that the rejection of the registration of his further charge has affected his business adversely. The Plaintiff avers that the 1st Defendant did not serve him with any notice of the particulars of the alleged illegal acquisition. That despite his lawyers writing to the 1st Defendant to call for reasons for the restriction, the 1st Defendant only informed him that it was placed due to investigations into irregular acquisition without furnishing particulars thereof.
 4. The Plaintiff avers that despite having ample time since 13.6.2023 and reminders, the 1st Defendant has not concluded the investigation, prejudicing his livelihood and that of his family. He accused the Registrar of failing to carry out its obligation under the law. He claimed he was aggrieved by the Defendant's actions, especially since he is not the first, but the third registered owner who purchased the land for valuable consideration without notice of defects. He prayed that the restriction be removed/lifted and he be allowed to register the further charge.
 5. On being served with the OS, the 1st Defendant filed a Replying Affidavit sworn by one of its investigators, one Leonard Njenga Mungai, on 4th June, 2025. He deponed that in exercise of its mandate under its parent Act, the 1st Defendant received a complaint that the suit property is government property illegally allocated and registered to a private individual. That pursuant to this, the 1st Defendant initiated investigations to ascertain the veracity of the complaint. He deponed that on 7th June, 2023 the 1st Defendant applied for a restriction to be placed on the title in line with Section 76(1)(2)(b) of the Land Registration Act (LRA). That a restriction was placed on 13th June, 2023 restricting any dealings until the investigations are concluded.
 6. He deponed that the Plaintiff is aware of the investigations as demonstrated by the letter dated 23rd October, 2024 Ref. K/462/2024 from his advocates seeking information on the nature of the complaint and investigations. That the 1st Defendant responded vide letter dated 30th October, 2024 Ref. EACC.ELD.6/16/1 VOL.IV(276) stating that the investigations were on the alleged irregular acquisition of the property. Further, that the matter was still under investigation and they would inform the Plaintiff once they were concluded. He deponed that the restriction was placed in good faith to secure the property and avoid any fraudulent or further dealings that would obstruct and render the investigations nugatory.
 7. He averred that the investigation has not been completed due to the vast period relevant to the property and the changes it was subjected to, including subdivision into 20 parcels registered to various private individuals and institutions, thus widening the scope of the investigations. He explained that the



- investigations are at an advanced stage, and the 1st Defendants intend to file a recovery suit after conclusion. He cited Article 10 of *the Constitution* of Kenya and urged that the Commission's powers should not appear to be curtailed or fettered. He deponed that it is in the interest of the public that the restriction be retained to enable the commission conclude its investigations into the acquisition of the suit land.
8. He expressed apprehension that if the restriction is lifted, set aside or varied, the Plaintiff may deal with the land in a manner that would interfere, convolute and/or complicate the investigations and render it and the intended civil recovery suit nugatory. He alleged that the Plaintiff had not demonstrated any prejudice he has or is likely to suffer due to the existence of the restriction as the suit land remains in his name and possession. He added that the Plaintiff had not demonstrated any fraud, procedural impropriety, illegality or irregularity in the conduct of the 1st Defendant's investigations to justify the orders sought. He thus averred that the OS lacks merit, is scandalous and an abuse of the court process and should be dismissed with costs.
 9. On its part, the 2nd Defendant filed Grounds of Opposition dated 28th July, 2025 in response to the OS. According to the 2nd Defendant, the restriction registered on 13th June, 2023 was done lawfully and procedurally under Section 76(1)(b) of the LRA upon formal request by the 1st Defendant. The 2nd Defendant alleged that it acted within its mandate as set out at Section 76 and 77 of the said Act, and registered the restriction to safeguard public interest and preserve the subject matter pending investigations, and not deprive or extinguish the Plaintiff's title.
 10. The 2nd Defendant averred that it is not required under the Act to investigate or adjudicate underlying claims, thus the action it took was administrative in nature based on a valid request from a competent public agency. The 2nd Defendant averred that the restriction remains valid and tenable pending conclusion of investigations or further directions by a court of competent jurisdiction, and that there is no evidence of abuse of discretion or bad faith by the Defendants. The 2nd Defendant claimed that the continued existence of the restriction does not amount to a violation of Articles 40 and 47 of *the constitution* since the action was undertaken under lawful authority and is subject to review or removal under the law.
 11. Per the 2nd Defendant, the Plaintiff had not demonstrated any prejudice or irreparable harm it will suffer to warrant the court's intervention and termed the suit premature. The 2nd Defendant claimed that the balance of convenience tilts in favour of preserving the restriction in the public interest pending the investigations and to further the principles of accountability and integrity in land acquisition. The 2nd Defendant averred that the suit is an abuse of the court process intended to frustrate legitimate investigations and prematurely challenge an administrative measure taken under clear legal authority. The 2nd Defendant prayed that the OS be dismissed with costs for being misconceived, speculative, without merit and an abuse of court process.
 12. In further response to the OS, the 2nd Defendant filed a Replying Affidavit sworn on 30th October, 2025 by A.B. Gisemba the Land Registrar, Uasin Gishu. He deponed that the suit land was initially registered to Hyrex-Enterprises Limited on 22nd February, 1993 and a certificate of lease issued on 18th March, 1993. That the suit land was then transferred to Dhanyi Nanji Patel on 19th December, 1994 who was issued with a title on the same day, but it is currently in the Plaintiff's name. He deponed that there are currently three charges on the property to the Bank of Baroda; the first on 18th June, 2010 for KShs. 7,500,000/-, a further charge on 16th February, 2011 for KShs. 2,000,000/- and a 2nd further charge on 31st December, 2019 for KShs. 10,500,000/-.



13. He deponed that on 13th June, 2023 a restriction was placed against the title prohibiting any dealings pending conclusion of investigations by the 1st Defendant. That the restriction was properly entered pursuant to Section 76 of the LRA which allows the Land Registrar to restrict dealings on land where there are pending investigations or disputes. He averred that the restriction was lodged in compliance with statutory duties of the land Registrar, and that it remains valid and lawful, and that it was not made maliciously or irregularly. He deponed that as a neutral custodian of the register, the 2nd Defendant has no personal interest in the dispute between the Plaintiff and the 1st Defendant.
14. He averred that the allegations that the restriction was irregular and unlawful are without merit as due procedure was followed, and the same was done to preserve the property pending the outcome of investigations. He claimed that it is the interest of justice and good land administration that the restriction remains in force to prevent any transactions that may prejudice the ongoing investigations or any interested parties. He swore that the restriction is intended to preserve status quo, and urged that it remains valid pending conclusion of investigations. Further, that it does not violate constitutional rights under Article 40 and 47. He thus asked that the OS be dismissed with costs.

Submissions:

15. The court directed that the matter be canvassed by way of Affidavit evidence and written submissions. The Parties complied and have filed their final written submissions on the OS.

The Plaintiff's Submissions;

16. The Plaintiff's submissions in support of the OS are dated 27th October, 2025. Counsel for the Plaintiff submitted that the 2nd Defendant failed to comply with Section 76(1) of the LRA which required him to inform the Plaintiff and has subjected him to prejudice. Counsel submitted that in claiming that they were not required to hear the parties, the 2nd Defendant had not only misdirected himself, but also admitted that he did not comply with procedure. Counsel cited the case of *Ex Parte Reuben Wamburu Karoba & Land Registrar, Kiambu County vs Denise Kibisu* (2021) eKLR and *Matoya vs Standard Chartered Bank Ltd* (2001) EA 140.
17. Counsel submitted that the 2nd Defendant flouted the provisions of Article 47 of *the Constitution*, as well as Section 76(1) and 77 of the LRA by not according the Plaintiff a hearing yet he is directly affected by its administrative actions. Counsel claimed that the Plaintiff was not afforded an opportunity to be heard before registration of the restriction, and had not bothered to inform him even after it was registered. Counsel contended that the restriction is therefore illegal. Counsel argued that non-compliance with constitutional edicts is unlawful, whether it results in prejudice or not.
18. Counsel added that the Plaintiff had incurred legal expenses in attempting to perfect the charge over the suit land. That however, upon presentation the charge was rejected on account of the restriction, despite the fact that the funds paid to the government on account thereof were not refunded. On the argument that the restriction did not strip him of his ownership of the land, Counsel submitted that aside from housing, land is also used for commercial purposes such as the rights listed under Sections 24 & 25 of the LRA. Counsel pointed out that the Plaintiff is unable to use the land to secure the loan facility of KShs. 10,000,000/- to fund his business due to the restriction.
19. Counsel urged that the act of applying for the restriction was whimsical, unfair and illegal for failure to inform the Plaintiff or request a hearing date for the inquiries. He accused the Defendants of denying the Plaintiff his right to be heard on his land rights thereby infringing his rights under Article 40. Counsel moved the court to remove the restriction for being unprocedurally registered against the suit land.



The 1st Defendant's Submissions;

20. In the 1st Defendant's submissions dated 20th November, 2025 Counsel submitted that the restriction was made pursuant to Section 76(1) of the LRA. Counsel submitted that the 1st Defendant made a complaint in line with its mandate to recover public land under the [Anti-Corruption and Economic Crimes Act](#) and the Ethics and Anti-Corruption Act. Counsel contended that the restriction was necessary to protect the substratum of the investigation for the duration thereof. Counsel submitted that the restriction was not for an indefinite period, and explained that since the investigation is not yet concluded, the duration of the restriction has not lapsed.
21. Counsel submitted that the Plaintiff was aware of the restriction as is evident in their letter to the 1st Defendant requesting its intervention. Further, that the Plaintiff had evidently conducted a search which disclosed the restriction and cannot thus feign ignorance of its existence. Counsel argued that forcing the 1st Defendant to undertake investigations within certain timelines as well as removal of the restriction undermines its independence and risks rushed and incomplete investigations, and will prejudice the integrity of the inquiry and public interest.
22. Counsel urged the court not to cancel or vary the restriction as it was placed for a legitimate purpose, which is to preserve the subject of the investigation. Counsel submitted that it was in the public interest to retain the restriction. That its removal would render the investigations and the intended recovery proceedings nugatory as well as pose a higher risk of injustice, as opposed to denying the application which would only harm the Plaintiff's private interests. Counsel claimed that the Plaintiff had not demonstrated any injustice occasioned to him and asked that the Application be denied with costs.

The 2nd Defendant's Submissions;

23. The 2nd Defendant filed its Submissions dated 24th November, 2025. Counsel cited Sections 76, 77 and 78 of the LRA and submitted that the Restriction was placed on 13th June, 2023 upon the 1st Defendant's request on grounds that the suit land was under investigation. Counsel for the 2nd Defendant pointed out that the issue of ownership is not for determination in this suit. Counsel submitted that the suit land was public property hence the need for a restriction. She insisted that it was done in line with the 2nd Defendant's powers under Section 76 & 77 of the LRA.
24. Counsel claimed that the restriction was meant to safeguard public interest and preserve the subject property pending the investigations. Counsel asserted that the restriction is therefore lawful, properly registered and valid until removed or varied. She relied on *Films Rover International Limited vs Cannon Film Sales Limited* (1986) 3AllER 772, *Macharia Kinyur vs District Land Registrar, Naivasha & Another* Nakuru ELC Misc. Appl. No. 331 of 2016 and *Matoya vs Standard Chartered Bank (K) Limited & Others* (2003) 1 EA 140.
25. As to whether the restriction contravenes Articles 40 and 47 of [the Constitution](#), Counsel submitted that aside from protecting rights, [the constitution](#) also permits regulation of rights subject to just, fair and equitable process. Counsel submitted that the restriction being lawful, it does not violate any rights, and that it is subject to removal under Section 78(2) of the LRA, and she cited the case of *Kiore vs Chief Registrar of Titles* (2024) KEELC 564 (KLR). Counsel argued that the Plaintiff cannot plead surprise or prejudice since he is aware of the restriction. Counsel submitted that the 2nd Defendant had not exercised the power to remove the restriction because it recognised the 1st Defendant's mandate to carry out investigations.



26. Counsel further submitted that the Plaintiff had neither shown any illegality in the restriction nor demonstrated exceptional prejudice or irreparable harm to warrant judicial intervention. She relied on *Republic vs Land Registrar & Another ex parte Joyce Odhiambo & 5 Others; National Land Commission & Another (Interested Parties)*(2022) KEELC 445 (KLR). Counsel reiterated that the actions taken were procedural, regular and lawful in order to preserve public interest and promote accountability and integrity in land acquisition. Counsel urged that the OS is unfounded and should be dismissed with costs.

Analysis and Determination:

27. The court has considered the pleadings, documents and evidence on record in this matter. The court is of the opinion that the main issues for determination are:-

- i. Whether the restriction registered against the suit property on 13th June, 2023 was lawful;
- ii. Whether the restriction violates Articles 40 and 47 of *the Constitution*;
- iii. Whether the Plaintiffs has made out a case for removal of the restriction; and
- iv. Who shall bear the costs of this suit?

Whether the restriction registered against the suit property on 13th June, 2023 was lawful

28. There is no doubt that the suit property herein was registered in the name of Plaintiff on 14th May, 1996. Going by the certified copy of the green card presented before this court, there is in existence a restriction on the title of the suit property registered on 13th June, 2023 restricting dealings on the land until investigations are concluded by EACC. The Plaintiff claims that he was not informed and/or notified of the restriction.

29. The Plaintiff explained that in August, 2024 he was offered further banking facilities of KShs. 10,000,000/-. This loan was to be secured by a further charge on the suit property in favour of the Bank of Baroda. However, his lawyers have been unable to register the further charge and he claims that it was rejected by the Land Registrar, citing the restriction placed on the title on 13th June, 2023 at the request of the 1st Defendant.

30. The Plaintiff now claims that it is at the point of rejection of the further charge that he found out about the restriction. According to him, the restriction is unlawful and irregular for reason that it did not comply with the law, in particular Sections 76,77 and 78 of the *Land Registration Act* (LRA). The Plaintiff's claim is premised on the allegation that the Registrar failed to issue notice of the restriction, and even after it was lodged, still failed to inform him of its existence, thus he seeks to have it removed.

31. The Defendants' stand in this is that the restriction is legal and was registered pursuant to the law. They claim that the Plaintiff was informed of the restriction having written to the 2nd Defendant and received information thereon. They deny violations of any rights arising out of the existence of the restriction, and claim that the Plaintiff has shown no prejudice suffered by reason of its existence.

32. As regards the registration of restrictions, Section 76 of the *Land Registration Act* provides that:-

76. Restrictions

- (1) For the purposes of compulsory acquisition 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, and after directing such



inquiries to be made and notices to be served and hearing such persons as the Registrar considers 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;
 - (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.
- (2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.
- (3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.

33. From the above quoted provision, it is clear that the purpose of a restriction is aimed at stemming fraud or improper dealings over land, and may also be placed where there is any other sufficient cause. It is also evident that restrictions are not meant to remain in force indefinitely, but are to endure either for a particular time, until the occurrence of an event or upon further orders being made.

34. The reason behind this as given in *David Macharia Kinyuru vs District Land Registrar, Naivasha & Another (2017) KEELC 2474 (KLR)*, is that a restriction does not in and of itself solve a dispute. Therefore, it should only hold a property in abeyance while the underlying issue leading to the restriction is being resolved. In this case, the restriction lodged on 13th June, 2023 states as follows:-

“No dealings until investigations are concluded by EACC, see letter dated 7/6/2023 REF: ELD 6/16/VOL. IV/32.”

35. I have seen a copy of the letter dated 7th June, 2023 mentioned on the green card, through which the 1st Defendant requested the restriction. Notably, none of the Defendants have told this court that they issued any form of notice to the Plaintiff as to the existence of the restriction. The requirement for notice is reiterated at Section 77 of the LRA, which also outlines the effect of a restriction and provides that:-

77. Notice and effect of restriction

- (1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.
- (2) An instrument that is inconsistent with a restriction shall not be registered while the restriction is still registered except by order of the court or of the Registrar.

36. Sections 76 and 77(1) of the Act mandates the Land Registrar to conduct inquiries and issue notice in writing of a restriction to the proprietor affected by the restriction. The requirement for notice was



stressed in the case of Mukuria James Chacha & 2 others vs Land Registrar Muranga (2019) eKLR, where the court held as follows:-

“ 11. The Registrar of Lands has power to register a restriction in three instances; prevention of fraud; or improper dealings on land; or for any sufficient cause. The Registrar may be moved suo moto or on application of any persons interested in the land. The Registrar on receipt of the application is duty bound to direct inquiries to be made, notices to be served and hearing such persons as he considers fit and make an order prohibiting or restricting dealings with any land. The restriction may be for a particular period, until the occurrence of a particular event or until a further order is made. The Registrar shall give notice in writing of a restriction to the proprietor effected by the restriction.”

37. Similarly, in Matoya vs Standard Chartered Bank (K) LTD & others (2003) I EA 140 it was held that:-

“ A restriction is ordered to prevent any fraud or improper dealing with a given parcel of land and the land registrar does this whether on its own motion or if so asked by way of an application by the person interested in that land but before ordering the restriction the registrar is bound by law to make inquiries, send out notices and hear all those other people he may think fit first and he is not to move by whim, caprice or whatever influence personal or otherwise just to impose a restriction since he has a duty to inquire and be satisfied that his duty to order restriction is not hurting a person who was not heard and that indeed the restriction is in general good that frauds and other improper dealings are prevented.”

38. However, nothing in the 2nd Defendant’s response shows that the said office issued the requisite notice. The Registrar also did not lead evidence that this step was taken despite the mandatory nature of its command. It is clear from the above that the registration of the restriction was not in accordance with or pursuant to the law.

Whether the restriction violates Article 40 and 47 of *the Constitution*

39. In addition to challenging the restriction on its lawfulness for lack of compliance with law and procedure, the Plaintiff also claimed that the restriction entered by the 2nd Defendant violated Articles 40 and 47 of *the Constitution* of Kenya.

40. Article 40 of *the Constitution* guarantees the right of any person to own property of any description within Kenya. Article 40(2) protects against the deprivation or restriction of the right to property, save for the grounds specified under Article 27 of *the Constitution*. I agree that the restriction as placed does not violate the Plaintiff’s right to own property since it did not interfere with his title and/or ownership or even occupation of the suit property.

41. What the restriction does, is to prevent any transactions or dealings on the register until the determination of the alleged investigations. Attendant to the right to own land at Article 40 of *the Constitution*, is the right to peaceful possession as well as the privileges that come with such ownership, as set out under Section 24 of the *Land Registration Act*, which provides:-

24. Interest conferred by registration
Subject to this Act—



- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
42. One such right or privilege was to use it as security for the loan facility offered to him. The Plaintiff right under the said Article 40 was violated through the contravention of his right to enjoy the land in the manner he wished to.
43. Article 47 of *the Constitution* on the other hand provides as follows:-
47. Fair administrative action
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
44. Article 47 of *the Constitution* of Kenya 2010 has constitutionalized the right to be given written reasons for administrative actions and decisions. The said provision is again reflected at Sections 4 and 6 of the *Fair Administrative Action Act*, 2015. In *Judicial Service Commission vs Mbalu Mutava & Another* (2015) KECA 741 (KLR), the Court of Appeal held that:-
- “ Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
45. This court has already determined that the procedure applied by the land registrar in registering the restriction was contrary to the provisions of Section 76 and 77 of the *Land Registration Act* for failure to issue notice to the proprietor and conduct inquiries as required under the law.
46. Both Defendants however, seek to rely on the fact that the Plaintiff was later informed of the restriction to claim that he was aware of its existence and thus the requirement for notice was complied with. I have seen the annexure marked LM - 4 in the 1st Defendant’s Replying Affidavit, which is a letter dated 23rd October, 2024 from the firm of Manani Lilan Mwetich & Company Advocates to the 1st Defendant. The said firm indicates that it was acting for the Bank of Baroda and sought information on the restriction. The information sought was supplied through the 2nd Defendant’s letter dated 30th October, 2024 which was copied to the Plaintiff.



47. It must be noted that the letter was not written on behalf of the Plaintiff, but the Bank of Baroda which institution was advancing the loan facility to the Plaintiff. The information was supplied promptly, even though it is not the Plaintiff who took up the mantle to find out what the challenge on his title was about. Evidently, the law places the obligation to issue the notice on the 2nd Defendant herein. The failure by the 2nd Defendant to issue notice cannot be placed on the 1st Defendant whose only mandate in this instance was to apply for the restriction, and the rest was done by the 2nd Defendant.
48. Moreover, the fact that the 1st Defendant responded to the Bank's inquiries on the restriction did not in any way waive the 2nd Defendant's obligation to notify the Plaintiff as the proprietor of the suit property. As is evident from the letter sought to be relied on by the Defendants, the same was not even sent to the Plaintiff herein, but the Bank's advocate.
49. The fact remains that registering a restriction on the parcel of land without notice and without conducting the requisite inquiries was a breach of the Plaintiff's right to be heard before any administrative action is taken. That notwithstanding, the restriction itself has resulted in the breach of his right to enjoy his property herein. The court finds that the entry of the restriction did not comply with the law and the procedural requirement for notice, which is contrary to Articles 40 and 47 of the Constitution of Kenya.

Whether the Plaintiffs have made out a case for removal of the restriction

50. From the law cited hereinabove, restrictions are not meant to endure indefinitely on a title. In fact, with regards to removal of restrictions, Section 78 of the LRA 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 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.
51. It is evident from the above provisions of law that the Court has power to remove any restriction on a title to land. To this end, this court has already found that the Registrar's action of registering the restriction without giving the Plaintiff notice or a hearing amounts to a breach of the rules of natural justice. The Plaintiff has also pleaded that the continued existence of the restriction against his title is affecting his rights to use the suit property as he wishes. The Plaintiff is the registered owner of the land, and he intends to take out a loan but has been prevented by the restriction.
52. The restriction on the title herein restricts dealings on the land pending the outcome of the investigations by EACC. The 1st Defendant claims that the investigations are at an advanced stage, and that they intend to file recovery proceedings. It has been well over two and a half years since the restriction was imposed to preserve the suit property pending investigations. No investigation report was presented before this court to show that the investigations have since concluded. Similarly, there is no recovery proceedings filed against the Plaintiff with respect to the suit property.
53. I would be apprehensive on lifting the restriction, seeing as this would allow the Plaintiff to register a further charge and rope in an innocent third party into the intended recovery suit by the 1st Defendant. It is however evident that the Bank is well aware, having instructed its advocate to seek clarification on the restriction through its letter of 23rd October, 2024 and the same having been supplied. If the bank



does go ahead and proceeds to grant the facility sought, it will be with the knowledge that the property may be subject to recovery proceedings by the government of Kenya. Therefore, the Bank cannot later claim to have been unaware of the status of the land.

54. Furthermore, nothing restricts the Defendants from lodging another restriction in line with the procedure set out in law if the investigation is not complete. As matters stand, the existence of the restriction over 2 years, bearing in mind that the Plaintiff was never notified of its registration, is neither justified nor fair. This Court therefore finds no reason why the said restriction should remain on the said title.
55. I note also that one of the issues raised for determination in the OS is whether the particulars of the alleged corrupt acquisition of the land has been given the Plaintiff. I am of the opinion that the same can only be subject of the intended recovery suit, if any is filed, and not subject of this suit. Consequently, the Court finds that the Plaintiff's Originating Summons dated 17th March, 2025 succeeds.

Who shall bear the costs of this suit?

56. Section 27 of the *Civil Procedure Act* provides that costs follow the event, meaning that the successful litigant is entitled to costs except in exceptional circumstances. Costs are however awarded at the discretion of the court, which discretion must be exercised judiciously.
57. The Plaintiff in this suit has clearly succeeded in his quest to have the restriction removed, and is entitled to the costs of the suit. A court can only deviate from the general rule that costs follow the event where there exists justifiable cause to do so. Having noted that no such exceptional circumstance exist herein, the Court finds and holds that the Plaintiff, being the successful litigant, is entitled to the costs of the suit and so awards him the said costs.

Orders:-

58. Consequently, this Court determines the Plaintiff's Originating Summons dated 17th March, 2025 as follows:-
- i. That the restriction lodged and registered by the Defendants on 13.6.2023 was not exercised within the law
 - ii. That due process was not complied with after registration of the restriction
 - iii. That notification of the registration of the restriction was not served upon the Plaintiff in keeping with the rules of natural justice and the provisions of the Act
 - iv. That the registration of the restriction on 13.6.2023 is not tenable in view of the inordinate inaction by the Defendants
 - v. That the Land Registrar did not act within his/her mandate under the laws respecting disposal of the restriction
 - vi. That due and fair administrative justice was not afforded to the Plaintiff.
 - vii. That the Plaintiff is prejudiced by the indefinite restriction
 - viii. That the delay of almost 2 years is neither justified nor fair and is not in the interest of the Plaintiff who as ordinarily used the title to secure loans to fund his business
 - ix. That an order be and is hereby issued directing the Land registrar to forthwith lift and remove the restriction registered against the title on 13th June, 2023.



x. That the costs of the summons are awarded to the Plaintiff

59. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 5TH DAY OF
FEBRUARY, 2026 VIDE MICROSOFT TEAMS.**

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of;

Mr. Mwetich for Plaintiff.

Ms. Baithalu for 1st Defendant.

No appearance for 2nd Defendant.

Court Assistant - Laban.

