

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC MISCELLANEOUS CASE NO. E021 OF 2025

**IN THE MATTER OF AN APPLICATION UNDER SECTION 78 (2) OF THE
LAND REGISTRATION ACT NO 3 OF 2012**

AND

**IN THE MATTER OF LAND PARCEL NO. LONGONOT /KIJABE BLOCK
6/347 (KIAMBU NYAKINYWA)**

AND

**IN THE MATTER OF AN APPLICATION BY A PROPRIETOR TO REMOVE A
RESTRICTION PLACED ON LAND PARCEL NO. LONGONOT/KIJABE
BLOCK 6/347 (KIAMBU NYAKINYUA)**

BETWEEN

**RACHEL WAITHIRA NJOROGE.....
APPLICANT**

VERSUS

**THE LAND REGISTRAR, NAIVASHA.....1ST
RESPONDENT**

**CHIEF LAND REGISTRAR.....2ND
RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3RD
RESPONDENT**

RULING.

1. Coming up for determination is a Notice of Motion dated 14th November 2025 brought pursuant to the provisions of Section 3A the Civil Procedure Act, Section 3 of the Environment and Land Court Act, Section 76, 77, 78(2) of the Land Registration Act, Rule 81 of the Land Registration (General) Regulations, Article 159 (2) (d) of the Constitution and any enabling provision of law wherein the Applicant seeks for orders directing

the 1st Respondent, to lift and /or remove the restriction lodged against her parcel of land No. Longonot/Kijabe Block 6/374 (Kiambu Nyakinyua) (the suit property). The Applicant also seeks costs of the Application.

2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of an equal date, sworn by Rachel Waithira Njoroge, Applicant herein, who deponed that she is the duly registered proprietor of land known as Longonot/Kijabe Block 6/347 (Kiambu nyakinyua) measuring 4.06 Hectares. That, sometime in the year 2021, the suit property was compulsorily acquired by the National Land Commission (NLC), without compensation, for the construction of the Naivasha ICD-Longonot new meter gauge railway line in Nakuru County. She was never compensated.
3. She had subsequently instituted a case before the Land Acquisition Tribunal (LAT), being TRLAP/E046/2024: Rachael Waithira Njoroge v The National Land Commission and Kenya Railways Corporation, seeking compensation for the compulsory acquisition of the suit property where the NLC filed a Replying Affidavit, sworn by Jacob Kipaa on 11th November 2024, claiming that they could not process the compensation award for the acquired suit property because of the restriction placed on it by the 1st Respondent following instructions from the 2nd Respondent through a letter dated 5th June 2024 that restrictions be placed on all parcels of land within Longonot/Kijabe Block 6.
4. She deposed that the 1st Respondent never gave her an opportunity to be heard before placing or registering the restriction on the suit property, as she was never served with any notice. Furthermore, the 1st Respondent never notified her that a restriction had been placed on the suit property after it had been registered, despite the explicit direction by the 2nd Respondent and the legal requirement that land proprietors be informed of restrictions on their land. From the 2nd Respondent's letter dated 5th June 2025, which led to the restriction being imposed on the suit property, it was evident that the restrictions were due to a pending court case, which was not disclosed in the letter.

5. That she was not aware of any pending court matter and/or suit involving the suit property, or whether the suit property was the subject matter, hence placing restrictions on the same pending the determination of an alleged, undisclosed court matter, was unjustified, unreasonable, unfair, oppressive and without any legal basis. That she was aware that by a letter dated 3rd July 2025, the 2nd Respondent had informed the 1st Respondent of a memo by the Cabinet Secretary in charge of land directing that the restrictions placed on all the parcels of land within Longonot/Kijabe Block 6, including the suit property, be lifted to allow their owners transact on their properties. That the 1st Respondent refused, declined and/or failed to comply. That subsequently, the restrictions on the suit property were still in place, thereby hindering her from conducting any transactions on the suit property, including conducting a basic search of the same in the registry.
6. That upon instructing her advocate, there was an attempt to lodge an Application dated 28th July 2025 with the Land Registry for the removal of the restriction, which had been placed on the suit property, which application the 1st Respondent declined to receive on the lame excuse that the restrictions placed on the suit property had prohibited her from dealing with the same in any manner, including receiving an application to lift the said restriction. The brazen refusal to receive her Application was a deliberate attempt by the 1st Respondent to frustrate her effort to exhaust the statutory dispute resolution mechanism provided under the provisions of Section 78 of the Land Registration Act.
7. That, after refusal to receive the Application, her advocate left a copy of the said application at the reception of the 1st Respondent's offices in Naivasha, wherein acknowledgement of receipt was declined by the 1st Respondent's receptionist. The 1st Respondent has not acted on the said Application to date. Subsequently, she approached the court as a measure of last resort to compel the 1st Respondent to remove the restriction placed on the suit property.
8. That in a Judgement delivered on 14th April, 2025, the LAT had advised her to first pursue the lifting of the restrictions on the suit so as to enable

the NLC make a determination on her proprietary interests at the time of acquisition of the suit property for purposes of coming up with a compensation award. That she was gravely prejudiced by the unlawful restrictions placed on the suit property, which prevented her from being compensated for the compulsory acquisition of the suit property by the NLC. That it was in the interest of justice that the instant Application be allowed.

9. Despite the Application dated 14th November 2025 having been served upon the Defendants, they did not participate in the same.
10. The Applicant filed her written submissions dated 26th January 2026, where she framed two (2) issues for determination as follows:
 - i. Whether the restrictions on the Applicant's parcel of land No. Longonot/Kijabe Block 6/347 (Kiambu Nyakinyua) were illegally placed by the 1st Respondent.
 - ii. Whether the Honourable Court should lift the restrictions placed on parcel of land No. Longonot/Kijabe Block 6/347 (Kiambu Nyakinyua)
11. On the first issue for determination, the Applicant argues that although it was not in dispute that she is the registered owner of the land known as Longonot/Kijabe Block 6/347 (Kiambu Nyakinyua) (herein after referred to as 'the suit property') yet the 1st Respondent acted in "blatant violation" of the provisions of Sections 76 and 77 of the Land Registration Act, which require the Registrar to notify and hear affected proprietors before and after registering a restriction. That despite the 2nd Respondent (Chief Land Registrar) explicitly instructing the 1st Respondent, in a letter dated 5th June 2024, to notify the owner, no such notice was ever served.
12. That since the Respondents filed no response, the Applicant's claim that she was never heard remained uncontroverted. She cited several precedents in support of her argument, including **Jane Wanjiru Nyota & 2 others v Land Registrar, Kajiado County & another [2020] KEELC 3596 (KLR)**, **Sedani & another v County Land Registrar, Kisumu & another [2023] KEELC 111 (KLR)**, and **Republic v Land**

Registrar, Nyeri County Registry & another; Markerryl Company Limited (Ex parte Applicant) [2025] KEELC 2928 (KLR).

13. On the second issue for determination, the Applicant contended that the restriction lacked a legal or factual basis to remain in force for the reason that the restriction was supposedly based on a "pending court matter," for which the Respondents failed to disclose the case number or details. The Applicant maintained that she is unaware of any such suit involving her land.
14. She relied on the provisions of Section 76(2) of the Land Registration Act to submit that restrictions are not intended to be indefinite; they should only last until a specific event or further order. Reliance was placed on the decision in **David Macharia Kinyuru v District Land Registrar, Naivasha & another [2017] eKLR**. That, indeed, by a letter dated 3rd July 2025, the 2nd Respondent had directed the 1st Respondent to lift the restrictions to allow owners to transact on their parcels of land, and therefore the 1st Respondent's refusal to comply was portrayed as arbitrary and oppressive. That her attempt to apply for removal of the restriction under Section 78 of the Act, in July 2025, was declined by the Registrar, leaving the Court as the final resort.
15. The Applicant concludes that because the restriction was registered unlawfully on the basis of an undisclosed court matter, there is no basis whatsoever for the restriction on the suit land to remain in place and the same should be lifted by this Honourable Court. She thus prayed that the instant Application be allowed with costs.

Determination.

16. I remind myself that despite service having been effected upon the office of the Hon. Attorney General for the 1st, 2nd and 3rd Respondents, there had been no response received therein to the Application.
17. The Applicant, Rachel Waithira Njoroge, moved the court under the Land Registration Act and the Constitution to compel the 1st Respondent (Land Registrar) to lift a restriction placed on her property,

Longonot/Kijabe Block 6/374 (Kiambu Nyakinyua) and for costs of the application.

18. Her grievance is that in 2021, the National Land Commission (NLC) acquired the suit property for the Naivasha ICD-Longonot railway line, wherein she has never been compensated to date, on the claim that the 1st Respondent (Registrar) placed a blanket restriction on all parcels in "Longonot/Kijabe Block 6" following instructions from the 2nd Respondent in June 2024.
19. That she was never notified of the restriction nor given an opportunity to be heard, which in turn violated the legal requirements for land registration. That the restriction had allegedly been based on an "undisclosed pending court case" of which the Applicant has no knowledge.
20. Subsequently, through a letter from the Chief Land Registrar dated 3rd July 2025, Ref NVA/A/57/Vol.V(34), the Land Registrar was directed to lift the restriction, which was ignored.
21. After the Land Acquisition Tribunal (LAT) advised the Applicant in April 2025 to first seek the lifting of the restriction so that the NLC could finally determine her compensation award, she complied. However, her attempt to lodge a formal application for the removal of the restriction, dated 28th July 2025, was rejected by the 1st Respondent, who refused to accept or acknowledge the documents. She is seriously prejudiced, as the restriction prevents her from being compensated for her land. She therefore seeks an order from the court to remove or lift the restrictions.
22. Given the above summary of the matter, I find the issue for determination as follows:
 - i. Whether the 1st Respondent (Land Registrar) followed the mandatory statutory procedures when registering the restriction.
 - ii. Whether there exists a valid, ongoing reason to maintain the restriction.
23. On the first issue for determination, the provisions of Section 76 of the Land Registration Act, 2012 provides as follows:

“(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, 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”.

24. From a reading of the above, it is clear that the Register of Lands has the power to register a restriction on land in three instances;
- i. for the prevention of fraud;
 - ii. or to curb improper dealings on land;
 - iii. or for any sufficient cause.
25. The law is also clear that the Registrar may be moved suo moto or on the application of any persons interested in the land. In an instance where (s)he receives an application, then (s)he is duty bound to direct inquiries to be made, notices to be served, and hear such persons as (s)he considers fit, thereafter to 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.

26. In the present case and upon perusal of the certificate of official search, it is clear that the Restriction was placed on the suit land pursuant to the Chief Land Registrar's letter ref; NVA/A/57/Vol V(9) dated the 5th June 2024, on allegation that some people led by one Michael Gogotho Kamore had invaded the properties the belonging to the women group and were selling to unsuspecting members of the public.

27. In the case of **Matoya Vs Standard Chartered Bank (K) LTD & others (2003) I EA 140** the Court 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”.

28. The Applicant contends that no notice was ever served upon her prior to placing the restriction and even after the restriction had been placed, no investigations were carried out, but instead another memo from the Chief Land Registrar dated 3rd July 2025, Ref NVA/A/57/Vol.V(34), directed the Land Registrar to lift the restrictions to allow owners to transact, wherein the 1st Respondent refused to comply. The Applicant's application to the Land Registrar, dated the 28th July 2025, to lift the restriction also fell on deaf ears. Under the doctrine of Fair Administrative Action, Article 47 of the Constitution, such an administrative act performed without a hearing, I find, was a nullity.

29. On the second issue for determination, as to whether there exists a valid, ongoing reason to maintain the restriction, the Applicant's complaint was that the restriction had purportedly been based on a pending court case. However, neither the letter from the 2nd Respondent nor the Land Registry records (as per the Applicant) disclosed the existence of such a case, its number, or the nature of the suit.
30. Further, the Respondents failed to file any Replying Affidavit. Therefore, the Applicant's testimony that there is no known court case involving the suit property stands uncontroverted. A restriction cannot be a "permanent" or "indefinite" feature of a title, especially when the very authority that requested it (the 2nd Respondent) later issued a directive on 3rd July 2025 to have it lifted.
31. The Court notes with concern that the National Land Commission (NLC) is holding back the Applicant's compensation for the Naivasha ICD-Longonot railway line solely due to this restriction. Allowing the restriction to remain would allow the state to take land (Compulsory Acquisition) while simultaneously blocking the owner from the "prompt and full compensation" guaranteed under Article 40(3) of the Constitution. The restriction is effectively blocking this constitutional right.
32. In **Simon Kimemia Muthondu v Moses Mugo Maringa [2017] KEELC 3664 (KLR) (Persuasive)**, Justice B.N Oloo had observed as follows:
- "Finally, with regard to the removal of the caution lodged on the suit land, Section 73 (1) of the Land Registration Act grants the Court the power, on application, to remove a caution. In considering an application for the removal of a caution placed on land which is subject of a dispute, the Court will no doubt take into account the circumstances and justification for which the caution was lodged, what interests the person lodging the caution has on the land and what prejudice will be caused to the other party if the caution is removed."*
33. Since a restriction should only serve as a temporary measure and should not be used to limit or deprive the Applicant of the right to the property in perpetuity, and further, there having been no justification as

to why the restriction should continue to remain on the Applicant's suit land, especially when the very authority that requested it (the 2nd Respondent) later issued a directive on 3rd July 2025 to have it lifted, and having considered the Notice of Motion dated 14th November 2025 and the unopposed Written Submissions, I thus allow the said application and issue an Order directing the 1st Respondent (Land Registrar) to immediately lift and/or remove the restriction lodged against the parcel of land known as Longonot/Kijabe Block 6/347 (Kiambu Nyakinyua).

Costs shall be at a lower scale since the application was undefended

Dated and delivered via Microsoft Teams at Naivasha, this 5th day of March 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE