

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT EMBU**

**ELC MISC. APPL. NO. E31 OF 2025**

**HENRY NJAGI MURUARIUA ----- APPLICANT**

**VERSUS**

**LAND REGISTRAR, MBEERE NORTH ----- 1ST RESPONDENT HON.**

**ATTORNEY GENERAL ----- 2ND RESPONDENT**

**RULING**

The Applicant vide a Notice of Motion brought under Article 40 of the Constitution, Sections 76 and 78(2) of the Land Registration Act 2012, Order 51 Rule 1 CPR seeks the following orders;

1. (SPENT)
2. THAT the Honourable Court be pleased to issue an order lifting the restriction registered on land parcel NO. MBEERE/MBITA/2553 property of the Applicant herein.
3. THAT the Costs of this Application be provided for.
4. THAT the Honourable Court be pleased to issue such other orders and reliefs as it may deem fit and just in the circumstances.

The application is based on nine grounds apparent on the face thereof supported by the affidavit of the Applicant sworn on even date. In his supporting affidavit, the Applicant states that he is the registered proprietor of the suit land parcel NO. MBEERE/MBITA/2553. He annexed a copy of the green card. He stated that he was dissatisfied with the Ruling delivered by Justice Karanja of the High Court Misc. Appl. NO. 19 of 2009 (J.R) and preferred an appeal to Nyeri Court of Appeal vide Civil Appeal NO. 167 of 2009 APPL. NO. 18 of 2009. He further stated that on 16th December 2014, the court of appeal pronounced itself and found the said Appeal merited thereby setting aside the ruling by Justice Karanja.

The Applicant stated that prior to filing the said Appeal at the Court of Appeal, a restriction dated 14th January 2000 had been registered against the suit land parcel NO. MBEERE/MBITA/2553 pending the hearing and determination of the Minister's Appeal. He averred that pursuant to the Court of Appeal decision in Nyeri Civil Appeal NO.167 of 2009, this matter was effectively dispensed with and no further suit has been filed in relation to land parcel NO. MBEERE/MBITA/2553. He is now seeking to have the restriction registered on the suit land lifted to enable him freely enjoy his right to property including the right to deal with the same as the registered proprietor.

When the application came up for hearing on 20/01/2026, the 1st and 2nd Respondents were absent and neither was their Advocate on record. Since Mr. Kiongo for the Respondent was

present when the hearing date was taken, the court directed that the application be heard ex-parte and a ruling given for 5th March, 2026.

## **LEGAL ANALYSIS AND DECISION**

I have carefully considered the application dated 16th October 2025 and the supporting affidavit as well as the annexures thereto.

The restriction in question was registered on 14th January 2000 specifically “pending the hearing and determination of the Minister’s Appeal.” That appeal was conclusively determined by the Court of Appeal at Nyeri in Civil Appeal No. 167 of 2009 on 16th December 2014, when the Court allowed the appeal, set aside the Ruling of the High Court (Karanja, J.) in Misc. Application No. 19 of 2009 (J.R), and effectively disposed of the underlying dispute. The Applicant has deposed, and there is no contrary material before the Court, that no fresh suit or claim has been filed in respect of Land Parcel No. MBEERE/MBITA/2553 since then. The purpose for which the restriction was entered has therefore been spent.

Section 76 of the Land Registration Act, 2012 empowers the Registrar to enter a restriction “for the prevention of any fraud or improper dealing or for any other sufficient cause.” A restriction may endure “until the occurrence of a particular event” or “until a further order is made” (Section 76(2)). Section 78(2) of the same Act expressly confers jurisdiction on this Court:

“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.”

The Applicant, as the registered proprietor, has invoked this jurisdiction. He has demonstrated on a balance of probabilities that the condition precedent for the continuance of the restriction no longer exists.

Article 40(1) of the Constitution of Kenya, 2010 guarantees every person the right to acquire and own property of any description. Article 40(2) prohibits arbitrary deprivation of property or any interest therein. To allow the restriction to remain indefinitely after the Minister’s Appeal was finally determined over a decade ago would constitute an unjustified interference with the Applicant’s constitutional right to property. The indefeasibility of title conferred by registration (subject only to the exceptions in the Act) must now be given full effect.

This Court’s approach is consistent with established Kenyan jurisprudence. Where the underlying reason for a restriction or caution has been exhausted, the Court routinely directs its removal so that the registered proprietor may freely deal with the land (see, for example, analogous decisions in *Peter Nganga Kimani v Francis Njenga Kamau & Another* [2019] KEELC 751 (KLR) and *In re Estate of Hellen Nyokabi Marine* [2022] KEHC 1445 (KLR), where restrictions were lifted once the litigation or condition that necessitated them had been resolved).

For comparative context, the principle is equally well-settled in other common-law jurisdictions. Under the United Kingdom's Land Registration Act 2002, a restriction is discharged once the specified condition or event has occurred, thereby restoring the proprietor's full dispositive powers. Similarly, in India, a caveat or registered restriction is automatically liable to removal upon final determination of the dispute that gave rise to it, failing which it would offend the constitutional right to property and the principle of free alienability. These comparative authorities reinforce the position under Kenyan law that a restriction is not a permanent encumbrance but a temporary protective measure whose lifespan is tied to the existence of a live risk or dispute.

The application was duly served on both Respondents. The 1st Respondent (Land Registrar, Mbeere North) and the 2nd Respondent (Hon. Attorney General) were represented when the hearing date was fixed yet chose not to appear or file any response. In the absence of any opposition, the Court is entitled to proceed ex parte and to grant the relief sought where the Applicant has made out a prima facie case, which he has.

In the result, I am satisfied that the application is meritorious and the following orders are issued:

1. (Spent)
2. The Land Registrar, Mbeere North, is hereby directed and ordered to forthwith lift and remove the restriction registered against Land Parcel No. MBEERE/MBITA/2553 on 14th January 2000. The Registrar shall effect the cancellation of the said restriction in the register and issue an updated green card to the Applicant within fourteen (14) days of this Ruling.
3. The Applicant shall have the costs of this application.

It is so ordered.

**DATED, SIGNED AND DELIVERED at EMBU this 5th day of March, 2026.**

**HON. E.C CHERONO**

**ELC JUDGE**

**In the presence of:**

1. Mr. Sausaga H/B Mr. Kamunda for the Applicants
2. Respondent/Respondent-absent.
3. Diana Kemboi C/A.