



REPUBLIC OF KENYA



Kungu & another v Nyambura & another (Environment and Land Miscellaneous Application E091 of 2025) [2026] KEMC 50 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEMC 50 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E091 OF 2025
PA NDEGE, SPM
FEBRUARY 12, 2026**

BETWEEN

JOSIAH KARIUKI KUNGU 1ST APPLICANT

SAMUEL MACHARIA KUNGU 2ND APPLICANT

AND

PRISCILLA NYAMBURA & MERCY WANJIKU 1ST RESPONDENT

MERCY WANJIKU 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 17th March 2025 by the Applicants seeking the following orders:
 - i. That the restriction registered and/or placed against parcels of land numbers Bahati/Kabatini Block 1/13484 (NDEFFO), Ruiru/East Block 2/31026, Ruiru/ East Block 2/31027 & Ruiru/ East Block 2/31028 by the respondents herein be removed.
 - ii. That the order for its removal be served upon the Land Registrars, Ruiru and Nakuru for compliance
 - iii. That the costs of this application be borne by the respondents.
2. The application was supported by the affidavit of Josiah Kariuki Kungu, one of the applicants and the joint administrator of the estate of the late Julius Kungu Maingi who deposed that in December 2024, he intended to register/ transmit the above-named parcels of land to the applicants' joint names as the administrators but that upon lodging the same, they found that the same had been restricted/ cautioned by people known to the estate. That he was however never notified of the placing of the restriction by the respondents as required by the law to enable him contest or give his input on the same. That the placing of the restrictions was thus malicious, illegal and unlawful and should not be



allowed to remain. That he cannot transmit and secure the estate as the administrator fully while the restriction remains to the said encumbrance.

3. The application was served on the respondents who never responded to the same, and it is therefore deemed unopposed. That notwithstanding, as a court of law, I have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in *Gideon S. Konchellah Vrs Julius L. Sunkuli & 2 others* [2018] e KLR, it behoves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The court is thus under a duty to look at any points of law, such as any jurisdictional impediment, which might render the application a non-starter, or whether there is sufficient material that might enable the court to exercise its discretion in favour of an applicants, just like in case of a formal proof proceeding where the respondent or defendant fails to answer to claim in a main suit.
4. The issue for determination is: whether this court should issue an order for the removal of the restriction placed on Bahati/Kabatini Block 1/13484 (NDEFFO), Ruiru/East Block 2/31026, Ruiru/ East Block 2/31027 & Ruiru/ East Block 2/31028.
5. Section 78 of the *Land Registration Act* provides 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.
6. In this application, the applicants opted for the second route, by making this application, as the representative of the estate of the deceased's proprietor. There is however no proof that the Registrars were notified as they have not been joined in this application as Respondents, as it ought to have been. For this single reason, I find that the application herein is improperly before me and do therefore hereby dismiss it.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF FEBRUARY, 2026

ALOYCE – PETER- NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Applicants Counsel: N/A

Applicants: N/A

