

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT NAKURU**  
**ELC LC MISC NO E002 OF 2026**

**HIRAM NGUGI KIGO .....PLAINTIFF**

**VERSUS**

**ROSEMARY WANJIRU KIGO .....1<sup>ST</sup>**  
**RESPONDENT**

**THE LAND REGISTRAR NAKURU .....2<sup>ND</sup>**  
**RESPONDENT**

**R U L I N G**

1. This is a ruling in respect of the Notice of Motion dated 16<sup>th</sup> January 2026 brought under Order **51 Rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Section 76 of the Land Registration Act 212, Section 3 of the Environment and Land Court Act, and all other enabling provision of law).**

2. It seeks orders: -

1. Spent

2. That this Honorable Court be pleased to order the 2<sup>nd</sup> Respondent to remove, vacate and/or lift the restriction and/or any pending restriction and /or restriction registered in the register of all that land identified as Kihingo/Likia Block 2/330 (Pwani Mutukanio) within 7 days from the date hereof

pursuant to the provision of **Section 78 (1) and (2) of the Land Registration Act, 2012** immediately.

3. That this Honorable Court be pleased to make any such order against the respondents in protecting the sanctity and integrity of the register of all that land identified as Kihingo/Likia Block 2/330 (Pwani Mutukanio).

4. That costs of this application be provided for.

3. The grounds are on the face of the Application and are set out in paragraph a to m.

4. The application is supported by the affidavit of Hiram Ngugi Kigo, the Applicant herein, sworn on the 16<sup>th</sup> January 2026.

5. The Application is opposed. There are Grounds of Opposition filed by the 2<sup>nd</sup> Respondent dated 23<sup>rd</sup> March 2026.

6. The 1<sup>st</sup> Respondent did not file any response.

7. The Notice was canvassed by way of written submissions.

8. The Applicant's submissions are dated 30<sup>th</sup> March 2026. They raise one issue for determination; whether this court should issue an order for the variation and/or removal of the restriction on the title Number Kihingo/Likia Block 2/330 (Pwani Mutukanio) Pursuant to **Section 78 (1) & 2 of the Land Registration Act**.

9. It is the Applicant's submission that he is the registered owner of the suit property holding the same in trust for Joseph Kigo Ngugi. Further that the 1<sup>st</sup> Respondent has been given an opportunity to appear before the Land Registrar but

has refused to appear. Reliance is placed on **section 78 of the Land Registration Act.**

10. It is submitted that despite several summonses, the 1<sup>st</sup> Respondent has refused to appear before the Land Registrar to explain why the restriction cannot be lifted.
11. It is the Applicant's submission that the restriction cannot be allowed to subsist in perpetuity as this would amount to an unreasonable restriction on his right to deal with his property.
12. It is also submitted that this Court has jurisdiction under **Section 78 of the Land Registration Act** to order removal of the said restriction. Reliance is placed on the case of ***John Kamau Kinyanjui Vs Thika District Land Registrar (2017) KEELC 714 (KLR). Joyce Waithira Mwangi Vs Thika Land Registrar (2018) eKLR.***

He prays that the application be allowed.

13. The 2<sup>nd</sup> Respondent's submissions are dated 9<sup>th</sup> April 2026. They raise two issues for determination
  - i. Whether the applicant has met the statutory threshold under section 78 of the Land Registration Act for the removal of the restriction.**
  - ii. Whether the 2<sup>nd</sup> respondent can be compelled to remove the restriction without due process of the law.**

14. It is submitted that Section 78(1) mandates that before removing a restriction, the registrar must give the parties an opportunity to be heard. Reliance is placed on the case of ***Mwangi Rukwaro and another Vs Land Registrar Nyeri (2019) eKLR.***

It is stated that the 1<sup>st</sup> Respondent has not been heard.

15. It is submitted that section 78 of the Land Registration Act created a mandatory check and balance system that ensures that a restriction may only be removed after interested parties are given a notice and an opportunity to be heard. That the Applicant must prove that proper service was effected on the 1<sup>st</sup> Respondent. Reliance is placed on the case of ***Republic Vs Land Registrar & Another; Wamae & Another ELC JR E001 of 2022***

16. The 2<sup>nd</sup> Respondent prays that the Application be dismissed with costs.

17. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions and the authorities cited. The issue for determination is whether this court should issue an order for removal of the Restriction on title Number Kihingo/Likia Block 2/330 ( Pwani Mutukanio)

18. It is the Applicant's case that the restriction placed on the instruction of the 1<sup>st</sup> Respondent, has been pending for too long. She has been served with several summons to visit the

Land Registry and explain why it cannot be removed. She has failed to do so.

That the existence of the restriction infringes on the registered owner's right to property.

19. The 1<sup>st</sup> Respondent despite being served, neglected to file any response to this Notice of Motion. The process server Manuel S. Markey has sworn an affidavit dated 23<sup>rd</sup> February 2026. He has deponed that on the 21<sup>st</sup> February 2026 he travelled to Pwani Village within Njoro Sub County where he served the 1<sup>st</sup> Respondent in person. She acknowledged receipt but declined to sign.
20. It is important to note that this court in order to ensure that she had been served contacted the Land Registrar to avail the 1<sup>st</sup> Respondent's phone Number. The same was availed and the Court Assistant called her on mobile phone Number 0710901586 informing her of the case. She promised to file a response and to attend court but she never did.
21. I have stated the above to confirm that the 1<sup>st</sup> Respondent is aware of these proceedings but she has chosen to keep away.
22. I have looked at the correspondences attached to the Notice of Motion. The 1<sup>st</sup> Respondent has been summoned severally to the Land Registry to explain why the restriction cannot be removed. She has failed to honour the summons.
23. It is not clear what the 1<sup>st</sup> Respondent's interest is on the suit property as it is not stated.

24. I agree with the Applicant's submission that the 1<sup>st</sup> Respondent has been given an opportunity to be heard but has neglected to seize it .

**Section 78 (1) & (2) of the Land Registration Act provides that:**

**(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.**

25. I am guided by **Section 76 (2) of the Land Registration Act** in finding that the restriction cannot be allowed to subsist in perpetuity.

26. In the case of ***Joyce Waithira Mwangi Vs Thika Land Registrar (2018) eKLR*** the court held as follows:

“ It is evident from the above provisions of law that the Court has power to remove any restriction on a title to land. The Respondent did not appear in Court to explain why the restriction should not be removed even after the person who applied to have it registered has applied for its removal. This Court therefore finds no reason why the said restriction should remain on the said title and consequently, the Court finds that the Applicant’s Notice of Motion dated 26<sup>th</sup> May 2016 is merited”

27. I am satisfied that the 1<sup>st</sup> Respondent has been accorded an opportunity to defend the restriction. She has neglected to do so.

28. In conclusion, I find merit on this application and the same is allowed in the following terms: -

**(i) That the 2<sup>nd</sup> Respondent is hereby ordered to remove, vacate and/or lift the restriction registered against title Number Kihingo/Likia Block 2/330 (Pwani Mutukanio) within twenty-one (21) days from the date of this ruling.**

**(ii) That costs of this application be borne by the Applicant.**

**Ruling dated, signed and delivered virtually at Nakuru this 13<sup>th</sup> day of May 2026.**

**L KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Alusa for the Applicant

No appearance for the 1<sup>st</sup> Respondent

Ms. Nyambura for the 2<sup>nd</sup> Respondent

Court assistant : Derick