

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**  
**ELC CASE NO. E021 OF 2025**

**CHERUIYOT HILLARY KIRUI.....**  
**.....PLAINTIFF**

**VERSUS**

**ROSEMARY CHEPNGENO KOROS.....1<sup>ST</sup>**  
**DEFENDANT**

**THE LAND REGISTRAR KERICHO.....2<sup>ND</sup>**  
**DEFENDANT**

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**RULING.**

**Introduction.**

- 1.** This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 21<sup>st</sup> March, 2025. The application is expressed to be brought under **Sections 79 & 80** of the Land Registration Act and **Section 3A** of the Civil Procedure Act.
- 2.** The application seeks the following orders;
  - a. Spent**
  - b. That pending the hearing and determination of this**

**application, this Honourable Court do order that a restriction be placed on Kericho/Chemoiben/2670 to prevent any further dealings on the property until the transfer and registration process is completed.**

**c. Spent**

**d. Spent**

**e. Spent**

**f. That the costs of this application be awarded to the Applicant.**

- 3.** The application is based on the grounds on its face and the supporting affidavit of the Applicant that is sworn on 21<sup>st</sup> March, 2025.

**Factual Background.**

- 4.** The Plaintiff/Applicant commenced the present proceedings vide the Plaint filed on 27<sup>th</sup> June, 2025 wherein he seeks the following prayers;

- a. An order of specific performance compelling the Defendant to execute any remaining transfer documents.**
- b. An order compelling the Defendant to attend the Land Control Board to obtain consent to transfer the suit land to the Plaintiff.**
- c. In the alternative, the honorable Court be pleased to order the Land Registrar to complete transfer of the portion measuring 50 X 100 to be excised Kericho/Chemoiben/2670 (sic) and registered in the name of the Plaintiff.**
- d. In the further alternative, an order directing the Defendant to refund the purchase price of Ksh 1,200,000/= with interest at courts rate from the date of payment until payment in full (sic).**
- e. General damages for breach of contract.**
- f. Costs and interest to the Plaintiff.**
- g. Any other or further relief that the Court may deem fit and just to grant.**

5. As at the time of writing of this ruling, neither of the Defendants/Respondents have filed their Statements of Defence.
6. The application under consideration first came up for hearing on 30<sup>th</sup> June, 2025 which hearing was adjourned to 30<sup>th</sup> July, 2025.
7. On 30<sup>th</sup> July, 2025, the application was further adjourned to 13<sup>th</sup> October, 2025 and then rescheduled to 1<sup>st</sup> December, 2025.
8. On 1<sup>st</sup> December, 2025, Counsel for the 2<sup>nd</sup> Defendant/Respondent informed the Court that they will not be participating in the hearing of the application while Counsel for the Plaintiff/Applicant abandoned prayers **(3)** and **(4)** of the application.

9. The Court then issued directions that prayer (2) of the application under consideration shall be heard by way of written submissions.
10. The matter was mentioned on 16<sup>th</sup> February, 2026 to confirm filing of submissions before it was reserved for ruling.

**The Plaintiff/Applicant's Contention.**

11. The Plaintiff/Applicant contends that on 2<sup>nd</sup> October, 2024, he purchased a 50 x 100-acre portion of land parcel No. Kericho/Chemoiben/2670 from the 1<sup>st</sup> Defendant/Respondent.
12. He also contends that they executed all the transfer documents but the transfer process was delayed because he was away for work in Mandera.
13. He further contends that by the time he sought to complete the transfer process, the 1<sup>st</sup> Defendant/Respondent had halted it.

- 14.** It is his contention that the documents signed by the 1<sup>st</sup> Defendant/Respondent complied with the legal requirements and ought to be honored by the Land Registrar.
- 15.** It is also his contention that he approached the 1<sup>st</sup> Defendant/Respondent to complete the transfer but she refused and goes on to state that the said refusal has prevented the completion of the transfer process even though there is no substantive dispute over the sale of the suit property.
- 16.** It is further his contention that the 1<sup>st</sup> Defendant/Respondent signed the application for consent of the Land Control Board, Form LRA 33 and handed over all the completion documents including the original title deed to him.
- 17.** He contends that he paid the entire purchase price and there are therefore no financial encumbrances or outstanding liabilities on the property.

- 18.** He also contends that he obtained a Certificate of Official Search from the Land Registry which certificate shows that the suit property is still registered in the 1<sup>st</sup> Defendant/Respondent's name.
- 19.** He further contends that the continued refusal by the 1<sup>st</sup> Defendant/Respondent to complete the transfer has caused undue delay and prevented him from fully utilizing the property as intended.
- 20.** He ends his deposition by stating that it is in the interest of justice that the prayers sought be granted.

**The 1<sup>st</sup> Defendant/Respondent's Response.**

- 21.** In response to the Plaintiff/Applicant's application, the 1<sup>st</sup> Defendant/Respondent filed Grounds of Opposition dated 28<sup>th</sup> July, 2025. They are as follows;

***a. The Application is bad in law,  
misconceived, incompetent,***

***premature and fatally defective for the reason that the Applicant's purported proprietary rights in Kericho/Chemoiben/2670 have not been ascertained hence the orders sought cannot be granted.***

***b. The Application seeks substantive final orders which cannot be granted in the interim.***

**Issues for Determination.**

**22.** The Plaintiff/Applicant filed his submissions on 11<sup>th</sup> February, 2026 while the 1<sup>st</sup> Defendant/Respondent filed submissions on 16<sup>th</sup> February, 2026.

**23.** The Plaintiff/Applicant submits on the following issues;

***a. Whether the Applicant has established a prima facie case to warrant the grant of a restriction.***

***b. Whether a restriction can lawfully be placed over the***

*entire parcel even where the Applicant purchased only a portion thereof. (sic)*

*c. Whether the preservation of the suit property pending hearing is necessary to prevent injustice.*

*d. Whether the Applicant is entitled to costs of the application.*

**24.** On the first issue, the Plaintiff/Applicant relies on the judicial decision of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others** (citation not given) and submits that he has placed before the Court a valid written sale agreement, proof of payment of the full purchase price and the 1<sup>st</sup> Defendant/Respondent's refusal to transfer the land.

**25.** The Plaintiff/Applicant also submits that the facts he has presented demonstrate a clear contractual and equitable interest in a portion of the suit parcel of land.

**26.** On the second issue, the Plaintiff/Applicant relies on **Section 76** of the Land Registration Act, the judicial decision of

**David Macharia Kinyuru vs District Land Registrar, Naivasha & another [2017] eKLR** and submits that before the Court issues a restriction, it has to consider whether there is a dispute over the land.

- 27.** The Plaintiff/Applicant also relies on the judicial decisions of **Mutisya & another vs Mugambi & another** (citation not given), **Kinyua vs Runguma** (Citation not given) and submits that Courts have held that the only way to preserve a purchaser's interest in land is to restrict dealings over the whole title.
- 28.** The Plaintiff/Applicant further submits that the 1<sup>st</sup> Defendant/Respondent's argument that a restriction cannot issue because he is a purchaser is misconceived as issues of subdivision and transfer are matters yet to be completed and they remain under the 1<sup>st</sup> Defendant/Respondent's control.

- 29.** On the third issue, the Plaintiff/Applicant submits that the purpose of a restriction is to maintain the *status quo* and to prevent acts that render the Court's final decision nugatory.
- 30.** It is the Plaintiff/Applicant's submissions that if the Court does not issue a restriction, the 1<sup>st</sup> Defendant/Respondent may transfer the land to third parties, charge it or subdivide it in order to defeat his claim.
- 31.** It is also the Plaintiff/Applicant's submissions that the doctrine of *lis pendens* bars parties from dealing with property in a manner that prejudices ongoing litigation.
- 32.** It is further the Plaintiff/Applicant's submissions that he will be prejudiced if the said restriction is not issued and adds that the 1<sup>st</sup> Defendant/Respondent will not suffer any prejudice.
- 33.** The Plaintiff/Applicant concludes his submissions by urging the Court to allow his application as prayed.

- 34.** The 1<sup>st</sup> Defendant/Respondent submits on whether this Court has jurisdiction to order that a restriction be placed on land parcel No. **Kericho/Chemoiben/2670.**
- 35.** The 1<sup>st</sup> Defendant/Respondent relies on **Section 76** of the Land Registration Act, the judicial decisions of **Geoffrey Muthinja & Anor vs Samuel Muguna Henry & 1956 (sic) [2015]eKLR, Speaker of the National Assembly vs James Njenga Karume [1992] eKLR** as was cited in **Justine Karonji Nyaga vs Attorney General & 2 Others [2021] KEELC, Benard Murage vs Fine Serve Africa Limited & 3 Others [2015] eKLR** and submits that it is the Land Registrar who has the mandate to place a restriction on land.
- 36.** The 1<sup>st</sup> Defendant/Respondent also submits that the Land Registrar is the first point of recourse when a party seeks for the registration of a restriction.

**37.** The 1<sup>st</sup> Defendant/Respondent further submits that the Plaintiff/Applicant has not presented any evidence that he engaged the Land Registrar who is the first point of call before coming to Court.

**38.** It is the 1<sup>st</sup> Defendant/Respondent's submissions that the Plaintiff/Applicant's application is therefore premature and this Court does not have jurisdiction to hear and determine the application.

**39.** The 1<sup>st</sup> Defendant/Respondent concludes her submissions by urging the Court to dismiss the Plaintiff/Applicant's application.

**Analysis and Determination.**

**40.** I have considered the Plaintiff/Applicant's application, the response thereto and the rival submissions. It is my view that the only issue that arises for determination is whether the application dated 21<sup>st</sup> March, 2025 has merit.

**41.** As stated in the foregoing paragraphs, only Prayer (2) of the application under consideration is for determination. It is as follows;

***“b. That pending the hearing and determination of this application, this Honourable Court do order that a restriction be placed on Kericho/Chemoiben/2670 to prevent any further dealings on the property until the transfer and registration process is completed.”***

**42.** It is important to note that the said prayer has been sought *pending the hearing and determination of the application* under consideration. The appropriate relief would have been for the Plaintiff/Applicant to seek that a restriction be issued *pending the hearing and determination of the suit.*

43. In the judicial decision of **Issa Ahmed & 15 others vs Mohamed Al-Sawae [2021] eKLR** the Court held as follows;

***“The object and purpose of pleadings is to ensure that litigants come to Court with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. The pleadings are meant to give each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take. A Court cannot assume or infer a case by referring to a stray sentence here and a stray*”**

**sentence there in the pleading. A Court cannot exercise its judicial position to grant a relief which is not even sought by parties in their pleadings as granting the same would lead to a miscarriage of justice.”**

(Emphasis mine)

- 44.** Although parties have extensively submitted on whether or not a restriction should issue, the same cannot be granted as it was sought pending the hearing and determination of the application under consideration.

**Disposition.**

- 45.** Taking the foregoing into consideration, I find that the Plaintiff/Applicant’s application lacks merit and it is hereby dismissed with costs.

- 46.** It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO  
THIS 7<sup>TH</sup> DAY OF MAY, 2026.**

**L. A. OMOLLO  
JUDGE.**

**In the presence of: -**

**Mr. Kipkorir for the Plaintiff/Applicant.**

**Mr. Moshe for the 1<sup>st</sup> Defendant / Respondents.**

**Court Assistant; Mr. Joseph Makori.**

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