



REPUBLIC OF KENYA



In re Sumac Microfinance Bank Ltd (Environment and Land Miscellaneous Application E003 of 2025) [2025] KEELC 5291 (KLR) (16 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5291 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2025
MAO ODENY, J
JULY 16, 2025
IN THE MATTER OF AN APPLICATION UNDER SECTIONS
78 (2) OF THE LAND REGISTRATION ACT NO 3 OF 2012
AND
IN THE MATTER OF LAND PARCEL NO. NAKURU/RARE/GICHOBO/2313
AND
IN THE MATTER OF AN APPLICATION BY A CHARGEЕ TO
REMOVE A RESTRICTION PLACED ON PARCEL NO NAKURU/
RARE/GICHOBO/2313 BY THE REGIONAL SURVEYOR, NAKURU
IN THE MATTER OF
SUMAC MICROFINANCE BANK LTD APPLICANT

RULING

1. This ruling is in respect of Originating Summons dated 10th March, 2025 by the Applicant seeking the following orders:
 - a. That this Honourable Court be pleased to remove and/or vacate the restriction placed on the parcels of land known as Nakuru/Rare/Gichobo/2313 by the Regional Surveyor, Nakuru.
 - b. That the costs of this suit be provided for.
2. The Originating Summons was supported by the annexed affidavit of Duncan Mbugua Mwaniki dated 10th March, 2025, where he deponed that he is the Director of the Applicant and holds a valid charge over the land parcel known as Nakuru/Rare/Gichobo/2313, whereby the Chargee defaulted on his loan obligations. It is further his deposition that the realization of security has been frustrated by the failure to lift a restriction placed by the Regional Surveyor, Nakuru. He deponed that the Applicant's



advocates wrote to the Regional Surveyor, Nakuru vide a letter dated 13th September, 2024, in respect of the lifting of the restriction but the same has not been acted upon.

3. According to the Applicant, they wrote letters dated 28th October 2024 and 20th November 2024 to the Land Registrar Nakuru, but he has failed to act or remove the restriction without furnishing any reason. He concluded that the restriction placed by the Regional Surveyor is improper.

Applicant's Submissions

4. The Applicant's counsel filed submissions dated 30th May, 2025, and identified the issue for determination as to whether the Applicant is entitled to orders for the removal and/or lifting of the restriction placed on the parcel of land known as Nakuru/Rare/Gichobo/2313. Counsel submitted that a restriction is aimed at preventing fraud or improper dealings over the land and the same ought not to remain indefinitely.
5. It was counsel's further submission that the Regional Surveyor, at the behest of the chargor to prevent the Applicant from realizing its security, lodged the restriction fraudulently, yet the chargor defaulted in a loan facility. Counsel submitted that the continued pendency of the restriction over the property is occasioning loss and damage to the Applicant.
6. Counsel relied on Sections 76, 77 and 78 of the [Land Registration Act](#) and the cases of [David Macharia Kinyuru vs District Land Registrar, Naivasha & Another](#) [2017], [Ahmed Ibrahim Suleiman and Another vs Noor Khamisi Surur](#) [2013] eKLR and [Mwangi Rukwaro & Another vs Land Registrar Nyeri](#) [2019] eKLR.
7. Counsel submitted that it is in the interest of justice that this Honorable Court lifts the restriction over the subject suit property to enable the Applicant realize the security, given that the Regional Surveyor has never responded to the said application.

Analysis and Determination

8. The issue for determination is whether this court should remove the restriction placed on the parcel of land known as Nakuru/Rare/Gichobo/2313. 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.
9. The Applicant deponed that the restriction was lodged on the suit parcel of land by the Regional Surveyor Nakuru and the Applicant wrote three letters dated 13th September 2024, 28th October 2024 and 20th November 2024 respectively, to the Land Registrar Nakuru but the Land Registrar neither acted nor removed the restriction. He also stated that the Land Registrar has never furnished him with any reasons why the restriction should remain in force.
10. In the case of [Republic v Land Registrar, Nyeri County Registry & another; Markerryl Company Limited \(Exparte Applicant\)](#) [2025] KEELC 2928 (KLR), the court pronounced as follows at paragraphs 24 and 25:



24. It was also apparent that when the Applicant came to learn of the restriction, they wrote a letter to the Respondents herein dated 8th April, 2024 seeking for the removal of the restriction. It is the Applicant's case that the 1st Respondent has to-date failed to act upon and/or respond to the said request. It is to be noted that the removal of a restriction is provided for under Section 78(1) of the [Land Registration Act](#) as follows:
- “78. Removal and variation of restrictions.
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.”
 25. Arising from the foregoing, it was again clear to me that upon receipt of the Applicant's letter, it was incumbent upon the Land Registrar to conduct a hearing to give all the parties affected by the restrictions an opportunity of being heard and thereafter order the removal or variation or retention of the restriction. By failing to notify the Applicant of the imposition of the restriction and again failing to hear them when they applied for its removal, the 1st Respondent acted illegally and failed to comply with the mandatory provisions prescribed by the empowering statute law to the detriment of the Applicant.
11. Similarly in the case of [Joyce Waitbira Mwangi v Thika Land Registrar](#) [2018] eKLR, the court ordered the removal of a restriction and held that:
- “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 26th May 2016 is merited.”
12. In this case, the Land Registrar was served with the Summons but, neither responded nor appeared in court to explain why the restriction should continue being in force. In the case of [John Kamau Kinyanjui v Thika District Land Registrar](#) [2017] KEELC 714 (KLR), the court stated as follows:
- “It is apparent therefore that the court has discretion to make an order for removal of any restriction placed on a title. However as usual, the said discretion must be exercised judicially.”
13. The court has the discretion to make an order for the removal of a restriction upon satisfying itself that the Applicant has proved that the Land Registrar has failed to comply with the provisions under Section 78 (1) of the [Land Registration Act](#) and the court will therefore apply Section 78 (2) which states that:
- 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.



14. The Applicant had written three letters to the Land Registrar requesting the removal of the restriction but to no avail. I have considered the application and find that the same has merit and is therefore allowed as prayed and make the following specific order.
- a. The Land Registrar, Nakuru, is hereby ordered to lift the Restriction placed on the property known as Nakuru/Rare/Gichobo/2313 within 14 days failure to which it stands removed by this order.
 - b. Costs to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 16TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

