



**Edross v Chief Land Registrar; Muania (Interested Party) (Environment and Land Miscellaneous Application E018 of 2022) [2024] KEELC 4134 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4134 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2022**  
**MN GICHERU, J**  
**MAY 13, 2024**  
**IN THE MATTER OF THE ESTATE OF SAID AHMED EDROOS (DECEASED)**  
**IN THE MATTER OF LAND TITLE NUMBERS KAJIADO/MAILUA/2419 AND**  
**KAJIADO/MAILUA/2420**

**BETWEEN**

**SAYED IBRAHIM AHMED EDROSS ..... APPLICANT**

**AND**

**THE CHIEF LAND REGISTRAR ..... RESPONDENT**

**AND**

**NAILAPUA ENE MARANTOI MUANIA ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the notice of motion dated 23/5/2022. The motion which is brought under articles 40 and 407(1) and (2) of the *Constitution*, sections 76(1), 77(1) and 78(2) of the *Land Registration Act* 2012, section 3A of the *Civil Procedure Act* and all enabling provisions of the law seeks one main order.
2. That this court be pleased to order and/or direct the respondent, its servants/or agents to remove and/or cancel the restrictions registered as entry No. 3 on the parcels of land known as Kajiado/ Mailua/2419 and 2420.
2. The motion is based on fourteen grounds and is supported by the affidavit of applicant dated 22/5/2022. It has seven (7) annexures which include a grant of letters of administration, copies of title deeds for L.R. Kajiado/ Mailua/2418, 2419 and 2420, transfer of land documents and certificates of official search. The gist of the above material is as follows.



Firstly, the applicant is the administrator of the estate of the registered owner of the three parcels who is deceased.

Secondly, the interested party is the person who sold the parcels in issue to the deceased.

Thirdly, on 14/8/2012 the interested party filed applications for restrictions against the suit parcels without any notice to the deceased.

Fourthly, the respondent on the same 14/8/2012 registered restrictions against the two titles and this was done without notice to the deceased.

Fifthly, efforts by the deceased to have the restrictions lifted by the respondent have not borne any fruit.

Sixthly, these restrictions are not lawful as they do not comply with Sections 76,77 and 78 of the [Land Registration Act](#) and regulation 81 (4) of the General [Regulations](#).

Finally, this failure to comply with the law has undermined the applicant's right to property guaranteed under article 40 of the [Constitution](#).

It is for the above stated reasons that the filing of the motion became necessary.

3. The motion is opposed by the interested party who has sworn a replying affidavit dated 8/2/2023 in which she deposes as follows.

Firstly, she was the registered owner of L.R. Kajiado/Mailua/1593 before it was fraudulently transferred to the applicant's father Said Ahmed Edross.

Secondly, the deceased took advantage of the interested party's poverty and illiteracy to transfer sixty (60) instead of forty (40) acres to himself.

Thirdly, the dispute between her and the applicant has not been resolved.

For these reasons, she prays that the restrictions remains in force until the matter is fully resolved.

4. Counsel for the parties filed written submissions dated 20/4/2023 and 14/6/2023 respectively in which they identified two issues for determination as follows.
  - a. Whether the applicant should have applied to the Land Registrar for the removal of the restriction before coming to court.
  - b. Whether the applicant should have filed a plaint instead of the current application.

5. I have carefully considered the motion in its entirety including the affidavits, grounds, annexures, the written submissions by both sides and the law cited in the submissions. I agree that the two issues as identified will resolve the dispute. I make the following findings on the two issues raised by Learned Counsel for the parties.

6. On the first issue, I find that there is no legal requirement under section 78 (2) of the [Land Registration Act](#) or any other provisions of law that a proprietor of land must first make an application for removal of a restriction to the Land Registrar before coming to court. Both sections 73(1) and 78(2) of the [Land Registration Act](#) recognize the jurisdiction of the court to order for the removal of a caution and a restriction. They provide as follows.

73(1) "A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar".

Unlike the registrar who has to comply with Subsection (2) of Section 73 before removing a caution, the discretion of the court in this regard is unfettered and not subject to any



condition. The same unfettered and unrestricted jurisdiction is to be found in section 78(2) of the Act.

7. Regarding the second issue, I find that neither section 73 nor section 78 provides that the proceedings in court for the removal of a caution or restriction be commenced by way of a plaint. There being no law on the procedure on how to commence proceedings, I find that the procedure adopted in this case is legally sound and proper. It has given both the respondent and the interested party ample opportunity of controverting the deposition in the applicant's affidavit that the registered owner of the two parcels was not notified of the application for the restriction or the registration of the restriction itself. None of them has controverted this evidence given on oath. This failure to notify the registered owner contravened section 77 (1) of the Act which provides as follows.

“The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction”.

8. It is neither fair nor just to have land restricted for ten years. Article 159 2(b) of the [Constitution](#), sections 1A and 1B of the [Civil Procedure Act](#) and section 3(1) of the [Environment and Land Court Act](#) have the combined effect of providing that justice shall not be delayed and cases and especially land cases be heard and determined expeditiously. If the interested party has a genuine dispute against the applicant, she should file a suit instead restricting the use of land of his registered land.
9. For the above stated reasons, I find merit in the notice of motion dated 23/5/2022 and I allow it as drawn.

It is so ordered. Costs to the applicant.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13<sup>TH</sup> DAY OF MAY 2024.**

**M.N. GICHERU**

**JUDGE**

