



**Muchiri & another v Kimani (Environment & Land Case
795 of 2017) [2024] KEELC 4699 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4699 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 795 OF 2017**

**JG KEMEI, J
JUNE 13, 2024**

BETWEEN

PAUL KARIUKI MUCHIRI 1ST PLAINTIFF

MARTIN MUCHIRI 2ND PLAINTIFF

AND

STEPHEN WAINAINA KIMANI DEFENDANT

RULING

1. It is the Defendant Applicant's application dated the 27/7/2023 seeking orders that the restriction placed on the register of the title number Ruiru/Ruiru East Block2/755 (suit land) by the Respondents/Plaintiffs herein on 9/2/2022 be removed.
2. The application is premised on the grounds annexed thereto together with the Supporting Affidavit sworn on the 27/7/23 by the Applicant where he deposes that upon obtaining Judgement in his favour on the 23/3/23 he proceeded to execute by way of transfer however the process came to a halt because of the existence of a restriction lodged on the title on the 9/2/22 at the behest of the Respondents/Plaintiffs.
3. The application is opposed by the Respondents vide their Replying Affidavit sworn by the 2nd Respondent on the 21/8/2023 on his behalf and that of the 1st Respondent. He contended that the restriction was lodged until the determination of the suit by the administrators and beneficiaries of the deceased estate. That following the delivery of the Judgement in this suit, he has since filed an appeal in the Court of Appeal vide a Notice of Appeal dated the 3/4/2023. That if the Court lifts the restriction it will defeat the purpose for which the restriction was lodged as well as the suit since the Respondent has filed an appeal against the decision of the Court. He further added that the removal of the restriction will prejudice the Respondents as he believes that his case has a huge success on appeal.



4. Parties filed their written submission which I have read and considered. In their written submissions both parties framed a singular issue for the Courts determination which is whether the Applicant is entitled to orders of removal of the restriction.
5. Lodgement and removal of restrictions is governed by the provisions of Section 76, 77 and 78 of the [Land Registration Act](#) which provides;

“76. Restrictions

- (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
- (2) A restriction may be expressed to endure—
 - (a) for a particular period;
 - (b) until the occurrence of a particular event; or
 - (c) until the making a further order is made, and may prohibit or restrict all dealings or only the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.
- (3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.

77. Notice and effect of restriction

- (1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.
- (2) An instrument that is inconsistent with it shall not be registered while the restriction is still registered except by order of the Court or of the Registrar

78. Removal and variation of restrictions

- (1) The Registrar may, at anytime 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 that 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. It is clear that this Court has power to remove a restriction upon application of a party and upon notice to the Land Registrar.
7. In the case of *David Macharia Kinyuru v District Land Registrar Naivasha & Anor* [2017]eKLR the Court held that;

“Restrictions are to endure for a particular time, or until the occurrence of an event, or the making of a further order. It is not the purpose of this section of the law to have restrictions remain indefinitely. The reasoning is that a restriction should only hold a property in abeyance, as the underlying issue leading to the restriction is being resolved, since a restriction by itself does not solve a dispute”
8. In this case the suit was heard and determined and the Applicant has been adjudged as the owner of the suit land and that for his right to ownership and issuance of title to crystalize he requires the restriction to be removed as it is preventing him processing the title.
9. The restriction on the title is framed as;

“9/2/22 – restriction; No dealings until determination of the suit by administrators beneficiaries of the deceased.”
10. The Respondents have opposed the application on the basis that the restriction should be allowed to persist because they have filed an appeal. The Court finds that the suit is fully determined by the Court and there is no valid reason that has been proffered by the Respondents to bar the Court from directing the removal of the restriction.
11. Final orders for disposal;
 - a. In the end the application is allowed.
 - b. Each party to meet the costs of the application.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 13TH DAY OF JUNE, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of

Wachira HB Kanyi for 1st and 2nd Plaintiffs

Jesse Kariuki for Defendant

Court Assistants – Phyllis / Oliver

