Written Submissions on Notice and Hearing Before a Land Restriction

Educational sample 055 | Environment and Land Court at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

WRITTEN SUBMISSIONS

1. These submissions concern the procedural validity of the restriction against [redacted parcel]. The Applicant seeks removal or justified variation after notice to the Registrar. It does not seek final adjudication of the Respondent’s matrimonial ownership claim in this application.

2. The relevant record comprises the certified register, the pre-purchase search, the transfer documents and the correspondence requesting a hearing. The Applicant purchased for KES 12,500,000 and became registered proprietor before discovering the challenged restriction.

3. The first issue is whether the Registrar complied with the inquiries and hearing contemplated by section 76 and the written notice required by section 77 of the Land Registration Act. The Applicant’s affidavits deny receipt of notice and participation in a hearing. No service document should be assumed to exist without being produced.

4. The second issue is the remedy under section 78(2). That provision allows the Court, on the application of a proprietor affected by a restriction and upon notice to the Registrar, to remove or vary the entry or make another appropriate order.

5. The Respondent’s asserted matrimonial interest is a reason to hear the affected persons. It does not, by itself, cure a restriction entered without the required process. Equally, a procedural defect does not conclusively negate a separately pleaded proprietary claim.

6. The Applicant relies on the Nairobi ELC ruling identified in the source note, where a restriction was removed because the registered proprietor had not been notified or heard. The decision illustrates the distinction between statutory fairness and final title adjudication.

7. Development disruption and refunded deposits explain the practical effect of the entry. They are not presented here as a proved damages claim. A separate monetary prayer would require a pleaded legal basis and admissible quantification.

8. The Court is invited to remove the identified restriction and address costs, or to state expressly the lawful basis, extent and duration of any variation. Any existing injunction in another proceeding must be disclosed and dealt with according to its own terms.

9. The proposed order should identify the parcel and entry precisely and be served on the relevant Registrar. No direction should be requested against an unidentified registry or a person who has not been heard.

DATED at [place] on [date]. [Signature of party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Submissions are argument, not evidence. Put searches, service records and correspondence in affidavits or the proper evidence bundle. Verify the current consolidation of the Land Registration Act and any later orders affecting the parcel before adapting the draft.

Source and procedural limits

A developer bought land for KES 12,500,000 after a registry search disclosed no encumbrance. A restriction subsequently interrupted development and off-plan sales. A spouse asserted rights connected with a pending matrimonial dispute. The registered developer said it had not been notified or heard and had unsuccessfully asked the Registrar for a hearing.

The court removed the restriction with costs because the statutory notice and hearing safeguards were not observed. It did not finally determine the matrimonial ownership dispute or declare that every allegation of fraud was false.

Land Registration Act sections 76, 77 and 78, particularly the court route under section 78(2). A restriction and a caution are different entries; obtain the actual register before choosing a remedy.

[2015] KEELC 655 (KLR) — 13 February 2015. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2015/655/eng@2015-02-13

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.