



Cautions and Restrictions



The law provides protective entries on the land register which operate as statutory caveats, some at the instance of private parties asserting an interest, others at the direction of the Registrar - both designed to arrest dealings with land until competing claims are resolved or the risk of fraud is eliminated.

Land, in law, is not merely soil and stones. It is memory, wealth, and security. In Kenya's Torrens-based system, the land register is the ultimate mirror of rights, but even a mirror must sometimes be shielded to prevent distortions. That is the function of cautions and restrictions: they act as sentinels at the gates of the register.

A *caution* is the private litigant's alarm bell, rung when one asserts an interest in land and wishes to hold the registrar's pen still until their claim is heard.

It is not a weapon of ownership, but a shield of preservation used in preventing dealings without notifying the cautioner.

A *restriction*, by contrast, is the registrar's statutory injunction, often public in character, placed to ensure that the register is not tainted by fraud, impropriety, or unlawful dealings. It freezes transactions, not as proof of rights, but as a safeguard until disputes are resolved or conditions fulfilled.

Together, they embody a paradox of the land law system: they do not create rights, yet they may determine whether rights survive. They are, in short, the law's way of saying, "stop — before you move further, let us be certain whose claim truly prevails."

What the law provides

- **Cautions**

A caution may be lodged where a person has an interest in land that requires temporary protection from adverse dealings.

For example, a purchaser who has paid a deposit under a sale agreement may lodge a caution to prevent the vendor from transferring the property elsewhere; a beneficiary under succession may use it to safeguard their entitlement until distribution is confirmed; a spouse may lodge one to protect matrimonial property

from being disposed of without consent; a lender may secure their loan pending registration of a charge; and even an adverse possessor may rely on a caution to preserve the status quo. In each case, the caution operates not as proof of ownership, but as a statutory safeguard to hold the register in abeyance until the claim is resolved.

Section 71 of the Land Registration Act equally extends this right to those entitled to a *licence over land, as well as to individuals who have initiated bankruptcy proceedings against the proprietor of registered land or an interest therein.*

A caution, once lodged, may take two forms:

- it may forbid the registration of any disposition and the making of entries in the register, or
- it may do so only to the extent expressly stated by the cautioner.

To ensure orderliness, the caution must be lodged in the prescribed statutory form, and the Registrar may require that it be supported by a sworn declaration. Importantly, the Registrar retains the discretion to reject any caution deemed unnecessary or where its purpose may instead be achieved by the registration of a formal instrument. Once accepted, the caution is entered into the relevant register.

Upon registration, the Registrar is under a duty to notify, in writing, the proprietor of the land, lease, or charge affected. While the caution remains in force, no dealing that contradicts it may be registered unless the cautioner consents or a court so orders.

However, the law also provides avenues for lifting or limiting this protective entry.

How to lift the caution

- A caution may be voluntarily withdrawn by the cautioner,
- removed by order of the court, or,

- upon application by an interested party, removed by the Registrar. In this latter case, the Registrar must serve notice on the cautioner warning of removal after a stated period. If no objection is raised, the caution is removed; but where the cautioner objects, the Registrar must hear both parties and issue an appropriate order, including on costs.

A special rule exists in relation to sales by chargees: once a chargee exercises their statutory power of sale and a transfer is registered, any subsequent caution that purports to inhibit the chargee's dealing is automatically removed thirty days later.

This basically means that the law prioritizes the rights of chargees, because their interest is a registered encumbrance on the land. Without this rule, people could abuse cautions by continuously lodging them to frustrate banks or purchasers after a valid statutory sale.

The 30-day grace period exists to allow anyone with a legitimate claim to move to court — but after that, the register must be cleared to give certainty to the buyer from the bank.

Furthermore, in order to prevent abuse, the *Act prohibits the lodging of successive cautions in respect of the same matter by the same person or their proxy.*

Moreover, Section 75 imposes *liability on those who lodge or maintain cautions wrongfully and without reasonable cause:* such persons may be sued for damages by any party who suffers loss as a result.



- **Restrictions**

Whereas a caution is essentially a private weapon, lodged by an individual to protect their personal claim against land, a restriction is the Registrar's shield, imposed in the public interest to safeguard the integrity of the register.

A caution is reactive since it arises when a purchaser, a beneficiary, or even an adverse possessor fears that their interest may be defeated, and so they lodge a protective entry. A restriction, by contrast, is preventive since it is the Registrar's statutory injunction, issued to freeze dealings in circumstances such as impending compulsory acquisition, suspected fraud, or any other sufficient cause.

The two serve similar ends, in that they both arrest dealings on the register, but they differ profoundly in character: the caution is a party-driven notice, while the restriction is an administrative or judicial order.

What the law provides

Under the Land Registration Act, a restriction is a statutory mechanism used to limit or prohibit dealings with land,

a lease, or a charge where circumstances demand greater scrutiny.

The Registrar may, either **on their own motion or at the instance of an interested party**, impose a restriction for a variety of purposes including

- facilitating compulsory acquisition upon issuance of notice to the registrar of intent to acquire the said land by the National Land Commission,
- preventing fraud,
- stopping improper dealings, or for any other sufficient cause.

Before issuing such an order, the Registrar is empowered to direct inquiries, serve notices, and hear persons whose rights may be affected. Once imposed, the restriction is entered in the appropriate register and becomes binding on the land or interest concerned.

A restriction may endure for a fixed period, until the occurrence of a specified event, or indefinitely until further orders are made.

Its effect can range from prohibiting all dealings in the land to prohibiting only those that do not comply with stated conditions.



In essence, a restriction “freezes” the register, preventing the registration of instruments that are inconsistent with it unless the Registrar or the court orders otherwise.

The Act expressly requires the Registrar to give notice in writing to the proprietor of the affected land, lease, or charge, before registering a restriction thereby preserving the principles of fair administrative action under Article 47 of the Constitution.

Lifting the Restriction

The law also provides for flexibility in lifting or modifying restrictions. The Registrar may, at any time, remove or vary a restriction on their own initiative or upon application by an interested party, provided the parties concerned are given an opportunity to be heard.

Similarly, the proprietor affected by a restriction may move the court (ELC) to have it lifted or varied, in which case the court has broad discretion to make such orders as it deems just, including on costs. Thus, restrictions serve as regulatory safeguards to protect land transactions from fraud, uncertainty, or premature dealing, while still allowing recourse for aggrieved proprietors.



Cautions and Restrictions



KARANJA
NJENGA
ADVOCATES

30⁺
YEARS