

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MALINDI**  
**ELC NO. E127 OF 2025**

**ALAMIN HASSAN OTHMAN** .....  
**PLAINTIFF**

**MOHAMED SAFARI KAZUNGU & 2 OTHERS** .....  
**DEFENDANT**

**RULING**

1. The plaintiff’s application dated 16<sup>th</sup> September 2025 is seeking:
  - a. a temporary injunction restraining, inhibiting and prohibiting all dealings in respect of CR 23219 - PLOT NUMBER MN/III/1905 till further orders of this court in this matter and/or *inter partes* hearing;
  - b. A conservatory order of injunction be issued restraining the defendant by himself his servants, agents and whomsoever howsoever from in any manner dealing, transferring and interfering with CR 23219 PLOT NUMBER MN/III/1905 till full hearing and determination of the suit herein.
2. The application is supported by the affidavit of the plaintiff sworn on the same date. The grounds on which the application is premised are that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have fraudulently and unlawfully transferred the suit property without the plaintiff’s consent, knowledge or authority; that the plaintiff has been denied access to the property and he is apprehensive that the defendants may dispose of the suit property while there is still in existence a dispute between the parties herein; that the 1<sup>st</sup> defendant illegally transferred the property under decree in a suit **Malindi ELC Number E027 Of 2014** while the plaintiff herein was not aware of such a decree and while the original title to the property was still in his custody. The plaintiff’s attempt to obtain an order of his joinder to **Malindi ELC Number E027 of 2014** was repulsed by the defendants, and it was rejected by this court hence this suit. It is alleged that the plaintiff never received any summons from either the 1<sup>st</sup> or 2<sup>nd</sup> defendant in this case in respect of the earlier suit **Malindi ELC Number E027 of 2014**, and thus he never participated in the substantive proceedings therein.
3. The application is opposed.
4. The 1<sup>st</sup> defendant filed his sworn affidavit dated 1<sup>st</sup> October 2025 in which he stated that he had conducted due diligence prior to purchase

of the suit property from the 2<sup>nd</sup> defendant, and that an official search on the suit property revealed that the owner thereof was the second defendant; that the Land Registrar gazetted **Notice Number 564 of 24<sup>th</sup> January 2025** indicating that the owner of the suit land was “*Patmack Investments Limited*”; that the deponent is currently the registered owner of the suit and the document of title exhibited by the plaintiff is false and fraudulent. It is stated that he followed all due process to acquire the suit land from the 2<sup>nd</sup> defendant.

5. The application was disposed of by way of written submissions which the 1<sup>st</sup> defendant filed, dated 13<sup>th</sup> October 2025, while the plaintiff filed his dated 14<sup>th</sup> October 2025. The 2<sup>nd</sup> defendant never filed submissions.
6. I have considered the written submissions of the parties and the contents of the proceedings in the earlier case, Malindi ELC Number E027 of 2014, which I had the benefit of handling. The plaintiff herein had attempted to join himself into the earlier case without success because it had been completed, hence his act of filing this fresh suit. He has exhibited a copy of a title issued in his name. He has in the present application exhibited documents showing that the land was transferred to him in 2014 by the 2<sup>nd</sup> defendant. It may therefore be probable that by the time Malindi ELC Number E027 of 2014 was filed, the 2<sup>nd</sup> defendant was not the owner of the suit land. In this court’s view the plaintiff herein has established a *prima facie* case with probability of success.
7. As regards whether there is risk of irreparable injury to be occasioned to the plaintiff, I note that the suit land having been registered in the name of the 1<sup>st</sup> defendant, it may be transferred to third parties thus rendering it to be out of reach of the plaintiff, yet some illegality in the transfer to the 1<sup>st</sup> defendant has already been alleged. In the circumstances, I am of the view that the plaintiff herein may suffer irreparable loss.
8. There having been a previous suit in which the property was involved and in which the plaintiff herein had successfully join as a party, it is the opinion of this court that he has demonstrated genuine interest and the balance of convenience lies in preserving the status of the suit property till the determination of this suit.
9. Consequently, I find the application dated 16<sup>th</sup> September 2025 has merit and I grant the same in terms of **prayer no 3** thereof.
10. The costs of the application shall be in the cause. Mention on 2/3/26 for issuance of a hearing date. Parties shall comply with the Civil Procedure

Rules before then with the plaintiff taking the first 30 days herein and the defendant the following 30 days.

**Dated, signed and delivered at Malindi on this 16<sup>th</sup> day of December 2025.**

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi Njoroge".

**MWANGI NJOROGE  
JUDGE, ELC, MALINDI**