



**Malinda v Kraftway Limited & 6 others; Premier Bank Limited Formerly Known as First Community Bank Limited (Interested Party) (Environment and Land Case E101 of 2025) [2026] KEELC 407 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 407 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E101 OF 2025  
MAO ODENY, J  
FEBRUARY 2, 2026**

**BETWEEN**

**JOSEPH MALINDA ..... PLAINTIFF**

**AND**

**KRAFTWAY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MAZHAR HAROON ISMAEL ..... 2<sup>ND</sup> DEFENDANT**

**FATHIMA AAMRIN ..... 3<sup>RD</sup> DEFENDANT**

**MAXWELL MUCHIRI NDIRITU ..... 4<sup>TH</sup> DEFENDANT**

**PETER MUIYURO MACHARIA ..... 5<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR ..... 6<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**PREMIER BANK LIMITED FORMERLY KNOWN AS FIRST COMMUNITY BANK LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Plaintiff’s Notice of Motion dated 2<sup>nd</sup> October, 2025, seeking the following orders:
  - a. Spent
  - b. Spent



- c. Spent
  - d. That pending the hearing and determination of this suit, a conservatory order do issue restraining the Defendants , including the Interested party , their servants, agents and/or any other persons claiming through them from alienating, transferring, charging, leasing, disposing of, interfering with the Plaintiff's quiet possession, or in any way dealing with the parcels of land known as Kiambogo/Kiambogo Block 2/800( Mwariki)
  - e. That pending the hearing and determination of this suit, a conservatory order do issue directing the Land Registrar Nakuru, to place a restriction and /or inhibition on the register in respect of the parcels of land known as Kiambogo/Kiambogo Block 2/800 (Mwariki)to preserve the subject matter of this suit.
  - f. That the costs of this application be in the cause
2. The Application was supported by the annexed affidavit and a further affidavit of Joseph Mutua Malinda dated 29<sup>th</sup> September 2025, and 18<sup>th</sup> November 2025 respectively, where the Applicant deponed on 5<sup>th</sup> February 2025, he purchased the suit parcels of land from the 4<sup>th</sup> Defendant after conducting due diligence, vide two official searches, inspection of the green card, obtaining a Land Control Board Consent and payment of stamp duty.
  3. He further deponed that at the time of the search the 4<sup>th</sup> Defendant was reflected as the registered proprietor of the suit properties, and that he remains exclusively in possession even after filing these proceedings. The Applicant stated that he had extensively developed the properties, including a perimeter fence, utility connections and commercial buildings where he has invested substantial sums.
  4. It was the applicant's disposition that upon lodging transfer documents for registration, he discovered that the 6<sup>th</sup> Defendant declined to issue a title deed in his favour citing the existence of alleged fraudulent parallel titles which he revealed are in the name of the 1<sup>st</sup> Defendant Kraftway Ltd and further that the same had been charged to the Interested Party to secure a sum of Kshs. 14Million.
  5. Mr. Malinda further deponed that the allegations of the existence of a charge are not reflected in the official records held at the lands registry and no lawful explanation has been provided as to how the 1<sup>st</sup> Defendant's parallel titles arose. He deponed that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants being related parties, colluded with the 6<sup>th</sup> Defendant to unlawfully create the parallel titles to purport to encumber the property fraudulently.
  6. Pursuant to the Interested Party's replying affidavit, the Applicant filed a further affidavit and deponed that the contents of the Interested Party's replying affidavit supports the urgency of the application as during the pendency of this matter the Interested Party is still reconstructing the green card, whereas the 6<sup>th</sup> Defendant has not shown that the green card is lost.
  7. Mr. Malinda also stated that the 6<sup>th</sup> Defendant has been uncooperative, and necessitated the filing of a Miscellaneous Criminal Application compelling the Registrar to give information in respect of the suit parcels of land. Which green card had the applicant's name and asked why the Registrar was reconstructing the green card in the interested party's name.
  8. The Applicant further deponed that from the Interested Party's Replying affidavit at page 80 contains its own valuation report, and at page 5, thereof, the Valuer states that:

“from the above, it is evident that the titles availed to us by the bank lack authenticity and are suspicious” It further states at page 6, that,



Both titles are registered to Maxwell Muchiri Ndiritu: what was availed by the bank, and what is on the ground are completely different, in size, registered owners, and the fact that the titles are not encumbered”

9. It was the Applicant’s further disposition that, the Interested Party’s own valuation report attached to the Replying affidavit stated that:

“The properties are not good for use as collateral to secure a bank loan facility, there are known factors that would hinder the sale of the subject properties in case realization by the bank is necessary.”
10. The Applicant urged the court to allow the application, as he would suffer irreparable loss if the same were not allowed.
11. The 4<sup>th</sup> Defendant/ Respondent, Maxwell Muchiri Ndiritu filed a replying affidavit dated 15<sup>th</sup> December 2025 and deponed that he is currently the registered owner of the suit parcels of land and attached a copy and a title deed and an official search.
12. Mr. Muchiri stated that he purchased the two parcels of land on 30<sup>th</sup> January 2023, from Fathima Aarmin the 3<sup>rd</sup> Defendant and attached a sale agreement and later she transferred the suit parcels to him. He stated that he subsequently sold the parcels of land to the Plaintiff, Joseph Mutua Malinda vide a sale agreement dated 5<sup>th</sup> February 2025, and when he was in the process of transferring the suit parcels in his name he was told by the Land Registrar, that there were claims on the two title deed hence the process could not be done.
13. The deponent further stated that in his interaction with Fathima, he realized that she was one of the directors of Kraftway limited the 1<sup>st</sup> Defendant, but the parcels were in the name of Fathima and not the Company name. He stated that the Interested Party and the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendant want to fraudulently acquire the suit land.
14. The Interested Party filed a replying affidavit through Claris Ogombo dated 11<sup>th</sup> November 2025, and deponed that on 14<sup>th</sup> February 2022, the Interested Party and the 1<sup>st</sup> Defendant executed a facility agreement, which secured funding to the tune of Kshs. 14,000,000/- in favour of the 1<sup>st</sup> Defendant for a period of 120 Months at a financing rate of 13% per annum to the bank.
15. She further stated that the facility was secured by a first legal charge over the suit properties and in favour of the Interested Party and the Charge instrument was registered at the Lands Registry on 1<sup>st</sup> April 2022 as well as at the Business Registration Services as a Charge & Debenture on 8<sup>th</sup> April 2022. That the Interested Party ensured that its interests were recorded against the original title deeds for the suit properties.
16. Ms. Ogombo further deponed that the facility fell into arrears and the Interested Party instituted the process to realize the collaterals that secured the facility and instructed Accurate Valuers Ltd to value the properties in preparation to exercise the Bank’s statutory power of sale. Further that the Interested Party initiated the reconstruction of the green card to secure its interest in the properties and advertised in the Daily Nation and Standard Newspapers of 1<sup>st</sup> October that the green cards in respect of the suit properties were lost
17. She further stated that the Rift Valley Regional Surveyor conducted a ground report and was sent to the 6<sup>th</sup> Defendant and on 29<sup>th</sup> October 2025, the Interested Party lodged an application for reconstruction and that the 1<sup>st</sup> Defendant is a bona fide owner of the suit properties. Further that the Plaintiff has



joined the Bank as an Interested Party hence acknowledged the Interested Party's rights over the suit properties.

18. The Interested party filed a further affidavit and stated that the facility is in arrears and the outstanding balance is Kshs 15, 824,315.24 as at 7<sup>th</sup> November 2025.

### **Plaintiff/Applicant's Submissions**

19. Counsel filed submissions dated 18<sup>th</sup> November 2025 and submitted that the Applicant has established a prima facie case as the green card originally bore the Applicant's name and the records from the 6<sup>th</sup> Respondent confirm that the title deeds had been prepared in the Applicant's name albeit unsigned. Further that the respondent's own valuation report confirms the suspicious nature of the titles noting that they differ in size and encumbrance status.
20. Counsel further submitted that the Applicant is a purchaser for value with a legitimate ownership interest which is corroborated by the documentation from the 6<sup>th</sup> Respondent According to counsel, the ongoing attempt to reconstruct the green card without the original parcel file strengthens the case that the property is under contention and may be subject to irregular or fraudulent dealings.
21. Counsel relied on the cases of Bwanyange Limited v Alibhai & another (Civil Suit E015 of 2023) [2023] KEHC 24390 (KLR) (24 October 2023) and Easthal Logistics Limited v Lasuba Logistics Limited & 2 others (Civil Case 77 of 2023) [2023] KEHC 24997 (KLR) (6 November 2023) and submitted that courts have consistently held that where allegations of fraud or irregularity exist, this strengthens the prima facie case for interlocutory relief. The evidence of irregularities in property documentation warrants judicial intervention to preserve the property. And where documentation of ownership is disputed, the applicant is entitled to protective orders to maintain the status quo.
22. On the limb whether the Applicant will suffer irreparable injury, counsel submitted that the IP is actively reconstructing the green card, advertising and gazetting the properties, whereas there is another green card with the Applicant's name, and if the actions continue the Applicant risks permanent loss of the ownership, alteration of the boundaries or dispossession.
23. Counsel relied on the case of Nyaga v Chandaria Industries Limited (Cause E031 of 2024) [2024] KEELRC 1065 (KLR) (25 April 2024), and submitted that property disputes involving risks of dissipation or alteration justify interlocutory relief. The fact that the green card is not lost and the 6<sup>th</sup> Respondent issued a green card in the Applicant's name further highlights the urgency and that the IP and the 6<sup>th</sup> respondent's conduct amounts to misrepresentation and potential fraud which can lead to irreversible damage if not restrained.
24. On the issue of balance of convenience, it was counsel's submission that the Respondents and the Interested Party will suffer minimal inconvenience from the temporary injunction as it merely preserves the status quo pending the determination of the suit, but the Applicant faces potential irreversible harm.
25. Counsel relied on the case of Makau & 25 others v Noor; Mohamed & another (Intended Interested Party) (Environment & Land Case 11 of 2022) [2023] KEELC 21245 (KLR) (30 October 2023) and submitted that the court emphasized that where there is credible risk of loss or misappropriation, the balance of convenience favors preserving the property, as harm from wrongful dispossession cannot be remedied by damages.
26. Counsel also cited the case of Kinyanjui v Kariuki (Environmental and Land Originating Summons E041 of 2022) [2024] KEELC 13901 (KLR) (16 December 2024), and submitted that the court



restrained transfer of property amid allegations of forgery, emphasizing that temporary relief is necessary to prevent inequitable outcomes, and urged the court to allow the application as prayed.

### Interested Party's Submissions

27. Counsel reiterated brief facts of the case and identified two issues for determination as follows:
  - a. Whether the Plaintiff has the requisite locus standi to interfere with the Interested Party's statutory power of sale?
  - b. Without prejudice to the above, whether the Plaintiff is entitled to the orders sought?
28. On the first issue on locus standi, counsel relied on the case of Mumo Matemo v Trusted Society of Human Rights Alliance Civil APP.290/2012 (2013) e KLR, which defined locus standi from Black's Law Dictionary, 9<sup>th</sup> Edition as "the right to bring an action or to be heard in a given forum"
29. Counsel submitted that the Interested Party is exercising its right of sale over the suit properties pursuant to Section 90 (3) and 96 of the Land Act as the charge of the properties, and section 103 of the Land Act which describes persons who can seek for relief against the exercise by the charge of any of the remedies referred to in Section 90 (3).
30. It was counsel's submission that the Plaintiff is not a person who can apply for relief against the chargee's statutory power of sale and relied on the cases of Kamau v NCBA Bank Kenya PLC & 3 others (Environment & Land Case E020 of 2024) [2024] KEELC 4039 (KLR) (14 May 2024), Bank of Africa Kenya Limited & another v TSS Investment Limited & 2 others (Civil Appeal E055 of 2022) [2024] KECA 410 (KLR) (26 April 2024), Nairobi Mamba Village v National Bank of Kenya [2002] 1 EA 197, Venture Capital & Credit Ltd v Consolidated Bank of Kenya Ltd [2004] 1 EA 357. Counsel therefore urged the court to submit that the Plaintiff/applicant lacks locus standi to challenge the Interested Party's statutory power of sale.
31. On the second issue whether the plaintiff is entitled to the orders sought, counsel submitted that since the Plaintiff lacks locus standi, he is equally not entitled to the orders sought, conservatory orders.
32. It was counsel's submission that the Plaintiff sought a conservatory order in the application but prayed for an injunction in his written submissions dated 16<sup>th</sup> November 2025 and pre conditions for grant of injunctions, Counsel relied on the Supreme Court case of Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others [2014] eKLR, where the apex court expounded on the difference between conservatory orders and injunction, that injunctions in proper sense belong to the sphere of civil claims and are issued essentially on the basis of convenience as between the parties and of balances of probabilities. While conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court in the public interest.
33. Mr. Mumu submitted that the suit is a private party claim hence the Plaintiff ought to have prayed for an injunction in its application, and not a conservatory order. Counsel therefore urged the court to strike out the Plaintiff's application for being defective for seeking an improper remedy and improper joinder of the bank as an Interested Party yet the bank is not a primary party to the proceedings.
34. Counsel for the 5<sup>th</sup> defendant/respondent stated that he was not opposed to the application hence was not participating. Counsel for the 4<sup>th</sup> Defendant stated that they were relying on the Plaintiff's submissions.



## Analysis and Determination

35. The parties have enumerated the genesis of the case in the Plaintiff, their affidavits together with the submissions. The issues that arise from the pleadings are as to whether the Plaintiff/Applicant has locus standi to file this suit and whether he is entitled to the orders sought.
36. The Interested party has raised an issue that the Plaintiff does not have locus standi pursuant to the provisions of section 103 of the *Land Act*:
37. Section 103, Application for relief by Chargor:
- (1) An application for relief against the exercise by the Chargee of any of the remedies referred to in section 90(3) may be made by—
    - (a) the Chargor;
    - (b) if two or more persons are joint Chargors, by one or more of them on their own behalf;
    - (c) a spouse of the Chargor to the extent that the spouse was required to give consent to the creation of the charge but did not give consent; or
    - (d) deleted by Act No. 28 of 2016, s. 75;
    - (e) if the Chargor has been adjudged bankrupt, the bankruptcy trustee of the estate of the Chargor.
  - (2) If an application made in accordance subsection (1)(b) is not made by all the joint Chargors, then, unless the court orders otherwise, it must be served on all the joint Chargors.
38. To answer the question whether the plaintiff has locus standi to file this suit, we must go back to the plaint and look at the prayers sought. By a Plaintiff dated 2<sup>nd</sup> October 2025, the Plaintiff sued the Defendants jointly and severally together with the Interested Party seeking the following orders:
- a. A declaration that the plaintiff is the bona fide purchaser for value without notice and entitled to exclusive ownership, occupation, and quiet enjoyment of the suit properties.
  - b. A declaration that any titles held or purportedly held by the 1<sup>st</sup> defendant and/or any other party are fraudulent, null and void.
  - c. An order directing the 6<sup>th</sup> defendant to cancel any fraudulent entries or titles and to register the suit properties in the plaintiff's name forthwith.
  - d. An order of permanent injunction restraining the defendants and the interested party, their servants or agents, from trespassing, selling, charging, transferring, or in any way interfering with the plaintiff's possession and enjoyment of the suit properties.
- In the alternative, and without prejudice to the foregoing:
- a. If the alleged charge in favour of the interested party is found valid, the plaintiff be granted first priority to redeem the property as the current occupier; and
  - b. The 4<sup>th</sup> defendant (being the vendor), together with the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants jointly and severally, be ordered to refund the plaintiff the full purchase price and the costs of all developments made thereon, together with interest, damages and costs.



- c. General damages for fraud and inconvenience caused to the plaintiff as against the 1st defendant, 2nd defendant, 3rd defendant and the 4th defendant, both jointly and severally.
  - d. Costs of this suit and interest thereon.
  - e. Any other relief this Honourable Court may deem fit to grant in the circumstances.
39. From the above mentioned prayers, the Plaintiff does not state or purport to fall under the category listed under Section 103 of the *Land Act* to possess the locus standi to sue. The prayers are specific, and are directed to the defendants as a purchaser for value and plead fraud in respect of what is happening in his bid to get a transfer to his name. The Interested Party was brought in not as a defendant and the process of exercising its statutory power of sale had not yet kicked in, in earnest as they were still reconstructing the parcel file.
40. The Plaintiff's application was triggered by what was happening to the suit parcels of land, in respect to the registration and transfer at the land Registry where he was informed by the Land Registrar that there were parallel titles which raised suspicion of fraudulent activities.
41. The Plaintiff/Applicant's application does not specifically talk about the chargee's statutory power of sale, he wants the suit properties to be preserved pending the hearing and determination of this suit to ascertain the alleged fraudulent activities that gave rise to parallel titles in respect of the same parcels of land. I find that the Plaintiff has locus standi to bring this suit.
42. On the issue as to whether the Plaintiff is entitled to the orders sought, counsel raised an issue that the Plaintiff sought conservatory orders in the Application instead of interlocutory injunction, and submitted on temporary injunction. The court is cognizant of the difference between conservatory orders and injunctions.
43. In the Supreme Court case of *Gatirau Peter Munya (Supra)* the court differentiated conservatory and injunction orders as follows:
- “Injunctions in proper sense belong to the sphere of civil claims and are issued essentially on the basis of convenience as between the parties and of balance of probabilities. While conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court in the public interest.”
44. I agree with the Interested Party's submissions that the Plaintiff/Applicant's application was for conservatory orders. The court notes that conservatory and injunction orders serve the same purpose of preserving the substratum of the case until it is heard and determined.
45. The court has a discretionary power to grant orders of status quo aimed at preventing any action that would interfere with the subject matter of the case rendering the hearing of the case an academic exercise. It should also be noted that when a party seeks a conservatory order, the court is not strictly limited to that label. If the court finds that the situation requires the preservation of the existing state of affairs rather than a proactive injunction, it can issue a status quo order.



46. The Black's Law Dictionary, Butter Worth's 9<sup>th</sup> Edition, defines status quo as a Latin word which means 'the situation as it exists'. In the case of Republic – Versus - National Environment Tribunal, Ex - Parte Palm Homes Limited & Another [2013] eKLR, the court stated as follows:
- “When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”
47. Similarly, in the case of Kenya Airline Pilots Association (KALPA) – Versus – Co - Operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows:
- “... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
48. The Plaintiff/Applicant enumerated the activities of the 6<sup>th</sup> Defendant/Respondent and the Interested Party in the reconstruction of the parcels files, whereas the same 6<sup>th</sup> Defendant/Respondent had refused to register a transfer on the ground that there were parallel titles which were suspected to be fraudulent. One parcel of land cannot have two parallel titles, which points to some irregularity in the issuance of one of them. This is why the court should order that the status quo be maintained pending the hearing and determination of who is the rightful owner of the suit parcels of land.
49. The best that all the parties can do is to fast-track the hearing of this case to avoid losses if any are anticipated. I have considered the application, the affidavits and the submission by counsel and find that the best option is to grant an order of status quo to be maintained pending the hearing and determination of this suit.
50. The provisions of Section 27 of the *Civil Procedure Act*, cap. 21 holds that costs follow an event, but in this case, in the interest of justice and equity, I order that each party bear their own cost.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 2<sup>ND</sup> DAY OF FEBRUARY 2026.**

**M. A. ODENY**

**JUDGE**

