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SUPREME COURT DEFINES SCOPE OF LEASE RENEWALS AND TITLE PROTECTION IN LANDMARK LAND CASE

Case: *Sehmi & Another v Tarabana Company Ltd & 5 Others (Petition E033 of 2023) [2025] KESC 21 (KLR)*
Date of Judgment: 11 April 2025
Court: Supreme Court of Kenya

OVERVIEW

On 11 April 2025, the Supreme Court of Kenya delivered a precedent-setting decision in *Sehmi & Another v Tarabana Company Ltd & 5 Others*, resolving complex legal issues at the intersection of expired leases, legitimate expectation, and the doctrine of bona fide purchaser for value without notice. The ruling significantly impacts how leasehold interests, public land reallocation, and land title protections are treated in law.

1. Lease Expiry and Legitimate Expectation

The Court reaffirmed that where a lease expires over public land, the land reverts back to the government and no longer a leasehold land but now a government land. And further that where an appellant continues to stay on the same land he still cannot be said to be in possession of the leased land because of the expiry of time which extinguished the leasehold tenure and reversion to government. As such, such applicant only becomes a "tenant at will".

Noting the above, however, where an application for renewal of lease is made by an applicant in possession of the land and is met with silence or affirmative conduct from public authorities, the applicant may acquire a legitimate expectation deserving of protection.

The legitimate expectation arises because the expectation is that his/her application will be acknowledged and considered fairly and be informed in reasonable time of the decision. Therefore, an applicant in possession of land is entitled to be given reasons in the circumstance where his/her application is denied.

This principle strengthens the accountability of public bodies in handling lease renewals and provides relief to leaseholders who have acted in good faith within legal processes.

2. Doctrine of Bona Fide Purchaser: Not an Absolute Shield

The Court revisited the doctrine of the bona fide purchaser for value without notice and stressed it is not an unqualified defence where public land is unlawfully alienated or irregularly reallocated and further that the doctrine cannot be invoked to protect a title to an illegally acquired public land. The Court set a high evidentiary threshold:

"It is a fundamental principle of the law of property in land that a purchase of a legal estate for value without notice is an absolute, unqualified and unanswerable defence against the claims of any prior equitable owner or encumbrancer. The onus of proof however lies upon the person claiming to be a bona fide purchaser."

(Paragraph 58, Supreme Court Judgment)

To invoke this doctrine successfully, three ingredients must be proven:

- **Innocence:** The purchaser must have acted in good faith, free from unconscionable conduct or suspicious circumstances. Diligence is required.
- **Value:** Actual consideration must have been paid prior to receiving notice of a rival interest.
- **Legal Estate:** The purchaser must acquire a legal, not merely equitable, interest in the land.

The Court emphasized:

> *"The element of innocence also connotes the exercise of diligence expected of any reasonable purchaser. The claimant must demonstrate that he acted diligently and conducted a reasonable inquiry into the status of the estate or land that he sought to purchase."*

(Paragraph 59)

Citing its decision in *Torino Enterprises Limited v AG [2023] KESC 79 (KLR)*, the Court added:

> *"An innocent purchaser for value would also denote one who was aware of what they were purchasing by inspecting the suit premises... The fact that the suit land was occupied must have sounded a warning of 'buyer be aware' to the appellant."*

(Paragraph 60)

3. Purchase for Value

The judgment clarified that payment must be made before the purchaser becomes aware of any equitable interests. Mere execution of a conveyance without actual payment will not suffice.

> *"A person who takes land without giving value in exchange must take it with all its burdens, equitable as well as legal."*

(Paragraph 61)

4. Legal vs Equitable Interests

The Court explained the classic operation of the doctrine:

> *"An innocent purchaser of a legal estate in land without notice of an equitable interest in the said land, takes free from the encumbrance of the latter interest."*

(Paragraph 62)

It reaffirmed the traditional maxim:

> *"Equity follows the law. Legal rights are good against all the world; equitable rights are good against all persons except a bona fide purchaser of a legal estate for value without notice."*

(Paragraph 63)

IMPLICATIONS FOR STAKEHOLDERS

- **Leaseholders & Developers:** Initiate lease renewal applications at least five (5) years before expiry and maintain complete documentation. Public authority conduct is increasingly under judicial scrutiny for creating legitimate expectations through inaction or misleading conduct.

- **Purchasers & Investors:** Due diligence is not optional. Always conduct a thorough title search, investigate historical use, physical possession, and any public infrastructure or claims on the property.

- **Government & Regulatory Bodies:** Must improve transparency, timely processing of renewals, and accountability in ensuringe proper records are maintained and accessible to prevent competing claims over public land.

- **Legal Advisors & Conveyancers:** This case redefines due diligence thresholds. Advising clients now demands deeper scrutiny of equitable claims and the full transactional history of the land.

CONCLUSION

The *Sehmi v Tarabana* ruling affirms the delicate balance between protecting legal title and ensuring equity prevails in cases of irregular allocation or neglect of procedural safeguards. The judgment is now a key reference in land transactions involving expired leases and contested titles.

HOW CM ADVOCATES LLP CAN ASSIST

At CM Advocates LLP, we offer tailored legal solutions to guide our clients through the implications of this ruling:

For Private Clients
We assist high-net-worth individuals and families in:

- Navigating lease renewal processes and protecting long-held residential and investment properties.
- Conducting comprehensive due diligence before land purchases.
- Drafting and registering legal safeguards such as cautions, restrictions, and power of attorney.

For Diaspora and Foreign Investors
We offer end-to-end services to non-resident clients:

- Title verification and land history tracing to avoid disputed parcels.
- Structuring ownership through compliant vehicles (SPVs, companies, trusts).
- Succession planning and intergenerational wealth preservation.

For Real Estate Developers
We provide full-cycle legal support across development projects:

- Strategic guidance on lease renewal and change of user applications.
- JV structuring, land acquisition due diligence, and regulatory compliance.
- Legal representation in disputes involving leases, titles, and land allocation.

Partner with our ***Real Estate Development & Finance Group*** to structure risk-resilient, bankable developments.

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