

DOCTRINE OF BONA FIDE PURCHASER AND LEGITIMATE EXPECTATION IN LEASEHOLD INTERESTS OVER PUBLIC LAND



MAY 2025

Doctrine of Bona Fide Purchaser and Legitimate Expectation in Leasehold Interests over Public Land: Harcharan Singh Sehmi & Another v Tarabana Company Limited & Others (Petition E033 of 2023) [2025] KESC 21

INTRODUCTION

In **Harcharan Singh Sehmi & Another v Tarabana Company Limited & Others (Petition E033 of 2023) [2025] KESC 21** (the **Sehmi Case**), the Supreme Court of Kenya has provided authoritative guidance on two critical issues affecting leasehold interests in public land:

- (i) the meaning, scope, and applicability of the doctrine of the bona fide purchaser for value without notice; and
- (ii) the concept of legitimate expectation in the renewal or extension of leases.

This decision not only clarifies inconsistencies in judicial interpretation but also reiterates the constitutional and statutory limits on property rights, especially where titles are rooted in illegality or public maladministration.

BACKGROUND OF THE CASE

The appellants, alongside the late Harcharan Singh Sehmi, were the registered proprietors of the suit property. They had acquired the property in 1968 and were duly registered as tenants in common. The tenure of the proprietorship interest they held over the land was for a leasehold interest of a term of fifty-nine (59) years commencing on 1st October 1942 and terminating lapse on the 1st October 2001.

Three months prior to the expiry of their tenure, they initiated a process of extension of the lease from the Commissioner of Lands in accordance with the provisions of Government Lands Act (now repealed). However, in October 2014, they were forcibly evicted from the property by the 1st and 2nd respondents who laid claim on the property under a separate title bearing a new I.R. number, L.R. No. 209/2759/9 (I.R 12263).

ANALYSIS

The Supreme Court was called upon to determine whether the doctrine of a bona fide purchaser could be invoked to protect a purchaser who acquired land that had been irregularly allocated, and whether a lessee of public land had a legitimate expectation of lease renewal in the absence of a formal extension.

1. BONA FIDE PURCHASER DOCTRINE: NO SHIELD FOR ILLEGALITY

The Court emphasized that the doctrine of a bona fide purchaser for value without notice only applies to protect purchasers of legal estates who lack knowledge of any prior equitable interest in the property. However, **where the root of title is marred by illegality, irregularity, or procedural impropriety, the doctrine does not apply**—even if the purchaser was unaware of such defects.

"[T]here can be no protectable 'purchaser of an illegal title without notice of such illegality'." (para. 72)

According to the Court, an illegally or irregularly allocated title cannot confer a legal estate, and as such, no defence can lie in

equity to preserve rights under such a title. This position reaffirms the Court's earlier holding in **Dina Management Limited v County Government of Mombasa & Others [2023]**, which established that title derived from an unlawful allocation is void ab initio and indefeasibility under Section 26(1) of the Land Registration Act does not apply.

2. Legitimate Expectation in Lease Renewals: Not Absolute

Turning to lease renewals, the Court held that a lessee of public land who applies for renewal before expiry may, in some circumstances, acquire a legitimate expectation that the application will be considered. In the Sehmi Case, the appellants had submitted their application three months before the lease expired. The Commissioner of Lands and relevant departments acknowledged receipt and did not raise objections.

The Court found that this conduct triggered a legitimate expectation, especially as the applicants remained in possession and continued to pay rent and rates. However, the Court was clear that this expectation:

- did not create an equitable interest capable of defeating reversion to the Government;
- did not give rise to a pre-emptive right over the land; and
- could not override the statutory requirements for lease renewal.

"[T]he application for renewal ignites the legitimate expectation, given the fact that it is addressed to an authority that has the competence to renew the lease." (para. 77)

3. Remedies and Impact

Despite finding that the lease had expired and the property reverted to the State, the Court held that the subsequent allocation to the 2nd Respondent was unlawful and could not confer title. Consequently, the appellants were reinstated as lessees upon fulfilling registration requirements. The title held by the 1st Respondent was invalidated, and any developments on the land by the 1st Respondent were deemed improperly grounded.

This holding nullified the allocations made after the expiration of the appellants' lease, particularly due to the government's failure to act on the pending lease renewal application in accordance with fair administrative action under Article 47 of the Constitution..

Conclusion and Recommendation

The Sehmi Case affirms that:

- a purchaser cannot rely on the bona fide purchaser doctrine where the root of title is illegal or irregular;
- legitimate expectation may arise in lease renewals, but it does not confer an automatic right of renewal or pre-emptive ownership; and
- state organs must act fairly and expeditiously on lease extension applications to avoid arbitrary extinguishment of property interests.

Holders of leasehold titles over public land, particularly those nearing expiry, should:

- initiate renewal applications well before expiration;

- retain documentary proof of applications and correspondence with land offices; and
- seek formal responses and, where absent, consider invoking Article 47 on fair administrative action.

Additionally, purchasers of public land titles must conduct thorough due diligence, not only on current registrations but also on the lawfulness of the allocation process.

Our View

The Sehmi decision underscores the Supreme Court's commitment to rooting out land injustices while reinforcing the supremacy of constitutional and procedural compliance. It provides much-needed certainty on what constitutes a defensible title and when equitable doctrines can — and cannot — apply.

Need Help?

If you hold a leasehold interest in public land or are planning a transaction involving such property, we recommend a compliance audit and legal due diligence to safeguard your interests. Contact us to learn more about our real estate and land advisory services.

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