



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Mwilu; DCJ & VP; Wanjala, Njoki, Lenaola, & Ouko, SCJJ)*

**APPLICATION NO. E032 OF 2025**

— BETWEEN —

**FRANN INVESTMENT LIMITED.....APPLICANT**

**-AND-**

**KENYA ANTI-CORRUPTION COMMISSION.....1<sup>ST</sup> RESPONDENT**

**FRANCIS GITHUI WAHOME.....2<sup>ND</sup> RESPONDENT**

**ANNE GATHONI.....3<sup>RD</sup> RESPONDENT**

**VICTOR WAHOME.....4<sup>TH</sup> RESPONDENT**

**EDWARD KAGUME.....5<sup>TH</sup> RESPONDENT**

**DAVID MWANGI.....6<sup>TH</sup> RESPONDENT**

**WILSON GACANJA.....7<sup>TH</sup> RESPONDENT**

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*(Being an application for review of the ruling of the Court of Appeal (Nyamweya, Laibuta & Ngenye, JJ.A) sitting in Mombasa Civil Application No. E077 of 2024 delivered on 24<sup>th</sup> October 2025, declining certification to appeal against the Judgment of the Court of Appeal (Nyamweya, Laibuta & Odunga, JJ.A) delivered on 21<sup>st</sup> June 2024 in Nairobi Civil Appeal No. E038 of 2021)*

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Representation:

Mr. Eluid Otieno h/b for Mr. Gikandi Ngibuini for the Applicant  
*(Gikandi & Co. Advocates)*

Ms. Cherono h/b for Mr. Ben Murei for the 1<sup>st</sup> Respondent  
*(Ethics and Anti-Corruption Commission)*

No appearance for the 2<sup>nd</sup> to 7<sup>th</sup> Respondents

## **RULING OF THE COURT**

**[1] UPON PERUSING** the Originating Motion dated 7<sup>th</sup> November 2025 and filed on 28<sup>th</sup> November 2025, brought pursuant to Article 163(4)(b) of the Constitution, Sections 15 and 15B of the Supreme Court Act and Rule 33(2) of the Supreme Court Rules seeking orders to review and set aside the Ruling of the Court of Appeal (*Nyamweya, Laibuta & Ngenye, J.J.A*) delivered on 24<sup>th</sup> October 2025 in **Mombasa Civil Application No. E077 of 2024**, in which that court declined to certify the intended appeal as one raising matters of general public importance; and

**[2] UPON CONSIDERING** the applicant's affidavit, sworn by *David Mwangi Wahome*, one of the applicant's directors, on 7<sup>th</sup> November 2025, wherein he deposes that the applicant is the registered proprietor of all those parcels of land known as Plot Nos. MN/III/3650, MN/III/3651, MN/III/3652, MN/III/3653, MN/III/3654, MN/III/3655, MN/III/3656, MN/III/3657, MN/III/3658 and MN/III/3659 (hereinafter "*the suit properties*"), which are subdivisions of the original Plot No. MN/III/2974; that the applicant acquired the said properties for valuable consideration from the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who had in turn acquired their interest from one Kenny Mohammed Sheikh Ali, the original allottee from the Government of Kenya; that at all times material to the matter under consideration, the Government of Kenya, through the Commissioner of Lands, demanded and was paid all requisite statutory fees, stand premium and other revenues for the allocation and subsequent transfer of the suit properties, leading to the issuance of a registered title to the applicant; that subsequent to the said registration, the applicant sought and obtained all necessary approvals from the relevant government and county government organs and proceeded to construct a four-storey building on the suit properties whose current value is estimated at Kshs. 47,500,000/-; that the 1<sup>st</sup> respondent subsequently filed a suit in the Environment and Land Court in Mombasa (being ELC consolidated Case Nos. 215-224 of 2009) seeking to nullify the applicant's title on the grounds that the initial

allocation to one Kenny Mohammed Sheikh Ali was irregular, as the land was allegedly reserved for the Customs Department and that the ELC (*Sila Munyao, J*) (as he then was) on 12<sup>th</sup> November 2020 held that the allocation was *void ab initio* and ordered the cancellation of the applicant's titles and the demolition of the aforementioned developments; that on appeal, the Court of Appeal (*Nyamweya, Laibuta & Odunga, JJA*) upheld the judgment of the trial court and dismissed the appeal; and

**[3] NOTING** that the applicant was aggrieved by the said judgment, it lodged in the Court of Appeal an application seeking certification to appeal that decision to this Court on the basis that the intended appeal raises matters of general public importance, to wit, whether the 1<sup>st</sup> respondent can lawfully seek to nullify a registered title issued by the Commissioner of Lands; whether the common law doctrine that a title is *void ab initio* where its creation was procedurally flawed can override the right to property under Article 40 of the Constitution and the indefeasibility of title under Section 26 of the Land Registration Act; whether a proprietor loses constitutional protection of the right to property if the root of the title is irregular; whether, upon nullification of a registered title on grounds of irregular allocation, a proprietor who has undertaken substantial developments with full government approval is entitled to compensation or restitution to prevent unjust enrichment of the State and lastly, whether a judgment which nullifies a title for irregular initial allocation to Kenny Mohammed Sheikh Ali can be lawfully sustained without him being joined in the proceedings; and

**[4] UPON READING** the ruling dated 24<sup>th</sup> October 2025, where the Court of Appeal (*Nyamweya, Laibuta & Ngenye JJA*) declined to grant the prayer to certify the intended appeal as involving a matter of general public importance for the reasons that it does not raise any novel issues in respect of the question of legality of a subsequent owner of a title whose root was found to be tainted with illegality. The rejection of the applicant's arguments has provoked the present application.

[5] **UPON CONSIDERING** the applicant's submissions dated 27<sup>th</sup> November 2025 and filed on 28<sup>th</sup> November 2025 to the effect that this Court's decisions in ***Dina Management Ltd Vs County Government of Mombasa & 5 others*** [2023] KESC 30 (KLR) (hereinafter referred to as "***Dina Management***") and ***Torino Enterprises Limited Vs Attorney General*** [2023] KESC 79 (KLR) (hereinafter referred to as "***Torino Enterprises***") have not addressed the issues raised herein, namely, that the government can be permitted to obtain money by false pretences; whether estoppel applies against government; and whether Articles 10, 40, 43 and 47 of the Constitution can come to the aid of an innocent allottee for value without notice of any illegalities; these are weighty issues of general public importance; and

[6] **TAKING INTO ACCOUNT** the 1<sup>st</sup> respondent's replying affidavit sworn by *Ben Murei* on 16<sup>th</sup> December 2025 and filed on 13<sup>th</sup> January 2026, to the effect that the application is bad in law for having been filed out of the stipulated 14 days period under Rule 33(2) of the Supreme Court Rules 2020; the application is vexatious and offends the principle that litigation must come to an end; that the governing principles under Article 163(4)(b) of the Constitution and as enunciated in ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR) (hereinafter referred to as "***Steyn***") have not been met as the issues raised in the application have already been determined by this Court in ***Dina Management*** and ***Torino Enterprises*** and do not need further input from this Court; that the EACC's mandate to institute proceedings to recover public land and the limitation of actions under Section 42 of the Limitation of Actions Act were being raised for the first time; the joinder or non-joinder of Kenny Mohammed Sheikh Ali cannot be a matter of general public importance; and the application is therefore not merited and ought to be dismissed with costs; and

[7] **NOTING** that the 2<sup>nd</sup> to 7<sup>th</sup> respondents did not file any responses to the application; and

**[8] BEARING IN MIND** the provisions of Article 163 (5) of the Constitution, Section 15B of the Supreme Court Act and Rule 33 (1) and (2) of the Supreme Court Rules, 2020 which grant this Court jurisdiction to review the Court of Appeal’s decision on certification; and considering this Court’s own guiding principles on certification set out in **Steyn** and the additional guidelines in **Bell Vs Moi & another** [2013] KESC 23 (KLR); and

**[9] HAVING EXAMINED** the totality of the application and submissions by the parties, **WE NOW OPINE** as follows:

- i. The Court of Appeal dismissed the application for certification upon finding that the application fell short of demonstrating that the intended appeal raised issues of general public importance. In its determination, the court stated as follows;

***“27. Our understanding of the questions posed by the applicant to be determined by the Supreme Court can be zeroed in to be: what is the recourse for a party who incurs costs after purchasing property from a buyer who did not have a good title? We understand that the applicant wants the question as to the root of the title to the suit property to be addressed afresh, and the consequences that follow where the original title was found to have been illegally acquired.***

***28. In our view, we find that there are no novel issues that can be raised on the legality of a subsequent owner of a title whose root was tainted with illegality. We say so because the Supreme Court has sufficiently addressed itself in this respect in the case of Dina Management (supra). The Supreme Court held that if a party contends that it is a***

***bona fide purchaser for value, it must first go to the root of the title, right from the first allotment. It is not sufficient to dangle a title as proof of ownership. It certainly goes beyond that.***

***29. To ask the Supreme Court to revisit the evidence, would be tantamount to urging the Court to reconsider a matter already settled within the purview of its mandate upon certification under Article 163(4) (a) and (b) of the Constitution. As was held by this Court in Koinange Investment & Development Ltd Vs Robert Nelson Ngethe (2013) KECA 380 (KLR), with which we fully concur:***

***“...the jurisdiction of the Supreme Court being the apex court, a court of last resort, must not be invoked in a routine fashion. It was never intended to be a regular court of appeal against all and sundry orders passed by this Court.”***

***30. Finally, it is trite that a question of law or fact which was not addressed at the trial and before the appellate court cannot be discussed before the Supreme Court.”***

- ii. From this passage, it is clear that the appellate court was not convinced that the threshold for certification was attained because the issues intended to be raised, canvassed, and determined before this Court on appeal are already settled in law. With respect, we agree. The doctrine of indefeasibility of title applies with respect to the effects of registration of land, initially under Section 23(1) of the repealed Registration of Titles Act, which provided that the certificate of title was “conclusive evidence” of absolute and indefeasible ownership, subject only to challenge “on the ground of fraud or misrepresentation”. Today, Section 26(1) of the Land Registration Act guarantees the certificate of title but only as “prima facie evidence” of

ownership, subject to challenge on the ground of fraud or misrepresentation; or on the ground that the “certificate of title was acquired illegally, unprocedurally or through a corrupt scheme”. This provision proclaims the terms of Article 40(6) of the Constitution. The Article does not guarantee the right to property in situations where the property has been found to have been unlawfully acquired. This subject has received sufficient judicial pronouncement and has been determined with finality by the Court in cases such as ***Dina Management*** and ***Torino Enterprises Limited***, among others. In the former, the Court declared as follows:

***“108. As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that:***

*“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”*

- iii. To our mind, the question of unalienated Government land and the procedure of allocating such land was explained in detail in ***Dina Management***. The application, therefore, falls short of the threshold in ***Steyn***. The issue framed for determination is not one whose determination would transcend the circumstances of the parties in this appeal. In addition, the determinations of facts in contention by the courts below cannot, by themselves, be a basis for granting certification.

- iv. Like the Court of Appeal, we cannot find any aspect of the intended appeal that raises issues of general public importance. We believe the applicant's intention in bringing this application is to have a second bite at the cherry. It is apparent that the applicant seeks to persuade the Court to re-examine its decisions in *Dina Management* and *Torino Enterprises Limited* through the lens of the unique circumstances and facts of this case.
- v. It is well settled that once this Court renders a judgment, it is not open to any party to seek a review of the judgment using the certification procedure under Article 163(4)(b) of the Constitution. Article 163(7) of the Constitution can only be invoked under very strict terms, and the Court will only depart from its previous decision for a good cause and on such grounds as the decision was made *per incuriam*, or that the decision is no longer good law. It can do this after taking into account legal considerations of significant weight. See *Rai & 3 others Vs Rai & 5 others* [2013] KESC 21 (KLR).
- vi. We may add to this condition that, given the weight of an apex court departing from its past decision, a request to the Court to do so must be formally made.
- vii. Applying the principles established in the *Steyn* case and our analysis above, we find that the motion lacks merit and must be dismissed. The obligation to satisfy the Court that the intended appeal raises substantial issues of law of general public importance rests on the applicant, which the applicant has failed to discharge.
- viii. Having arrived at the foregoing conclusion, we believe that no purpose will be served for us to consider the 1<sup>st</sup> respondent's other claims, such as the contention that the application was filed outside the prescribed fourteen-day period, and that it amounts to vexatious litigation.


**[10] CONSEQUENTLY**, and for reasons aforesaid, we make the following **ORDERS**:

***a) The Originating Motion dated 7<sup>th</sup> November 2025 and filed on 28<sup>th</sup> November 2025 is hereby dismissed.***

***b) The applicant shall bear the costs of this application.***

It is so Ordered.

**DATED and DELIVERED at NAIROBI this 31<sup>st</sup> day of March 2026.**



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**P.M. MWILU**  
**DEPUTY CHIEF JUSTICE & VICE PRESIDENT**  
**OF THE SUPREME COURT**

.....  
**S.C. WANJALA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....  
**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**W. OUKO**  
**JUSTICE OF THE SUPREME COURT**

**I certify that this is a true copy  
of the original**

**REGISTRAR**  
**SUPREME COURT OF KENYA**