



## REPUBLIC OF KENYA

### IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Lenaola & Ouko, SCJJ)

#### PETITION (APPLICATION) NO. E033 OF 2023

— BETWEEN —

**HARCHARAN SINGH SEHMI.....1<sup>ST</sup> APPELLANT/RESPONDENT**

**JASWARANA SEHMI.....2<sup>ND</sup> APPELLANT/RESPONDENT**

-AND-

**TARABANA COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**ROSPATECH LIMITED.....2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR, NAIROBI.....3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....4<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

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*(Being an application for Review of Judgment of the Supreme Court (Ibrahim, Wanjala, Njoki, Lenaola & Ouko SCJJ) dated 11<sup>th</sup> April, 2025 in SC Petition No. E033 of 2023)*

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Representation:

Mr. Charles Kiri Thube, the Applicant/1<sup>st</sup> Respondent  
(*In Person*)

Mr. Peter Mumu for the Appellants/Respondents  
(*Igeria & Ngugi Advocates*)

### RULING OF THE COURT

[1] **UPON CONSIDERING** the Notice of Motion by the 1<sup>st</sup> respondent (the applicant) dated 30<sup>th</sup> January 2026 and filed on the same date pursuant to Sections

3A and 23A of the Supreme Court Act, Cap 9B, as well as Rule 3(2) of the Supreme Court Rules 2020 for Orders:

- i) *That this honourable Court be pleased to review, vary, vacate and/or set aside its Judgment delivered on 11<sup>th</sup> April 2025;*
- ii) *That upon the grant of prayer (i) above, this honourable Court be pleased to address in its Judgment the issue and/or question of how and/or in what manner was the 1<sup>st</sup> respondent/applicant aware or had prior notice that the title L.R No. 209/2759/9 by the 2<sup>nd</sup> respondent had unprocedurally been acquired;*
- iii) *That consequent to the grant of prayers (i) and (ii) above, this Court be pleased to give a judgment that the 1<sup>st</sup> respondent was a bona fide purchaser for value of L.R No. 209/2759/9;*
- iv) *That this honourable Court be pleased to issue any further orders that it may deem fit and expedient to grant in the circumstances; and*
- v) *That costs for this application be provided for; and*

**[2] UPON READING** the affidavit sworn on 30<sup>th</sup> January 2026 by Charles Kiri Thube, the applicant's Director, together with the submissions dated 30<sup>th</sup> January 2026, to the effect that: on 11<sup>th</sup> April 2025, this Court delivered a judgment in favour of the appellants (the respondents) against the applicant; that in the said Judgment, the Court held that a claim of a *bona fide* purchaser for value without notice could not arise on the part of the applicant, as due process was not followed in the reallocation of L.R No. 209/2759/9 (the suit property) to the 2<sup>nd</sup> respondent; that the Court consequently found that the applicant's title was, for these reasons, invalid; that notwithstanding this finding, the applicant contends that the Court did not address, nor provide any rationale or justification, as to how or in what manner the applicant was aware of, or had prior notice of, the allocation of the suit property to the 2<sup>nd</sup> respondent; and that the Court failed to analyse or identify the evidence upon which it relied on in reaching this conclusion. It is this clarification that the instant application seeks to obtain from the Court; and

**[3] FURTHER NOTING** the applicant's assertion that it has established sufficient cause for the grant of orders for review of the Judgment, on the foregoing grounds: that it relies on the definition of a *bona fide* purchaser as set out in *Black's Law Dictionary*, as well as the decision in *Katende Vs Haridar & Company Limited* [2008] 2 EA 173, which sets out the requirements to be satisfied before a purchaser can be deemed innocent and to have acquired property for value without notice; and further on the authority of *Elizabeth Wambui Githinji & 29 others Vs Kenya Urban Roads Authority* [2019] eKLR and *Shimoni Resort Vs Registrar of Titles & 5 others* [2016] eKLR for the proposition that a *bona fide* purchaser is entitled to protection notwithstanding that prior dealings in the property may have been tainted by fraud. The applicant argues that, by providing a clear rationale for its conclusion, this Court would address the critical question of whether the applicant was indeed an innocent purchaser and, if not, the basis upon which it is said to have had knowledge of prior fraudulent dealings before purchasing the suit property; and that, upon such review and consideration, the Court may arrive at a different outcome; and

**[4] UPON CONSIDERING** the respondents' Grounds of Objection dated 9<sup>th</sup> February 2026, together with their submissions of even date, to the effect that: the applicant has failed to meet the threshold for review as set out in Section 21A of the Supreme Court Act and Rule 28(5) of the Supreme Court Rules; the present application is, in substance, a disguised attempt to appeal the decision of this Court to itself; that the Judgment of the Court directed the applicant to remove and demolish the structures and developments on the suit property within six (6) months; shortly thereafter, the applicant filed an application dated 25<sup>th</sup> September 2025 seeking enlargement of time to comply with the said orders, which application was dismissed by a Ruling delivered on 30<sup>th</sup> January 2026; in the said Ruling, the Court held that it was *functus officio* and that the parties remained bound by the orders issued in the Judgment; and that, on the same day, the

applicant filed the present application, in blatant disregard of the aforementioned Ruling and the doctrine of finality; and

**[5] TAKING INTO ACCOUNT** the respondents' further submissions that the applicant has not satisfied the criteria for review as established in ***Outa Vs Okello & 3 others*** [2017] KESC 25 (KLR) and as codified under Section 21A of the Supreme Court Act; that the applicant has neither alleged nor demonstrated that the Judgment of this Court was procured by fraud, deceit, or misrepresentation of facts, nor that the Court lacked jurisdiction to make the determination in the appeal; reliance is placed on the decisions of this Court in ***County Assembly of Migori Vs Aluochier & 2 others*** [2024] KESC 7 (KLR) and ***Dari Limited & 5 others Vs East African Development Bank*** [2023] KESC 93 (KLR) to submit that the present application is an attempt to have a second bite at the cherry and ought to be dismissed; that the applicant has failed to explain, in the first place, the delay of approximately ten (10) months in bringing this application; and that the applicant's true intention is to perpetuate delay, frustrate execution, and deprive the respondents of their constitutional right to property as affirmed by this Court; and for these reasons, the respondents pray for the dismissal of the application with costs; and

**[6] GUIDED** by Section 21A of the Supreme Court Act, Rule 28(5) of the Supreme Court Rules, 2020, and the principles set out in ***Outa Vs Okello & 3 others*** (*supra*), we reaffirm the limited scope of this Court's jurisdiction to review its own decisions. As a general rule, this Court does not sit on appeal over its own judgments and will not reopen them, save for the correction of errors apparent on the face of the record or in the exercise of its inherent jurisdiction, and only in exceptional circumstances to meet the ends of justice, may the Court review its decisions in the following instances where:

***“(i)The judgment, ruling or order is obtained by fraud or deceit;***

***(ii) The judgment, ruling or order, is a nullity such as, when the Court itself was not competent; or***

***(iii) The Court was misled into giving judgment, ruling or order under a mistaken belief that the parties had consented thereto; or***

***(iv) The judgment or ruling was rendered, on the basis of a repealed law, or as a result of a deliberately concealed statutory provision.”; and***

**[7] HAVING CONSIDERED** the application, affidavits and rival arguments by both parties **WE NOW OPINE** as follows:

- i. Applying the principles in ***Outa Vs Okello & 3 others*** (*supra*) and the provisions of Rule 28(5) of the Supreme Court Rules, 2020, set out above to the present application, we find that the applicant has failed to bring itself within the narrow and exceptional grounds upon which this Court may exercise its review jurisdiction.
- ii. Instead, the applicant appears determined to vex both the Court and the respondents by persistently initiating applications without reasonable grounds, exposing the latter to unnecessary expense. The applicant's conduct amounts to an abuse of the court process. By returning to us with this application, having lost an earlier one, and to invite the Court to relook at its analysis of the evidence and provide a rationale for its conclusion, amounts to a challenge of the Court's determination. Such a grievance properly belongs to an appeal, not a review. The Court does not sit on appeal over its own decisions, and its review jurisdiction cannot be invoked as a vehicle for a second bite at the cherry. In the circumstances, we are not satisfied that the applicant has established sufficient cause to warrant the exercise of this Court's review jurisdiction.

iii. On the issue of costs, bearing in mind that costs follow the event as enunciated in ***Rai & 3 others Vs Rai & 4 others*** [2014] KESC 31 (KLR), the applicant shall bear the costs of this application.

**[8] ACCORDINGLY**, we make the following Orders:

- i) The Notice of Motion dated 30<sup>th</sup> January 2026 is hereby dismissed.***
- ii) The applicant shall bear the costs of this application.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> Day of June, 2026.**

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**M.K. KOOME**  
**CHIEF JUSTICE & PRESIDENT**  
**OF THE SUPREME COURT**

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

.....  
**S.C. WANJALA**  
**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**