REPUBLIC OF KENYA
THE SUPREME COURT OF KENYA
HARCHARAN SINGH SEHMI & ANOR Vs TARABANA COMPANY LIMITED & OTHERS
SC PETITION NO. E033 OF 2023
DATE OF JUDGMENT: 11TH APRIL, 2025
MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Final Orders: ***The Court allowed the appeal***

Background

The appellants, together with the late Harcharan Singh Sehmi, had been registered as tenants in common of the property (L.R. No. 209/2759/9, I.R. 6477) (hereinafter ***"the suit property"***) Their 59-year lease, which began in 1942, was due to expire in 2001, and they applied for its extension. Thereafter, the 1st and 2nd respondents purported to evict them, claiming ownership under a separate title. This culminated to their forceful eviction in October 2014.

At the ELC, the appellants contended that prior to the expiration of the lease, they had applied for its extension and the Director of City Planning and the Director of Survey unconditionally recommended it for approval. The respondent, on the other hand, contended that the lease expired and the property reverted to the Government of Kenya and the same allocated to them in 2010. The trial court, in allowing the claim, found that appellants had commenced the process of extending their lease over the suit property before the lease expired and therefore had a legitimate expectation that their lease would be extended. Furthermore, that the allocation of the suit property to the 2nd respondent by the Commissioner of Lands had not adhered to the prescribed procedure under the Government Lands Act (now repealed).

On first appeal, the Court of Appeal overturned the trial court and held that the 1st respondent was a *bona fide* purchaser for value without notice of any fraud, illegalities or irregularities because although the appellant applied for renewal, there was no evidence that the lease was extended. Therefore, the 1st respondent's title was protected under Section 26 of the Land Registration Act and the trial court had no power to divest the 1st respondent's ownership of the suit property and to vest it on any party including the appellants without evidence of the 1st respondent's involvement in any illegality.

In the appeal before the Supreme Court, the Court framed the following issues for determination:

1. *What is the meaning, scope, and extent of applicability of the doctrine of Bona fide/Innocent Purchaser for value without Notice?*
2. *Whether the doctrine of Bona fide/ Innocent Purchaser for Value Without Notice protects a purchaser of an illegally/irregularly allocated title over Public Land.*
3. *To what extent, if at all, is the doctrine of Legitimate Expectation applicable to the renewal of leases over public land?*

Upon consideration, the Supreme Court has allowed the appeal for the following reasons:

1. **Issue 1:** Three main ingredients must be present for a claimant to mount a successful defence based on the doctrine of *bona fide* purchaser for value without notice. These are *innocence, purchase for value*, and *a legal estate*. The element of innocence means that the purchaser must act in good faith, purchase for value means that consideration in money or money's worth was paid in return for the land, and the purchase must be in reference to a legal estate ***vis a vis*** an equitable interest in the suit land. To clarify, the absence of "notice" is in reference to the existence of "an equitable interest" in the land and not "the incidence of illegality or irregularity of the title" in question.

2. **Issue 2:** The doctrine of innocent purchaser for value without notice cannot protect a purchaser of an illegally or irregularly allocated title to public land.

   The 1st respondent was not a *bona fide* purchaser of the suit land, without notice of an existing equitable interest in the land, given the fact that the 2nd respondent was incapable of passing a valid title to the 1st respondent. For reasons that, the allotment of the land to the 2nd respondent was made by a person other that the Commissioner of Lands. Furthermore, the allotment was not preceded by the requisite procedural steps.

3. **Issue 3:** It is the application for renewal that ignites the legitimate expectation, given the fact that it is addressed to an authority that has the competence to renew the lease. Where the lessee makes an application for renewal of his/her lease, the application would be considered either way and that, the applicant would be furnished with reasons should the application be declined. It would also be expected that the application would be clear and unambiguous.

   The appellants made an application for renewal of the lease three months before its expiry. Therefore, the appellants had a legitimate expectation that their lease would be extended. Such an expectation was not only reasonable, but was expressed to a competent authority, who at different times, had exercised the powers conferred by the law, to extend the leases of other applicants in a similar position as the appellants.

Upon considering the appeal, the Supreme Court determined as follows:

a) The Judgment of the Court of Appeal, dated 8th October 2021 is hereby overturned.
b) The Petition of Appeal dated 23rd November 2023 is hereby allowed;

c) ***The Chief Land Registrar (3rd respondent) is hereby directed to effect a cancellation of the 1st respondent's title from the Proprietorship Section of the Land Register.***
d) ***The Chief Land Registrar (3rd respondent) is hereby directed to make an entry in the Proprietorship Section of the Land Register to reflect the appellants as the proprietors of the suit property in accordance with the provisions of the Land Registration Act.***
e) ***The structures and developments erected by the 1st respondent on the suit property be removed and demolished by the 1st respondent within six months from the date of this Judgment under the supervision of the 5th respondent.***
f) ***The Costs of the suit at the ELC and the appeal at the Court of Appeal shall be borne by the 1st and 2nd respondents.***
g) ***Each party shall bear its own costs of this appeal.***

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