



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

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

**APPLICATION NO. E010 OF 2026**

**— BETWEEN —**

**BRIAN LABAN NJENGA (Suing as the Administrator *Ad Litem* of the Estate of JUDITH WANJIRU NJENGA (Deceased))..... APPLICANT**

**—AND—**

**MASTO HOLDINGS LIMITED.....1<sup>ST</sup> RESPONDENT**

**P.M NG'ANG'A.....2<sup>ND</sup> RESPONDENT**

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

**ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION .....5<sup>TH</sup> RESPONDENT**

**—AND—**

**CO-OPERATIVE BANK OF KENYA .....INTERESTED PARTY**

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*(Being an application for review of the Ruling of the Court of Appeal at Nairobi (Asike-Makhandia, Kantai & Ngenye, JJ. A.) delivered on 6<sup>th</sup> March 2026 in Civil Application No. Sup. E010 of 2024, declining to certify the appeal as one raising matters of general public importance.)*

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Representation:

Mr. Mbichire for the Applicant  
(*Mbichire & Company Advocates*)

Mr. Mwangi h/b for Dr. Thiankolu SC for the 1<sup>st</sup> Respondent  
(*Muthomi & Karanja Advocates*)

Mr. Wabwire for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents  
(*State Law Office*)

Mr. Nabutola and Ms. Chepkorir h/b for Ms. Chiggai for the 5<sup>th</sup> Respondent.  
(*Chiggai & Company Advocates*)

Mr. Ole Ntome, for the Interested Party  
(*TripleOKLaw LLP*)

**RULING OF THE COURT**

**[1] UPON PERUSING** the Notice of Motion dated 12<sup>th</sup> March 2026 and filed on 17<sup>th</sup> March 2026 under Rules 33 (2), 36 & 38 of the Supreme Court Rules, 2020, Section 15B of the Supreme Court Act and Articles 163(4)(b) and (5) of the Constitution, seeking to review the Court of Appeal's ruling delivered on 6<sup>th</sup> March 2026 in Civil Application No. Sup. E010 of 2024, which declined to grant certification and leave to appeal to this Court against the judgment of the Court of Appeal (**Tuiyott, Achode & Gachoka, JJ. A.**) delivered on 26<sup>th</sup> April 2024 in Civil Appeal No. 632 of 2019; certification and leave to file an appeal to this Court; the certification and leave granted to operate as stay of execution of the said Judgment pending the hearing and determination of the appeal; and costs; and

**[2] UPON EXAMINING** the grounds on the face of the application and the supporting affidavit sworn by the applicant on 12<sup>th</sup> March 2026, wherein it is contended that the Court of Appeal erred in failing to certify the identified issues as constituting matters of general public; the application before the appellate court

met the threshold established by this Court in *Steyn Vs Ruscone* [2013] KESC 11 (KLR); the issues identified raise substantial questions of law whose determination transcends the parties' circumstances; the intended appeal presents a jurisprudential moment warranting further input from the Supreme Court; the alleged statutory power of sale was exercised pursuant to an invalid and unregistered charge, thereby rendering the procedure culminating in the statutory sale and transfer of the property known as L.R. No. 209/522/2 (*the suit property*) to the 1<sup>st</sup> respondent unlawful; the intended appeal raises the question of whether courts can uphold proprietary rights derived from a process whose title is flawed; and whether a trial court exercising its original jurisdiction is precluded from interrogating the validity of title on account of prior interlocutory or affidavit-based determinations; and

**[3] UPON FURTHER CONSIDERING**, the applicant's supplementary affidavit sworn on 8<sup>th</sup> April 2026 and further affidavit sworn on 6<sup>th</sup> May 2026, wherein it is deponed that the intended appeal is not a private or factual dispute, but bears a significant consequence in the interpretation and application of legal principles relating to the exercise of the statutory power of sale and securities of title to land in Kenya; the grounds of objection are legally untenable, misconceived, and fail to appreciate the constitutional and jurisprudential questions raised in the application; and

**[4] UPON FURTHER EXAMINING** the questions of general public importance set out by the applicant, that is;

- a) *Whether Section 69B (2) of the Indian Transfer of Property Act affords absolute protection to a purchaser where a statutory power of sale has been exercised pursuant to a defective, unlawful or unregistered charge;*
- b) *Whether a person claiming to be a bona fide purchaser for value without notice must demonstrate the legality of the root of the title, particularly where the validity of the statutory power of sale and the underlying charge instrument is challenged;*

- c) *Whether the Court of Appeal erred in law in upholding the 1<sup>st</sup> respondent's title without first interrogating the legality of the process leading to its acquisition, including the validity of the charge and the exercise of the statutory power of sale;*
- d) *Whether reliance on determinations made in earlier proceedings decided solely on affidavit evidence before courts of concurrent jurisdiction to overturn a judgment rendered after a full trial undermines the doctrine of stare decisis, the hierarchy of courts and the principles governing appellate review;*
- e) *Whether the issues arising from the impugned decisions raise substantial questions of law of general public importance relating to the exercise of statutory power of sale, securities of land titles, and the protection of purchasers in Kenya, thereby warranting intervention by the Supreme Court under Articles 163 (4)(b) and (5) of the Constitution; and*

**[5] UPON CONSIDERING** the applicant's submissions dated 12<sup>th</sup> March 2026, supplementary submissions, and further submissions both dated 6<sup>th</sup> May 2026 restating the grounds on the face of the application wherein it is urged that there is uncertainty in law regarding the scope of protection afforded to purchasers in a statutory power of sale under Section 69B(2) of the Indian Transfer of Property Act (*ITPA*) where a charge instrument is invalid or unregistered; the intended appeal is of general public importance and calls for the determination of whether the statutory protection afforded under the *ITPA* is absolute, or whether courts must first interrogate the legality of the root title in line with the law settled in ***Dina Management Ltd Vs County Government of Mombasa & 5 others*** [2023] KESC 30 (KLR) (***Dina Management***); the Court of Appeal departed from the decision in ***Dina Management***, thereby creating uncertainty in land jurisprudence; upsetting the doctrine of *stare decisis* and the hierarchy of courts; and that this Court has inherent jurisdiction to preserve the subject matter on the basis of decisions in ***Muriithi & 32 others Vs Law Society of Kenya &***

*another* [2016] KESC 13 (KLR) and ***Board of Governors, Moi High School, Kabarak & another Vs Bell & 2 others*** [2013] KESC 12 KLR; and

[6] **NOTING** the 1<sup>st</sup> respondent's replying affidavit sworn by *Gathoni Martha Mwema*, its director, on 1<sup>st</sup> April 2026 and submissions of even date, wherein it is asserted that, the applicant has not met the threshold settled in ***Steyn Vs Ruscone [supra]***; the dispute is a private commercial dispute over a charge on the suit property; the issues raised by the applicant are contested matters of fact which by themselves are not a basis for certification; the contentions by the applicant are a mere apprehension of a miscarriage of justice; the application, including the the issue of section 69B(2) of the ITPA does not disclose any legal issues of general public importance or any uncertainty in the law or judicial precedents; the ITPA was repealed on 12<sup>th</sup> May 2012, by Section 109 of the Land Registration Act; no transactions have been effected under the ITPA in the last fourteen years, or can potentially be entered into in the future; be that as it may, the courts below were not called upon to interpret the provisions of the ITPA; and

[7] **FURTHER NOTING** the 3<sup>rd</sup> and 4<sup>th</sup> respondents' grounds of objection dated 4<sup>th</sup> May 2026, the 5<sup>th</sup> respondent's grounds of objection dated 28<sup>th</sup> April 2016 and written submissions of even date, essentially agreeing with the 1<sup>st</sup> respondent and further contending that the applicant fails to meet the threshold for certification as the intended appeal arises from a private and commercial contest between the chargor and the chargee, and the exercise of the statutory power of sale upon default; the determination of the issues preferred by the applicant would not impact any class of citizens beyond the parties, particularly because the applicant invites the court to determine the protection under Section 69B(2) of the ITPA, a pre-colonial statute repealed in 2012; the application does not raise any uncertainty in law regarding the principle of *bona fide* purchaser for value without notice; the prayer for stay, is premature and unavailable to the applicant by virtue of Section 23A (2) of the Supreme Court Act; and

**[8] UPON CONSIDERATION** of the 1<sup>st</sup> interested party's (*as admitted by the Court of Appeal*) grounds of objection dated 30<sup>th</sup> April 2026 and submissions of even date to the effect that, the issues identified by the applicant, particularly the validity of the statutory power of sale conferring proprietary rights over the suit property to the 1<sup>st</sup> respondent are private in nature and do not transcend the interests of the parties; the issue of the protection under Section 69B(2) of the ITPA and the application of the principles of *bona fide* purchaser do not raise any uncertainties in law, as the ITPA is a repealed Act and the Court has settled with finality the applications of the principles of a *bona fide* purchaser for value without notice in ***Dina Management [supra]***; the issue whether the appellate court can grant a party leave to adduce additional evidence under Rule 31 of the Court of Appeal Rules does not meet the threshold for certification settled in ***Steyn Vs Ruscone [supra]***; the orders for stay sought by the applicant are not available in view of Rule 23A (b) and (c) of the Supreme Court Rules; and

**[9] BEARING IN MIND** that before the Environment and Land Court (ELC), the 1<sup>st</sup> respondent instituted ***ELC No. 226 of 2016*** alleging that Andrew Njenga, the husband of Judith Wanjiru Njenga, whose estate is now represented by the applicant, charged the suit property to the Co-operative Merchant Bank Limited, now Co-operative Bank of Kenya, to secure a loan of Kshs. 10,000,000.00; there was default, and the 1<sup>st</sup> interested party sought to exercise its statutory power of sale, but Andrew Njenga instituted ***HC Civil Suit No. 1095 of 2002*** seeking orders to avert the exercise of the power of sale; the High Court (***Mwera J*** – as he then was) dismissed the challenge, and thereafter, the interested party conducted a public auction in exercise of its statutory power of sale, whereat the 1<sup>st</sup> respondent purchased the suit property; Later, the 1<sup>st</sup> respondent presented the transfer documents to the Registrar of Titles, who declined to effect registration; this prompted the 1<sup>st</sup> respondent to file a judicial review, ***Nairobi Miscellaneous Civil Application No. 487 of 2008***, and the High Court (***Kihara J, as he then was***) granted orders compelling the Registrar of Titles to

effect registration in favour of the 1<sup>st</sup> respondent; thereafter, the applicant proceeded to file a total of ten suits before the subordinate courts, the High Court and the Court of Appeal respectively, seeking to stop and reverse the exercise of the statutory power of sale and transfer of the suit property to the 1<sup>st</sup> respondent; in all those matters the courts upheld the exercise of the statutory power of sale and transfer of the property to the 1<sup>st</sup> respondent; in the course of litigation, Judith Wanjiru Njenga made an application to the Land Office, and was presented with the provisional title, necessitating the institution of the matter before the ELC, seeking the annulment, revocation and cancellation of the provisional title, among other orders; and

**[10] NOTING** that: in a judgment dated 8<sup>th</sup> August 2019, the ELC (*Kossy Bor, J.*) delineated a single issue for determination, to wit, *who between the 1<sup>st</sup> respondent and Judith Wanjiru Njenga held a valid title over the suit property*; the trial court found in favour of Judith Wanjiru Njenga, reasoning that the 1<sup>st</sup> respondent had failed to adduce evidence of the public auction, such as the statutory notification of the sale served on the chargee, the advertisement of the auction, the memorandum of sale, and evidence of payment of the purchase price; the court also took notice of the discrepancies of the entries on the two competing titles over the suit property; the uncertainty over the value of the purchase price by the 1<sup>st</sup> respondent's witness; and the numerous suits filed in relation to the suit property, which according to the trial court pointed to the questionable manner in which the 1<sup>st</sup> respondent had acquired the suit property; and

**[11] FURTHER NOTING** that: the Court of Appeal in its Judgment dated 26<sup>th</sup> April 2024, overturned the ELC and found that; it was expressly admitted before the trial court that Andrew Njenga had executed a charge dated 13<sup>th</sup> June 2001 in favour of the predecessor of 1<sup>st</sup> interested party over the suit property to secure a loan facility of Kshs 10,000,000.00; there was a default in repayment of the loan and the bank lawfully exercised its statutory power of sale; the sale and transfer of the suit property to the 1<sup>st</sup> respondent had been upheld in various court decisions,

including by *Majanja, J*, in *Constitutional Petition No. 124 of 2011*, which decision was not appealed against; in the end, the appellate court set aside the judgment of the ELC; ordered the annulment of Judith Wanjiru Njenga's title, rectification of the Land Register to cancel entries in her favour, ordered her eviction from the suit property; and directed the Officer Commanding Station, Central Police Station to enforce possession in favour of the 1<sup>st</sup> respondent; and

**[12] FURTHER NOTING** that in denying certification and leave to appeal to this Court, the Court of Appeal in its ruling dated 6<sup>th</sup> March 2026 found that, the dispute involved the applicant's continued occupation of the suit property despite the sale by the interested party to the 1<sup>st</sup> respondent through a public auction, conducted in the exercise of the bank's statutory power of sale; the intended appeal does not raise matters of general public importance transcending the interests of the parties; the doctrines of indefeasibility of title and *bona fide* purchaser for value without notice have long been settled in law; and

**[13] GUIDED** by the provisions of Article 163(4)(b) and (5) of the Constitution, Section 15B of the Supreme Court Act and Rule 33 of the Supreme Court Rules, 2020 and this Court's guiding principles on grant of certification and leave to appeal to the Supreme Court as settled in *Steyn [Supra] and Malcolm Bell Vs Daniel Toroitich Arap Moi & another*, SC Appl. No. 1 of 2013 [2013] eKLR, to the effect that;

***"...for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest..."***

***... where the matter in respect of which certification is sought raises a point of law, the intending appellant must***

*demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest*”; and

[14] **FURTHER GUIDED** by this Court’s pronouncements in *Dina Management [supra]*, and *Sehmi & another Vs Tarabana Company Limited & others* [2055] KESC 21 (KLR), with regard to the meaning, nature, effect, and extent of applicability, of the doctrines of indefeasibility of title and *bona fide* purchaser for value without notice; and

[15] **HAVING CONSIDERED** the decisions of the superior courts, the totality of the pleadings, affidavits, and submissions by the parties herein, **WE NOW OPINE** as follows:

- i. The applicant has not satisfactorily demonstrated that the issues to be canvassed on appeal transcend the circumstances of the case and have a significant bearing on the public interest, to justify a review of the impugned Court of Appeal’s ruling. Further, the applicant has not cited any contradictory precedents that have created uncertainty in the law.
- ii. The issues before the superior courts below and now proposed in the intended appeal arose from a private commercial contract between a chargee (the Co-operative Bank of Kenya) and the chargor (Andrew Njenga) and the bank’s consequent exercise of its statutory power of sale over the suit property after the chargor’s default. In agreement with the Court of Appeal, we find that the facts and circumstances surrounding the dispute, do not transcend the interests of the parties.
- iii. On the question of the doctrines of indefeasibility of title and *bona fide* purchaser for value without notice, the courts’ pronouncements, including in *Dina Management [supra]* and *Sehmi [supra]*, have long settled the extent of the applicability of the said doctrines.

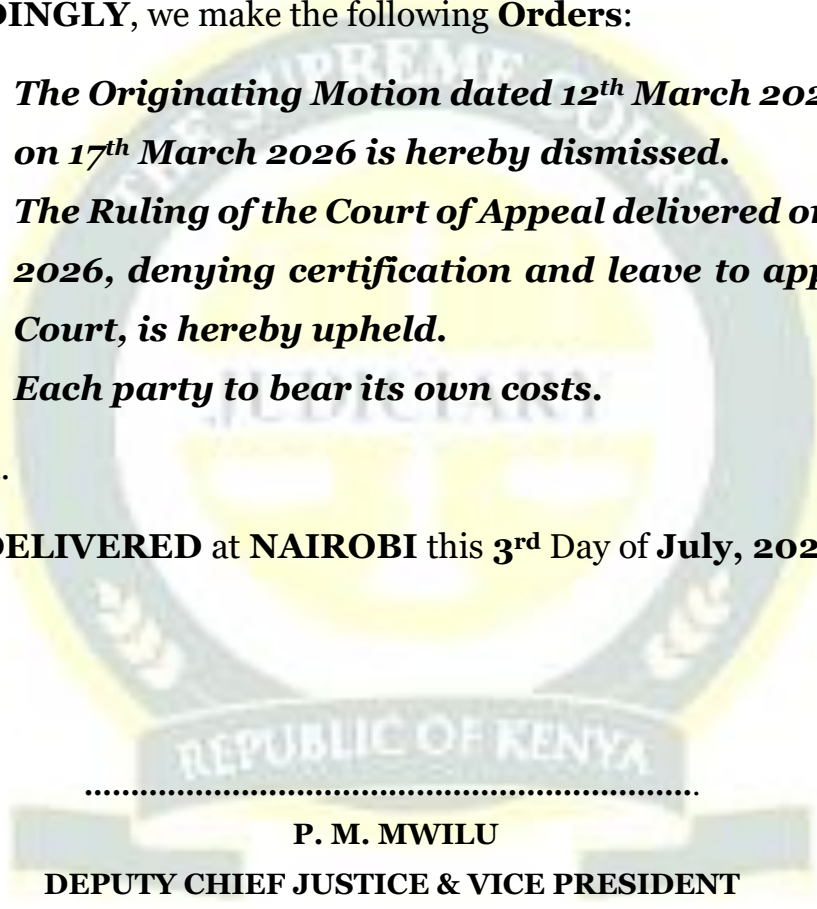
- iv. Ultimately, we find no fault in the Court of Appeal’s conclusion that the proposed issues do not meet the threshold set out in *Steyn [supra]* and *Bell [supra]*; and
- v. As regards stay, we find that consequent to our finding above, this Court lacks jurisdiction and must down its tools. In any event, by dint of Section 23A(2) of the Supreme Court Act, this relief is unavailable in the absence of a petition before the Court.

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

- (i) *The Originating Motion dated 12<sup>th</sup> March 2026 and filed on 17<sup>th</sup> March 2026 is hereby dismissed.***
- (ii) *The Ruling of the Court of Appeal delivered on 6<sup>th</sup> March 2026, denying certification and leave to appeal to this Court, is hereby upheld.***
- (iii) *Each party to bear its own costs.***

*It is so ordered.*

**DATED and DELIVERED at NAIROBI this 3<sup>rd</sup> Day of July, 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**

.....

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

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

.....  
**M. A. WARSAME**  
**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

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

