



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

APPLICATION NO. E023 OF 2025

—BETWEEN—

TELPOSTA PENSION SCHEME

TRUSTEES REGISTERED..... APPLICANT

—AND—

INTERCOUNTRIES IMPORTERS AND

EXPORTERS LIMITED.....1ST RESPONDENT

COMMISSIONER FOR LANDS.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

JUBILEE INSURANCE COMPANY LIMITED.....4TH RESPONDENT

PARK AVENUE INVESTMENTS LIMITED.....5TH RESPONDENT

TRUST BANK LIMITED (IN LIQUIDATION)6TH RESPONDENT

*Being an application for review of the Ruling of the Court of Appeal at Nairobi
(Musinga (P), Nyamweya & Odunga, JJ. A), delivered on 25th July 2025
in Civil Appeal (Application) No. 293 of 2016, granting certification and leave to
appeal to the Supreme Court*

Representation:

Mr. Bundotich for the applicant
(*Nchogu Omwanza & Nyasimi Advocates*)

Mr. Mayiga h/b for Mr. Mosota and Mr. Melly for the 1st respondent
(*G & A Advocates*)

Mr. Ochieng for the 2nd respondent
Sheikh & Company Advocates

Mr. Kamau for the 3rd respondent
(*State Counsel, Attorney General's Office*)

Mr. Muthee for the 6th respondent
(*TripleOKLaw LLP*)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 28th July 2025 and filed on 2nd September 2025, brought under Rule 33 (2) & (3) of the Supreme Court Rules, 2020 seeking to review the ruling of the Court of Appeal (***Musinga (P), Nyamweya & Odunga, J.J.A***) delivered on 25th July 2025, certifying the appeal to this Court against the Judgment of the Court of Appeal delivered on 12th July 2024, in Civil Appeal No. 293 of 2016, as constituting matters of general public importance; and costs; and

[2] UPON EXAMINING the grounds on the face of the application, the supporting and supplementary affidavits sworn by *Peter K. Rotich* on 29th July 2025 and 22nd August 2025, respectively, wherein it is contended that the Court of Appeal erred in certifying the identified issues as constituting matters of general public importance; the 1st respondent's application before the appellate court does not meet the threshold for certification established by this Court in ***Steyn Vs Ruscone*** [2013] KESC 11 (KLR); the issues certified by the Court of Appeal do not trigger a jurisprudential moment that warrants further input from the Supreme

Court; the application also fails to identify any uncertainty in law occasioned by contradictory precedents; or set out specific elements of general public importance; and

[3] UPON FURTHER EXAMINING the questions of general public importance set out by the 1st respondent, to wit;

- i. *what is the place of the statutory protections availed to purchasers upon the exercise of chargees' statutory powers of sale;*
- ii. *whether the provisions of the Land Act can be read into the repealed Land Statutes in their construction;*
- iii. *whether Dina Management Ltd. applies strictu sensu to persons deriving title from chargees' power of sale and if so, does it qualify in any way Section 99(3) of the Land Act?;*
- iv. *what interpretation/construction is to be accorded to the term 'constructive notice' under Section 99 (3) of the Land Act, and how can the conflicting decisions on the above matters be reconciled; and*

[4] UPON CONSIDERING the applicant's submissions dated 22nd August 2025, restating the grounds on the face of the application, and further urging that the issues framed by the Court of Appeal, more so, the issue of the indefeasibility of title, the doctrine of innocent purchaser, and the rights flowing from the exercise of the statutory power of sale, are matters long settled in law. The applicant submits that the Supreme Court in ***Dina Management Ltd. Vs County Government of Mombasa & 5 others*** [2023] KESC 30 (KLR) (***Dina Management***) settled the question of indefeasibility of title to the effect that if the process that was followed in the issuance of title did not comply with the law, such a title cannot be indefeasible. The appellant further argues that this Court has also settled that the doctrine of innocent purchaser for value without notice does not protect a purchaser of an illegally or irregularly allocated title to public land, in ***Sehmi & another Vs Tarabana Company Limited & 5 others*** (Petition E033 of 2023) [2025] KESC 21 (KLR); and

[5] NOTING the 1st respondent's replying affidavit sworn by *Naushad Abid* on 17th September, 2025 and submissions dated 6th October 2025, wherein it is asserted that: upon grant of certification, the 1st respondent filed ***Supreme Court Petition No. E039 of 2025***, and that the said appeal meets the threshold settled in ***Steyn Vs Ruscone [supra]***; the issues framed by the Court of Appeal transcend the interests of the parties the determination of which has a bearing on the public interest; the question of whether a legal charge is a bankable security, is of interest to both lenders and the public as it impacts the real estate and the financing sector; there exists contradictory precedents on this issue, which necessitate consideration by the Court; the issues for determination in the appeal have been the subject of litigation and judicial determination in the superior courts below; and that the applicant has not demonstrated the existence of an error in the Court of Appeal ruling on certification; and

[6] FURTHER NOTING the 2nd respondent's grounds of objection dated 16th October 2025 and written submissions of even date, wherein it is contended that the application lacks merit and fails to justify the prayers for review; the appellate court correctly certified the appeal as it constitutes substantial issues of law; and

[7] UPON CONSIDERATION of the 3rd respondent's grounds of objection dated 12th September 2025, and submissions of even date, urging that the question certified by the Court of Appeal involves a substantial point of law; transcends the circumstances of this particular case, and has a significant bearing on public interest; the determination of the question whether the rationale in ***Dina Management [supra]*** strictly applies to purchasers of property through the exercise of a chargee's statutory power of sale has far-reaching ramifications that affect the entire banking and finance sector, and the Kenyan economy; and

[8] UPON FURTHER CONSIDERATION of the 6th respondent's replying affidavit, sworn by *Stanley M. Milimu* on 1st October 2025 and submissions dated 1st September 2025, joining issues with the 1st, 2nd and 3rd respondents, wherein it is contended that: the issues certified by the Court of Appeal have a profound effect

on the financial, banking and commercial sectors transcending the parties' circumstances; clarification by this Court whether the principles in ***Dina Management [Supra]*** apply strictly to the sale of land by way of public auction by a chargee in exercise of the statutory power of sale; and that the determination of the framed issues by the Supreme Court will give clarity to the duty of an intending purchaser at an auction conducted in exercise of a chargee's statutory power of sale; and

[9] BEARING IN MIND that; the genesis of the dispute is the ownership of land reference No. 209/13238 (originally LR 209/2397), the *suit property*; the applicant (Teleposta) instituted the case before the High Court, founded on allegations of fraudulent and illegal alienation of the said property to the 5th respondent (Park Avenue Investments) by the 2nd respondent (Commissioner of Lands); thereafter, the 5th respondent charged the suit property to the 6th respondent (Trust Bank); upon default, the 6th respondent, in exercise of its statutory power of sale, sold the property to the 1st respondent (Intercountries Limited); the applicant sought an order for cancellation of the grant issued to the 5th respondent, and issuance of a new grant in its favour, or in the alternative, compensation from the Commissioner for Lands; and

[10] NOTING that: in a Judgment dated 27th July 2026, the High Court (*Ougo, J.*) found that the suit property was lawfully allocated to the 5th respondent; at the time of allotment, no registration of title to the suit property had been made in favour of the applicant or its predecessor; and that the 1st respondent was a *bona fide* purchaser for value and the lawful proprietor; and

[11] FURTHER NOTING that: the Court of Appeal in its Judgment dated 12th July 2024, overturned the High Court and found that; the suit property was not unalienated land available for allotment; the allotment to the 5th respondent by the 2nd respondent, and subsequent registration were irregular and unprocedural; the 2nd respondent could not ignore the unregistered interest of the applicant, more so because, it was the 5th respondent that had initiated the process of allotment by

application to the 2nd respondent; the suit property was not vacant at the time of the allotment to the 5th respondent; consequently, the latter had no valid title to the suit property, and could not charge the same to the 6th respondent; and therefore, the purported statutory power of sale by the 6th respondent to the 1st respondent was a nullity; and

[12] FURTHER NOTING that in granting certification and leave to appeal to this Court, the Court of Appeal in its ruling dated 25th July 2025, delineated the following issues as raising matters of general public importance: ‘**...the application of the provisions of the Land Act to transactions that were governed by the repealed statutes; the application of the Dina Management Case (supra) to persons acquiring titles from the chargee’s exercise of statutory powers of sale; and the extent of the application of the doctrine of bona fide purchaser to those transactions**’; and

[13] WELL AWARE of the provisions of Section 99(3) of the Land Act, Cap 280, on the protection of a purchaser in the case of a chargee’s exercise of the statutory power of sale, as well as Section 26 (1) of the Land Registration Act on evidence of proprietorship; and

[14] 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;

[15] FURTHER GUIDED by this Court's clear, unambiguous, and authoritative pronouncements in ***Dina Management Limited [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 this Court's pronouncement on the question of retrospective or retroactive legislation in ***Macharia & another Vs Kenya Commercial Bank Ltd & 2 others*** [2012] KESC 8 (KLR); and

[16] 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 question of the applicability of retrospective or retroactive legislation has long been settled by the superior courts. We emphasize that decisions of this Court are intended to settle substantial questions of law, and the Court can only depart from its decisions when sufficient grounds are established. Towards this end, the first issue, as framed by the Court of Appeal, does not present any ambiguities or uncertainties in the law to warrant the exercise of this Court's jurisdiction under Article 163(4)(b) of the Constitution.

- ii. However, the application seeking clarification as to whether the ***rationes decidendi*** in ***Dina*** and ***Sehmi [supra]***, apply to a transfer/acquisition of title pursuant to a public auction, consequent upon the exercise of a chargee's statutory power of sale, raises a substantial question of law the determination of which, not only transcends the interests of the parties herein, but will also have a significant bearing on the public interest.

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

- (i) ***The Notice of Motion dated 28th July 2025 and filed on 2nd September 2025 is hereby partially allowed.***
- (ii) ***The Ruling of the Court of Appeal delivered on 25th July 2025, granting certification and leave to appeal to this Court, is hereby affirmed only in the context of the contents of paragraph 16 (ii) above.***
- (iii) ***The Costs of this Application shall abide the Cause.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 31st Day of March 2026.

.....
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

.....
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

