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THE COMPLETE SERIES · PARTS 1 TO 8

# Who Owns *the Land?*

Title, purchasers and public auctions after *Dina Management*

Luka Ome, Partner, Real Estate | 27th November 2026

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01

PART 1 OF 8 · WHO OWNS THE LAND?

# *Dina Management* Explained

## What the Supreme Court Decided, and What It Did Not

Luka Ome, Partner, Real Estate | 10th November 2026

> “ Take this case for instance. You buy land. Your advocate conducts a search. The Lands Registry confirms ownership. Approvals are obtained, rates are paid, and millions of shillings are invested. Years later, a court tells you that the land was never capable of being privately owned in the first place. This is what happened in *Dina Management Ltd v County Government of Mombasa & 5 others*, [2023] KESC 30 (KLR), one of the most consequential land decisions delivered in recent years.

The judgment has generated no shortage of commentary. Some have concluded that title deeds are no longer worth the paper they are written on, while others argue that every purchaser must now trace a property's history back to the first allocation. Still others suggest that the doctrine of the innocent purchaser is effectively dead. None of those conclusions is quite right.

What the Supreme Court did was both narrower and more significant. It did not make every title vulnerable; rather, it reminded purchasers, lenders and developers that ownership is not merely a question of registration. Sometimes, the more important question is how the title came into existence in the first place. This article examines what the Supreme Court actually decided, what it did not decide, and why the distinction matters. The rest of this series builds from that foundation. **Next in the series:** Is Your Title Deed Enough?

## The facts

To understand why the decision matters, it is worth stepping back from the legal principles for a moment.

From Dina's perspective, this was not a reckless acquisition. The company purchased the property in 2006 for KES 18 million and relied on official records and approvals that appeared to support ownership of the property. Among the documents relied upon were ministry approvals, confirmation from the lands office, development permissions, environmental licences and evidence of payment of rates.

The County Government of Mombasa (the County) took a different view. It maintained that the land was public beach land that should never have left public ownership in the first place. In 2017, it demolished the perimeter wall and levelled the site. The dispute that followed eventually reached the Supreme Court.

Dina petitioned the Environment and Land Court, claiming that the demolition violated its rights, including its right to property under Article 40. The County responded with its own petition seeking declarations that the land was public beach land and that Dina's title was void. The Environment and Land Court heard the two petitions together, dismissed Dina's petition and partly allowed the County's, finding that the allocation was unlawful and rejecting Dina's defence that it was an innocent purchaser. The Court of Appeal dismissed Dina's appeal.

One feature of the case is easily missed. The national land agencies, including the Chief Land Registrar and the Director of Surveys, supported the lawfulness of the allocation, while acknowledging that the application letter and the Part Development Plan (PDP) were missing. This was therefore not a case of a purchaser who ignored warnings from the land registry. The registry itself stood behind the title.

## What the Supreme Court decided

The Supreme Court's jurisdiction lay only under Article 163(4)(a), on questions involving the interpretation or application of the Constitution. The Supreme Court was strict about this. It held that the factual findings on the allocation, made concurrently by two courts, were not open to it. It accepted jurisdiction over, among others, the constitutional question of whether Dina's title was protected under Article 40 as that of a bona fide purchaser, and it declined to entertain claims that had not been decided in the courts below, observing that Dina was "no more than seeking compensation and/or damages", which was outside its purview.

That framing explains the shape of the judgment. The Supreme Court did not retry the allocation. It took the irregularity as established and asked whether a title built on it could be protected.

## So what exactly was wrong with the allocation?

The Supreme Court identified three defects. First, the land was not available for allocation at all. Because the 1971 survey plan designated it as an open space for public use, it was a public utility and "could not be described as unalienated public land". Second, the procedure was not followed. Allocation required planning before survey, with a PDP approved and an application to the Commissioner of Lands. There was no evidence of either. Third, the tenure was wrong: for a town plot, the Government Lands Act permitted a leasehold not exceeding 100 years, not a freehold.

## The core holdings

Having set out the definitions of a bona fide purchaser in *Katende v Haridar & Company Ltd* [2008] 2 EA 173 and *Samuel Kamere v Lands Registrar, Kajiado* [2015] KECA 644

(KLR), the Supreme Court adopted the Court of Appeal's statement in *Munyu Maina v Hiram Gathiha Maina* [2013] KECA 94 (KLR) that *"it is not enough to dangle the instrument of title as proof of ownership"*. Because the dispute was about the original allocation, *"we must first go to the root of the title, right from the first allotment"*.

The heart of the decision states that a title or lease *"is an end product of a process"*. If the process that led to it was unlawful, *"such a title cannot be held as indefeasible"*. The first allottee therefore *"had no valid legal interest which he could pass to Bawazir & Co (1993) Ltd"*, which subsequently had nothing to pass to Dina. The Supreme Court stressed that *"we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities"* in the allocation of public land.

On the Constitution, the Supreme Court held that Article 40(6) *"limits the rights as not extending them to any property that has been found to have been unlawfully acquired"*. It went on to state that *"the root of the title having been challenged, ... the appellant could not benefit from the doctrine of bona fide purchaser"*. The land vested in the County under Article 62(2), and the Supreme Court added that beach property is attractive and Dina *"ought to have been more cautious in undertaking its due diligence"*.

## What is binding, and what is not

It helps to separate the holdings from the facts and from the Supreme Court's observations.

The binding propositions are three: where the root of a registered title is challenged, the proprietor must prove that the acquisition was lawful and cannot rest on the certificate alone; a title produced by an unlawful allocation is not indefeasible and is not protected by Article 40, because Article 40(6) excludes unlawfully acquired property; and a successor purchaser cannot use the bona fide purchaser doctrine to protect such a title, because the first allottee had nothing to pass.

Other features are particular to the facts: the land was a public utility protecting access to the sea, the defects were specific to the old Government Lands Act allocation process, and the findings of fact were concurrent findings that the Supreme Court would not disturb.

The remark that Dina should have been more cautious is an observation unique to the circumstances of that case. It is not a rule that sets the standard of due diligence for every purchase. Nor is the decision a blanket condemnation that an innocent purchaser can never be compensated. Its remark that Dina was "no more than seeking compensation" was a statement about the limits of the Supreme Court's jurisdiction in that appeal.

## The word "challenged"

The single most important word in the entire judgment is not indefeasibility, public land or even bona fide purchaser; it is the word "challenged". The obligation to go behind the register arises because "the root of the title" has been "challenged". *Dina Management* does not say that every purchaser, in every conveyance, must reconstruct every link in the chain back to the first allotment whether or not anything puts the title in question. It says that once a title is genuinely challenged, on competent grounds, the certificate alone will not answer the challenge.

The Court of Appeal has since stated the threshold expressly. In *Frank Logistics Ltd v Golden Lion Real Estate Co & 6 others* [2025] KECA 1471 (KLR), it held that a registered proprietor *"will not be called upon to prove the root of the title on spurious allegations"*; *"some evidence must be placed before the court"* showing *"reasonable grounds for believing that the title may not have been properly obtained"*. Part 2 of this series examines that threshold and the burden of proof in detail.

## What Dina Management did not decide

The judgment says nothing about purchasers at public auctions, whether at a chargee's sale under the Land Act, a court sale or a county rates sale. It does not address compensation, the standard of proof of illegality, or the extent to which its reasoning applies to purely private land. Those questions have been the subject of later decisions, and one of them, the position of the auction purchaser, is now before the Supreme Court, which affirmed its certification as a matter of general public importance in *Telposta Pension Scheme Trustees Registered v Intercountries Importers and Exporters Ltd & 5 others* [2026] KESC 27 (KLR). Parts 4 and 5 of this series will deal with auctions, while Part 8 will deal with the open questions.

## How the Supreme Court has built on it

The Supreme Court has not treated *Dina Management* as a one-off. In *Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR), it held that *"an allotment letter in and by itself, is incapable of conferring a transferable title"* and that the military's occupation of the land *"sounded a warning of 'buyer be aware'"*. In *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR), it held that the burden of proof *"lies upon the person claiming to be a bona fide purchaser"*, and that the doctrine *"cannot be invoked to protect a title to an illegally acquired public land"*.

The Supreme Court has also marked the limits. In *Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR), the full bench of the Supreme Court upheld a chain of titles, holding that fraud *"must be pleaded and*

*strictly proved*" and that where the root is lawful "*the question of whether such third parties were innocent purchasers for value without notice should not arise*".

## Practical implications

For buyers and their advocates, the lesson is not panic. It is to understand where the risk sits. It sits in the origin of the title: how the land left public hands, or how an earlier link in a private chain was created. A clean search is necessary but no longer sufficient where there are signs that the land was once public, reserved, or used by a public body, or where the chain contains an allocation, a reconstruction, a transmission or a corporate transfer that cannot be documented. Part 7 of this series sets out a due-diligence framework built on the decided cases.

For sellers and lenders, the lesson is that a title is only as marketable as its documented root. Allotment letters, PDPs, survey records, and the documents behind each transfer are now part of the title, in practical if not legal terms.

## The bottom line

*Dina Management* did not make every title unsafe. It made the origin of a title matter. A title born of an unlawful allocation will not survive a legal challenge, however innocent the buyer and however clean the search. A title with a lawful, documented root will. The difference between the two is rarely visible on the register. It is found in allotment files, survey records and the history of each transfer.

## What we do

Our Real Estate and Dispute Resolution teams advise buyers, sellers, developers and lenders on this question: we trace a title to its root before money changes hands, and we defend titles when they are attacked in court. If you own land, are buying it or are lending against it, and want to know what *Dina Management* means for you, speak to us before the question is asked in court.

> **Next in the series, Part 2:** Is Your Title Deed Enough? We look at what registration really guarantees, and the moment the burden shifts to the owner.

*Who Owns the Land? is a series by OK Law Advocates LLP on title, purchasers and public auctions after Dina Management. It is general commentary on the law as at the date of this publication and is not legal advice on any particular transaction. To discuss what it means for your land, purchase or security, contact our Real Estate team.*



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02

PART 2 OF 8 · WHO OWNS THE LAND?

# Is Your *Title Deed* Enough?

## Registration, Indefeasibility and Article 40(6)

Luka Ome, Partner, Real Estate | 12th November 2026

> **In Part 1,** we examined what the Supreme Court actually decided in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR), but this is the question every landowner eventually asks: **is the title deed enough**?

A title deed remains powerful evidence of ownership. However, where credible evidence suggests fraud, illegality, procedural irregularity or unlawful allocation, courts may look beyond the certificate and examine how the title came into existence.

## The Starting Point: Registration Still Matters

Sections 24, 25 and 26 of the Land Registration Act, 2012 (the Act) still favour the registered proprietor. Registration remains the foundation of ownership, and a certificate of title remains prima facie evidence of ownership.

That protection is not absolute. A title may be challenged where it was obtained through fraud, misrepresentation, illegality, procedural impropriety, or a corrupt scheme.

## What Article 40(6) Changed

Article 40 protects the right to property, but Article 40(6) withholds that protection from property that has been found to have been unlawfully acquired. *Dina Management reinforced* that courts may refuse to protect a title founded on an unlawful process.

The question, therefore, is not only whether you have a title deed, but also whether the process leading to the title was lawful.

## A Title Is the End Product of a Process

The Supreme Court's most quoted line is that *"the title or lease is an end product of a process"*, so that where the process was unlawful *"such a title cannot be held as indefeasible"*. In *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR), the Supreme Court went further to state that it is *"no longer possible for a title holder to erect the certificate of title as a barrier"* and confirmed that a certificate is only *"prima facie evidence"* of ownership.

It would be wrong, however, to read these statements as making registration meaningless. The presumption in section 26(1) of the Act still does real work. It decides cases where the challenger cannot displace it, and the Court of Appeal and the Environment and Land Court continue to uphold registered titles where the challenge is not made out.

## When Must You Prove the Root of Your Title?

A proprietor is not required to reconstruct ownership history merely because allegations are made. The obligation generally arises where evidence suggests a real defect, such as double allocation, forgery, missing allocation records, conflicting title documents or unlawful conversion of public land. Once such evidence is produced, ownership disputes shift from possession of a title deed to proof of how that title came into existence.

## Fraud and Illegality Are Different Routes

The distinction between section 26(1)(a) and (b) of the Act matters most at the level of proof.

Fraud focuses on misconduct and must be specifically pleaded and strictly proved. The Supreme Court in *Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) endorsed a standard "higher than proof on a balance of probabilities". The Court of Appeal in *Munyanya v Keya* [2024] KECA 1831 (KLR) required "very cogent evidence" and upheld a purchaser's title against a challenger who had merely raised doubts.

Illegality, on the other hand, focuses on the validity of the process and is not subject to the same requirement. In *Frank Logistics Ltd v Golden Lion Real Estate Co & 6 others* [2025] KECA 1471 (KLR), the trial judge had found that fraud was not proved. The Court of Appeal nonetheless held that *"the manner in which the 1st respondent's title was lost was unprocedural and illegal"*, bringing the case within section 26(1)(b) of the Act, and dismissed the appeal, leaving the cancellation of the later title in place. Therefore, a proprietor may be innocent yet still face a challenge if the underlying acquisition was unlawful.

## Rectification and Indemnity

Two further provisions deserve attention. Section 80(1) of the Act empowers the court to rectify the register where a registration *"was obtained, made or omitted by fraud or mistake"*. Section 80(2) of the Act, as it stands after amendment in 2016, provides that the register *"shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake ... or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default"*. On its face, that protects the innocent proprietor against rectification. The courts have not yet explained in any authoritative way how that subsection sits with the cancellation of innocent purchasers' titles under section 26(1)(b) of the Act and Article 40(6) of the Constitution. The likely answer is that a title that never lawfully existed is declared void rather than "rectified".

Section 81 of the Act gives a person "*suffering damage by reason of ... any rectification of the register*" an entitlement to indemnity, but excludes any person who caused or substantially contributed to the damage "*by fraud or negligence*", or who derives title "*otherwise than under a registered disposition made bona fide for valuable consideration*" from such a person (section 81(2) of the Act). For the innocent purchaser who loses a title, that is a potential source of recovery from the State, although the courts have yet to decide whether it extends to a title declared void rather than rectified.

## Practical Implications

For a proprietor, the certificate remains the first line of defence, and it will be enough unless a challenger can produce real evidence of a defective root. Proprietors should nevertheless keep the documents that prove the process: the allotment letter and acceptance, survey and planning records, consents, the transfer instruments and evidence of payment.

For a purchaser, the search is a necessary step but not the end of the inquiry where the land's history suggests a public origin, an allocation, or an unusual transfer.

For banks and lenders, security is only as strong as the title supporting it. Root of title verification is increasingly important.

For litigants, *Dina Management* did not abolish registered ownership; rather, it changed how ownership disputes are proved once a credible challenge is raised.

## The Bottom Line

A title deed remains one of the strongest legal documents a person can hold in Kenya, but ownership is measured by more than what appears on the register. Courts are increasingly prepared to ask the secondary question: how the title came into existence. If that question cannot be answered with credible evidence, registration alone may not save the title.

> **Next in the series, Part 3:** The Innocent Purchaser's Dilemma. Can you lose land **acquired in good faith after conducting a search, and if so, who bears the loss?**

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# 03

PART 3 OF 8 · WHO OWNS THE LAND?

# The *Innocent Purchaser's* Dilemma

## Can You Lose Land You Bought in Good Faith?

Luka Ome, Partner, Real Estate | 17th November 2026

> **Previously, in Part 2:** what a title deed is worth once it is challenged. Now the harder question: what happens to the buyer who did everything right? **Next, in Part 4:** we step into the auction room.

A doctor bought a residential property in Nakuru in 2013 for KES 16.1 million and was registered as proprietor in 2015. Ten years later, the Environment and Land Court cancelled his title because the property was a government house on land reserved for the Regional Veterinary Investigation Laboratory. The Environment and Land Court did one more thing: it ordered the person who sold him the land to refund the purchase price and costs of the purchase, KES 17,440,911.10, with interest (*Otara v Mukuriah & 4 others* [2025] KEELC 5001 (KLR)). The vendor has appealed, and the Court of Appeal declined to stay the judgment in May 2026 (*Mukuriah v Otara & 4 others* [2026] KECA 905 (KLR)).

The case captures the dilemma this article addresses. Can a purchaser who paid full value, searched the register and knew nothing of any wrongdoing lose the land? The answer is yes. But the bona fide purchaser doctrine has not disappeared. It has been put back in its proper place, and the purchaser's innocence still matters a great deal, though more often to the question of who pays than to the question of who keeps the land.

## The doctrine as Kenyan courts state it

The Supreme Court in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) cited two formulations. The first is the Ugandan Court of Appeal's in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, which sets out seven elements: the purchaser holds a certificate of title, bought in good faith, had no knowledge of the fraud, paid valuable consideration, the vendors had apparent valid title, the purchaser bought without notice of any fraud, and was not party to any fraud. The Court of Appeal applied it in *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] KECA 698 (KLR).

The second is the Court of Appeal's decision in *Kamere v Lands Registrar, Kajiado* [2015] KECA 644 (KLR): the purchaser *"must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration"*.

The *Kamere* formulation contains the seed of what followed. Its first element is a *"valid and legal title"*. A purchaser who cannot show that cannot be a bona fide purchaser in the protected sense, however honest.

## What Sehmi added

The Supreme Court's fullest statement is in *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR). Four points stand out:

1. The burden of proof *"lies upon the person claiming to be a bona fide purchaser"*.
2. Innocence is not mere ignorance. Restating its decision in *Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR), the Supreme Court said that the doctrine *"denotes a purchaser who exercised due diligence"*.
3. The doctrine is a defence against equitable claims. It *"only protects the purchaser against those basing their claims upon an equitable interest"*. This restates what the Court of Appeal had held in *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others* [2015] KECA 816 (KLR), that protection runs *"only against equitable interests"* and *"never enabled a purchaser to take free from legal rights"*.
4. Finally, there can be no protectable *"purchaser of an illegal title without notice of such illegality"*, and the doctrine *"cannot be invoked to protect a title to an illegally acquired public land"*. A purchaser cannot claim protection, the Supreme Court said, even if he was not aware of the illegality.

## Why an innocent purchaser can still lose the land

The reason is structural, not moral. The bona fide purchaser doctrine decides contests between a legal title and an earlier equitable claim. It allows a purchaser of the legal estate to take free of equities he did not know about. It was never a means of creating a legal title out of nothing. Where the vendor's title was void (because the land was not available for allocation, the allocation process was unlawful, a link in the chain was forged, or the vendor had no authority to sell), the purchaser has no legal estate for the doctrine to protect.

The Court of Appeal had accepted that result long before *Dina*. In *Ochieng & another v Ochieng & 2 others* [1996] KECA 205 (KLR), where a chargee's sale was void for want of proved statutory notice, the Court of Appeal acknowledged that its decision meant *"an innocent purchaser for value being deprived of the title"*. In *Wambui v Mwangi & 3 others* [2021] KECA 144 (KLR), where land had been sold at auction in execution of a decree obtained by a fictitious plaintiff, the earlier title prevailed *"notwithstanding that the appellant may have had no notice"*.

## When innocence still wins

It would be a serious misreading to conclude that the purchaser's position is hopeless. Three categories of cases are decided in the purchaser's favour.

a) **Where the root is lawful.** The Supreme Court in *Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) upheld a chain of titles and held that where the root is lawful, *"the question of whether such third parties were innocent purchasers for value without notice should not arise"*. The title stands on its own.

b) **Where the competing claim is equitable.** In *Freedom Limited v Mbarak* [2026] KESC 2 (KLR), the Supreme Court described the estate's unregistered interest under an uncompleted sale as *"only an equitable or beneficial interest"*, *"susceptible to a superior claim by a bona fide purchaser for value without notice"* as long as the purchase is not tainted by illegality. It remitted the case to the Environment and Land Court for a fresh hearing of the factual questions.

c) **Where the challenger cannot prove the defect.** In *Munyanya v Keya* [2024] KECA 1831 (KLR), the challenger raised doubts but not *"very cogent evidence"*, and the purchaser's title was upheld. In *Kanyua v Munene & 2 others* [2026] KECA 94 (KLR), purchasers from a proprietor who held under a confirmed grant kept their titles because fraud was *"not proven"*. In *Muigai v Ali & 3 others* [2026] KEELC 16 (KLR), a double allocation, the Environment and Land Court upheld the earlier lease and sale and declared the purchaser in possession a bona fide owner by reason of purchase.

## Notice: what the courts treat as a warning

Because due diligence is now an element of innocence, the question of what should have put the purchaser on inquiry has become central. The decided cases give concrete guidance.

- **Occupation by someone else is notice**. In *Torino*, the Department of Defence's occupation *"sounded a warning of 'buyer be aware'"*.
- **Public use visible on the ground is notice**. In *Shah & another v Kenya National Highways Authority* [2023] KECA 404 (KLR), there were *"telltale signs in the history of the suit properties"* of a road reserve.
- **Inconsistencies in the title documents are notice**. In *Galaxy Realtors Ltd v Kenya Forest Service* [2024] KECA 1304 (KLR), the lease ran from 1998 and the register was opened in 2000, before the 2001 notice that purported to de-gazette the forest (a notice the High Court later quashed). These inconsistencies cast serious doubt on the title, and the purchaser *"cannot hide behind the doctrine of bona fide purchaser for value"*.
- **The knowledge of those behind a purchasing company is the company's knowledge**. In *Frann Investment Ltd v Kenya Anti-Corruption Commission & 6 others* [2024] KECA 714 (KLR), the land was a customs house and the purchasing company was owned by a former customs officer and his family, who knew it; the transfer *"was not made in good faith"*.
- **Unusual contractual protection can be notice**. In *Telposta Pension Scheme Registered Trustees v Intercountries Exporters Ltd & 5 others* [2024] KECA 870 (KLR), the Court of Appeal relied on the fact that the selling bank had given the buyer an indemnity as indicating awareness of a defect.

## Remedies: who pays when the purchaser loses

This is where innocence counts most, and where the case law is least settled.

a) **The vendor.** The Court of Appeal has said that the doctrine, *"at its most charitable"*, permits the successor *"to look to the predecessor in title"* and, exceptionally, to a complicit government agency (*Shah v KeNHA*). In *Otara,* the vendor was joined and ordered to refund the full price and the costs of the purchase, with interest, in the same suit. In *Maina & another v Maina & 4 others* [2024] KEELC 5827 (KLR), the purchasers were told they were *"at liberty to seek remedy for damages as against the 1st Defendant in a separate suit"*. In other cases, the judgment is silent, and the purchaser leaves with nothing but a cause of action.

b) **The chargee or other seller.** Where the land was sold by a bank, the purchaser's remedy lies against the bank: *"Her remedy is against the bank primarily to obtain a refund of the consideration paid"* (*Ochieng*); the title being *"worthless"*, the remedy *"can only lie against the Bank"* (*Telposta*). Whether *Dina* and *Sehmi* apply at all to a title acquired through a chargee's statutory power of sale is now before the Supreme Court, which certified that question for appeal in *Telposta Pension Scheme Trustees Registered v Intercountries Importers and Exporters Limited & 5 others* [2026] KESC 27 (KLR). Parts 4 and 5 of our series deal with auction purchasers in detail.

c) **The State.** Section 81 of the Land Registration Act, 2012 entitles a person suffering damage by reason of rectification of the register to indemnity, excluding anyone who caused or substantially contributed to the damage *"by fraud or negligence"* (section 81(2)). The Supreme Court has not decided whether, or how far,

an innocent purchaser whose title is cancelled under *Dina* may claim compensation; in March 2026 it declined to certify for appeal a case that had raised that question (*Frann Investment Limited v Kenya Anti-Corruption Commission & 6 others* [2026] KESC 31 (KLR)), holding that the issues had already been settled in its earlier decisions. The question of State compensation for innocent purchasers remains open, and it is examined in Part 8.

There is also a risk in the other direction. A purchaser who loses the land may be ordered to pay damages for trespass to the true owner, as in *Kamau & another v Munene & 2 others* [2024] KEELC 4769 (KLR), where KES 5 million was awarded against a purchaser who said he had paid KES 28 million for the land.

## Practical implications

For purchasers, the answer to the dilemma lies in preparation and in pleading. Before buying, the purchaser should do the inquiries the courts treat as part of innocence (Part 7 sets them out). The sale agreement should contain enforceable warranties of title and an indemnity from a vendor worth suing, and where possible, a retention or escrow. If the title is later attacked, the purchaser should join the vendor and plead an alternative claim for a refund, damages and indemnity in the same suit, so that the court can do what it did in *Otara* rather than leave the purchaser to start again.

For advocates acting for purchasers, the record of due diligence is evidence. The searches, the planning and survey inquiries, the inspection report and the correspondence with the vendor are what will prove innocence if it is ever in issue, and *Sehmi* puts the burden of proving it on the purchaser.

## The bottom line

Yes, you can lose land you bought in good faith. Since *Dina* and *Sehmi*, honesty alone will not save a title whose root was unlawful. But the innocent purchaser is not defenceless. A buyer whose title rests on a lawful root needs no defence at all, and a buyer facing a challenger without credible evidence wins. A buyer who loses has a claim for compensation against the vendor, the bank or potentially the State. What decides the outcome is preparation: the due diligence done before purchase, the protections written into the contract, and the way the claim is pleaded when the title is attacked.

> **Next in the series, Part 4:** Buying Land at a Public Auction. Does the fall of the hammer still make the buyer safe?

If you have bought land whose title is now being questioned, or you are about to buy and want to be sure you are protected, OK Law can guide you through both the defence of your title and the recovery of what you paid.

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# 04

PART 4 OF 8 · WHO OWNS THE LAND?

# Buying Land at a *Public Auction* in Kenya

## Does *Dina Management* Change the Rules?

Luka Ome, Partner, Real Estate | 20th November 2026

> **Previously, in Parts 1 to 3:** the private purchaser. Now the auction room, where many buyers assume the fall of the hammer makes them safe. **Next, in Part 5:** chargee sales, and the bank sale appeal now pending before the Supreme Court.

The fall of the hammer has long been treated as the moment when the auction purchaser becomes safe. The owner's right to redeem is gone, the purchaser is not expected to look behind the auctioneer's conditions of sale, and any complaint about how the sale was run becomes a claim for money against someone else. Since the Supreme Court's decision in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) ("*Dina Management*"), buyers, lenders and auctioneers have asked whether that is still true.

The answer depends on what kind of auction it was and what kind of defect is alleged. This article maps the ground: the different kinds of public sale in Kenya, the legal regime that governs each, and the line the courts have drawn between a defect in the sale and a defect in the thing sold. Part 5 then examines the most contested category, the chargee's sale under section 99 of the Land Act, 2012, and the appeal now pending before the Supreme Court.

## Not one auction, but several

It is a mistake to treat "auction purchaser" as a single legal category. At least four regimes are in play.

1. A **chargee's sale** is a sale by a bank or other chargee exercising the statutory power of sale under sections 96 to 99 of the Land Act. The court is not involved unless someone sues. Section 99 of the Land Act gives the purchaser specific statutory protection.
2. A **judicial sale** is a sale in execution of a court decree under sections 44, 48 and 49 of the Civil Procedure Act (the "CPA") and Order 22 of the Civil Procedure Rules, 2010 (the "CPR"), conducted by a court officer or court-appointed auctioneer and confirmed by the court.
3. A **statutory sale by a public authority** is a sale by a county government for unpaid rates or by the Kenya Revenue Authority for unpaid tax. Under the repealed Rating Act (Cap. 267), rates sales were in substance judicial sales; under the National Rating Act, 2024 (the "NRA") and the Tax Procedures Act, 2015 (the "TPA"), the authority may sell without a court order.
4. A **sale of estate property** may take any of these forms, but carries the additional requirements of the Law of Succession Act (the "LSA").

The protection each regime gives the purchaser is different, and so is the route by which a sale can be challenged.

## The constant: process versus root

Across all four regimes the decided cases draw the same fundamental line, which we will call "the line between the process and the root".

A defect in the **process of sale** (notices, valuation, advertisement, the necessity or propriety of the sale) is generally cured as against an innocent purchaser once the sale is complete, and the owner is left with damages. That is the policy of section 99(4) of the Land Act, and it is reflected in the procedure for court sales under Order 22 of the CPR.

A defect in the **root** (the seller had no valid title, no valid charge, no valid decree, or no authority to sell) is not cured. The purchaser acquires only what the seller had to give.

*Dina Management* did not create that line. It intensified the scrutiny of the root. Once a court finds that the land was unlawfully acquired at its origin, the auction does not create an interest that did not exist.

## Court-ordered sales

Section 44(1) of the CPA makes "*all property belonging to a judgment debtor*" liable to attachment and sale. Once a sale of immovable property "*has become absolute*", section 48 of the CPA deems the property to have vested in the purchaser from the time of sale. Order 22 rule 77(1) of the CPR provides that the court shall confirm the sale where no application to set it aside is made or succeeds, "*and thereupon the sale shall become absolute in so far as the interest of the judgment-debtor in the property sold is concerned*".

Two features of that scheme protect the purchaser. First, the procedure for challenging a sale is a closed code. In *Stanley Ng'ethe Kinyanjui v Tony Ketter & 5 others* [2015] KECA 790 (KLR), the Court of Appeal held that the execution rules "*represent a complete code*" and that a challenger who did not use them could not fall back on the court's inherent or constitutional powers. The sale was upheld. Secondly, a sale may be set aside for "*material irregularity or fraud in publishing or conducting it*" (Order 22 rule 75 of the CPR), but only where the applicant shows substantial injury.

The scheme equally limits the purchaser's protection. The words "*in so far as the interest of the judgment-debtor in the property sold is concerned*" in Order 22 rule 77(1) of the CPR mean that confirmation passes only what the judgment debtor had. Order 22 rule 76 of the CPR gives the

purchaser the right to set the sale aside where "*the judgment-debtor had no saleable interest*". Where a sale is set aside under Order 22 rule 75 of the CPR, rule 78 entitles the purchaser to an order for repayment of the purchase money, with or without interest. In *Mehuba Gelan Keul & 2 others v Abdulkadir Shariff Abdirahim & 4 others* [2015] KEHC 7265 (KLR), an execution sale was set aside under Order 22 rule 75 of the CPR because the property was already charged to a bank, and the High Court ordered the purchaser's money repaid with interest at 18.5% a year.

Where the proceedings behind the sale were themselves void, the purchaser takes nothing. In *Wambui v Mwangi & 3 others* [2021] KECA 144 (KLR), land was sold at auction in execution of a decree fraudulently obtained by a plaintiff using another person's identity. The Court of Appeal held that "*no sanctionable benefits could flow*" from the void proceedings and that the auction purchaser's title "*stood vitiated by the same nullity*". The sub-purchaser lost the land, though the trial court's money award in its favour against the auction purchaser stood. In *Dhiman v Shah* [2025] KECA 1264 (KLR), the Court of Appeal held that once an *ex parte* judgment was set aside, the auction sale and the vesting order made on it fell "*by operation of law*" and were "*null and void*". In that case the purchaser was the decree-holder himself, so the decision does not settle the position of an unconnected bidder.

Good faith does not always save a judicial sale even where the defect is one of process. In *Nationwide Finance Co Ltd v Meck Industries Ltd & another* [2001] KEHC 160 (KLR), the High Court set aside an execution sale held without a reserve price, holding that its power to set aside an irregular sale is not affected by the fact that the property was sold to a bona fide purchaser. The Court of Appeal later dismissed the purchaser's appeal, as recorded in *George Gikubu Mbuthia v Consolidated Bank of Kenya Limited* [2016] KECA 768 (KLR).

## Certificates of sale and vesting orders

Purchasers often assume that a court document is an answer to any later challenge. It is not.

A certificate of sale under Order 22 rule 79 of the CPR records that the sale has become absolute. Section 65 of the Land Registration Act, 2012 (the "LRA") allows a person entitled "*by virtue of any order or certificate of sale*" to be registered as proprietor. But the certificate records the sale of the judgment-debtor's interest; it does not enlarge it.

Vesting orders are more problematic. In *Electrical Marketing (Wholesale) Ltd v Nairobi City County & 2 others* [2019] KEELC 1982 (KLR), the Environment and Land Court observed that vesting orders are made "*with a view to vesting movable property on a purchaser*", and that "*a vesting order ought not to have been issued after the sale of the land*". It set aside the sale and the vesting order together. *Dhiman* shows that a vesting order falls with the decree that supports it.

Section 25(1) of the LRA protects rights acquired "*by an order of court*", but only "*except as provided in this Act*", which leaves section 26(1)(b) available. A vesting order or certificate of sale does not cure a defect in the root of title.

## County rates and other statutory sales

Until 24th December 2024, rates were enforced under the Rating Act (Cap. 267). A rating authority sued in the subordinate court and executed the decree under the CPA, or applied to the High Court for an order for sale. Rates sales were therefore judicial sales, and the courts set them aside where the statutory steps were missed.

In *Electrical Marketing,* the land was sold for rates without proper service of the summons, notice of the judgment, a registered prohibitory order, a valuation or payment of the proceeds into court. The court held that there were "*material irregularities and fraud in the conduct of the sale*", and it rejected the argument that damages were the owner's only remedy. In *Dhanji & another v County Government of Mombasa & 3 others* [2024] KEELC 6001 (KLR), the County could not show that the demand had been served, and the sale had been advertised without the notice being fixed on the property. The court held that "*a good title did not pass*", upheld the cancellation of the purchasers' title, and upheld an award of KES 5 million in damages for the owner's wrongful eviction. The trial court had found that the purchasers knew of the pending proceedings.

The NRA (No. 15 of 2024) repealed Cap. 267. Section 19(3)(d) of the NRA now allows a county, after demand and default, to auction the rateable property at the current market value in accordance with the provided procedures, with the details left to county legislation (section 19(4)). Section 40(5) of the TPA similarly allows the Commissioner of the Kenya Revenue Authority to dispose of property charged for unpaid tax by public auction or private treaty without a court order.

Two observations follow from the statutes. First, neither Act contains a provision like section 99 of the Land Act protecting the purchaser from irregularities, so the purchaser depends on the authority's strict compliance. Secondly, a sale that departs from the statutory steps is exposed to challenge as a title "*acquired ... unprocedurally*" under section 26(1)(b) of the LRA. Purchasers at county auctions should therefore satisfy themselves that the demand was properly served, the notice period expired, the property was valued, and the county's own procedure was followed.

## Estate property

Land of a deceased person cannot be sold by anyone who lacks a grant (section 45 of the LSA), and an administrator may not sell immovable property before the grant is confirmed (section 82(b), proviso (ii)). Section 93 of the LSA protects transfers made to a purchaser "*by a person to whom representation has been granted*", even if the grant is later revoked, but on its terms it does not protect sales by a person without a grant.

The courts have applied *Dina Management* to such sales. In *Mbae & another v Mwamba & 5 others* [2024] KEELC 215 (KLR), land was registered by transmission to a person who held no grant of representation, then subdivided and sold. The court held that the transfers were "*unlawful and cannot be protected by the law*", and, citing *Dina Management* and *Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR), that "*the bar has been set higher for innocent purchasers*". An appeal against that decision is pending in the Court of Appeal. In the chargee context, the Court of Appeal in *Marteve Guest House Ltd v Njenga & 3 others* [2022] KECA 539 (KLR) held, by a majority, that a bank's auction was void where the chargor had died, the statutory notices had been served on her beneficiaries before they had obtained a grant, and fraud by the bank and the borrower was proved. Part 5 discusses that case.

## What the purchaser should do

For any public sale, the purchaser should ask two separate questions, and should not let a positive answer to the first stand in for the second.

1. **Was the sale properly authorised and conducted?** For a court sale: a valid decree, a registered prohibitory order over the same land, a notification of sale, a reserve price based on a current valuation, and confirmation by the court. For a rates or tax sale: demand, service, expiry of the notice period, valuation and the prescribed procedure. For estate land: a grant, confirmed where a sale is involved.
2. **Did the seller (the judgment debtor, the ratepayer or the deceased) have a lawful title to begin with?** That requires the same root-of-title inquiry as any private purchase: the register and its history, the allotment and survey records for allocated land, and inspection of the land for public use or third-party occupation (Part 7).

## The bottom line

The fall of the hammer still protects the auction buyer, but only against what went wrong at the auction. It does not cure what was wrong before it: a seller with no title, a void decree, estate land sold without a grant, or a county that skipped the statutory steps. A certificate of sale or a vesting order will not change that. **Bargains at auction are real, and so are the risks hidden behind them.**

> **Next in the series, Part 5:** Chargee Sales and Section 99 of the Land Act. The bank sale the Supreme Court has agreed to decide, and what its answer could mean for every auction buyer and lender.

*Who Owns the Land? is a series by OK Law Advocates LLP on title, purchasers and public auctions after Dina Management. It is general commentary on the law as at the date of this publication and is not legal advice on any particular transaction. To discuss what it means for your land, purchase or security, contact our Real Estate team.*

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05

PART 5 OF 8 · WHO OWNS THE LAND?

# *Dina Management* and *Chargee Sales*

## Where Does Section 99 of the Land Act Leave the Purchaser?

Luka Ome, Partner, Real Estate | 25th November 2026

> **Previously, in Part 4:** a map of Kenya's public auctions. Now the one the Supreme Court has agreed to decide: the bank's sale under section 99 of the Land Act. **Next, in Part 6:** how the courts have actually applied *Dina Management*.

In 1996, the Commissioner of Lands allotted a property on Muchai Road, Nairobi, to a private company. The land had already vested in the Kenya Posts and Telecommunications Corporation, and later in the Telposta Pension Scheme. The allottee charged the property to Trust Bank for KES 40 million and defaulted, and the bank sold the property to Intercountries Importers and Exporters Limited ("Intercountries") for KES 28 million. Intercountries was registered as proprietor and, in 2004, demanded vacant possession. Twenty years later, the Court of Appeal held that its title was "*worthless*", that the bank "*had no proper charge in its favour and had no statutory powers of sale*", and that the buyer's remedy lay against the bank (*Telposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others* [2024] KECA 870 (KLR) ("*Telposta*")).

On 31st March 2026, the Supreme Court confirmed that it will decide whether that is right. Reviewing the Court of Appeal's grant of leave to appeal, it allowed the appeal to proceed on a single question: whether the *rationes decidendi* (the binding reasoning) in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) ("*Dina Management*") and *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR) ("*Sehmi*") "*apply to a transfer/acquisition of title pursuant to a public auction, consequent upon the exercise of a chargee's statutory power of sale*" (*Telposta Pension Scheme Trustees Registered v Intercountries Importers and Exporters Limited & 5 others* [2026] KESC 27 (KLR)). It described the question as having "*a significant bearing on the public interest*". On 3rd July 2026, it restrained Telposta from disposing of the land until the appeal is determined (*Intercountries Importers and Exporters Ltd v Telposta Pension Scheme Registered Trustees & 5 others* [2026] KESC 49 (KLR)). At the date of writing, the appeal has not been decided.

This article sets out what section 99 of the Land Act, 2012 protects, what the courts have held it does not protect, and how the certified question might be answered. Our view is that the existing authorities are coherent and point to a clear distinction, but that the question is genuinely open at the highest level.

## What section 99 says

Section 99 of the Land Act applies to a person who buys charged land from a chargee or receiver (other than the chargee itself), and to anyone claiming through that person (section 99(1)). It relieves the purchaser of three burdens: the purchaser "*is not answerable for the loss, misapplication or non-application of the purchase money*", "*is not obliged to see to the application of the purchase price*", and "*is not obliged to inquire whether there has been a default by the chargor or whether any notice required to be given in connection with the exercise of the power of sale has been duly given or whether the sale is otherwise necessary, proper or regular*" (section 99(2)). The purchaser remains protected even with actual notice that the sale is irregular in any of those respects, unless there has been fraud, misrepresentation or other dishonest conduct by the chargee of which the purchaser had actual or constructive notice (section 99(3)). And: "*A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.*" (section 99(4))

Every element of that protection is directed at the **exercise of the power of sale**: whether default occurred, whether notices were served, whether the sale was necessary, proper or regular, and what happened to the money. Nothing in the section speaks to the validity of the chargor's title or of the charge.

## The protection works: irregular sales

The courts have given section 99 of the Land Act, and its predecessors, full effect against complaints about the conduct of the sale.

Under the repealed Indian Transfer of Property Act, 1882, which used the language of mortgages, the Court of Appeal in *Captain Patrick Kanyagia & another v Damaris Wangechi & 2 others* [1995] KECA 100 (KLR) held that the mortgagor's equity of redemption "*was extinguished when the contract for sale was signed on the date of auction sale*", that the purchaser was not "*concerned to see or inquire whether a case has arisen*" to authorise the sale, and that "*The Kanyagias have obtained a good title*". A prior purchaser from the mortgagor was left to damages.

Similarly, the Court of Appeal in *Etrade Limited & another v Thrift Estates Limited & 2 others* [2019] KECA 557 (KLR) held that the equity of redemption ends at the fall of the hammer, that there is "*no duty cast, in law, on an intending purchaser at an auction sale*" to inquire into regularity, and that the chargor "*can adequately be compensated by way of damages as stipulated in Section 99 (4)*".

In *Mwambeja Ranching Company Ltd & another v Kenya National Capital Corporation* [2019] KECA 436 (KLR), a sale by private contract at well below market value stood; the undervalue was "*remediable with damages*" under section 99(4) of the Land Act, and the lender was ordered to indemnify the chargor.

The High Court and the Environment and Land Court have followed the same approach. Section 99 has been described as shielding the purchaser "*almost absolutely save where he has participated in fraud*" (words of the High Court in *Cieni Plains Company Ltd & 2 others v Ecobank Kenya Ltd* [2017] KEHC 5977 (KLR), adopted by the Environment and Land Court in *Kirimi v Karanja* [2024] KEELC 5425 (KLR)), and the remedy for a chargor aggrieved by an irregular sale "*is not to reverse the auction against an innocent purchaser*" (from *Joyce Wairimu Karanja v James Mburu Ngure & 3 others* [2018] KEHC 7877 (KLR), quoted by the High Court in *Executive Super Rides Limited & another v NCBA Bank Kenya PLC* [2024] KEHC 12490 (KLR)).

## The protection stops: void sales

The Court of Appeal has, however, long distinguished an irregular sale from a void one.

In *Ochieng & another v Ochieng & 2 others* [1996] KECA 205 (KLR), the bank could not prove that the statutory notice had been served. The sale was held void, the purchaser's registration was cancelled, and the chargors were allowed to redeem. The Court accepted that the result deprived an innocent purchaser of the land, and held that "*Her remedy is against the bank primarily to obtain a refund of the consideration paid*".

In *Marteve Guest House Ltd v Njenga & 3 others* [2022] KECA 539 (KLR), the chargor had died. The bank converted the facilities without her signature and served the statutory notices on her beneficiaries before they had obtained a grant of representation, and the property was sold in 2011. By a majority, the Court held the sale null and void, fraud by the bank and the borrower having been proved. Because the sale predated the Land Act, Okwengu JA applied section 77(3) of the repealed Registered Land Act, and she drew the line in terms: "*there is a distinction between an auction sale which is rendered irregular during the sale, and a sale which is void*"; section 77(3) "*does not provide a blanket protection but only protects in the case of an irregular auction sale*"; and the purchaser's remedy "*lies in damages against the Bank and not the estate of the deceased*". Significantly, she contrasted section 99(3) of the Land Act as protecting an innocent purchaser in circumstances where the Registered Land Act did not. W. Karanja JA dissented, holding that the purchaser was protected and that the estate's remedy was damages against the bank.

It should be noted that *Ochieng*, *Marteve* and *Telposta* (discussed below) all concerned sales made before the Land Act came into force in 2012, and were decided under the repealed statutes. Whether the distinction between irregular and void sales applies with the same force under the wider wording of section 99(3) of the Land Act has not been authoritatively decided, at least not at the highest level of litigation.

The fraud exception in section 99(3) of the Land Act has its own force. In *Karanja v Equity Bank Limited & 2 others* [2024] KEELC 6482 (KLR), the declared buyer did not pay the deposit at the fall of the hammer (KES 9 million reached the bank only days later), the memorandum of sale recorded a deposit that had not been received, and the buyer was "*a very active participant in the fraudulent sale*". The Environment and Land Court held that section 99 of the Land Act "*presupposes a bona fide purchaser*", nullified the sale and awarded exemplary damages against the bank.

## The new frontier: a void chargor title

*Telposta* takes the void-sale reasoning back one step, from the sale to the chargor's own title. Applying *Dina Management*, the Court of Appeal held the allocation to the chargor fraudulent and void. The consequence was that the bank "*had no proper charge in its favour and had no statutory powers of sale*" and the sale was "*no more than 'hot air'*". The Court said: "*We do not find it necessary to go into the process of the exercise of the statutory power of sale.*" The charge and the purchaser's title were declared null and void.

Two features of the judgment need to be noted. First, the Court did not analyse section 99 of the Land Act, although arguments under the predecessor provisions of the repealed Indian Transfer of Property Act, 1882 were raised. Secondly, the Court made a finding specific to the purchaser: because the bank had given the purchaser an indemnity, "*We are not therefore, persuaded that Intercountries Limited was an innocent purchaser for value without notice*". The decision is therefore not a clean authority on a wholly innocent buyer.

The Court of Appeal has since applied the same reasoning to an auction. In *General & another v Hussein & 3 others* [2025] KECA 1022 (KLR), a bank sold land at auction in 2007 that had been irregularly excised from National Youth Service land; the purchasers' title was declared null and void and the land restored. In *Frank Logistics Limited v Golden Lion Real Estate Company & 6 others* [2025] KECA 1471 (KLR), a bank's charge over a title acquired unprocedurally fell with the title.

By contrast, where the chargor's title is sound, the auction purchaser is secure. In *Masto Holdings Limited v Njenga & 4 others* [2024] KECA 510 (KLR), the Court of Appeal upheld an auction purchaser's title, and on 3rd July 2026, the Supreme Court upheld the Court of Appeal's refusal to certify a further appeal, holding that *Dina Management* and *Sehmi* "*have long settled the extent of the applicability of the said doctrines*" (*Njenga v Masto Holdings Ltd & 4 others* [2026] KESC 52 (KLR)). In that case, the chargor's own title was never impeached. That, in our view, is why the two Supreme Court rulings, three months apart, are consistent.

## How the Supreme Court might answer

Since the Supreme Court has not decided the point, it is worth setting out the two positions the existing authorities support.

1. **The derivative-title position.** A chargee can sell only what the chargor could charge. Section 99 of the Land Act is directed at the exercise of a power of sale; it presupposes a valid charge, and a valid charge presupposes a valid title. If the chargor's title was void, there was no charge and no power, and section 99 of the Land Act has nothing to operate on (*Telposta*). This position is supported by the *nemo dat quod non habet* principle (no one can give a better title than they have) as the Court of Appeal applied it in *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR); by the Supreme Court's observation in *Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) that the banks before it "*are not purchasers but lenders*"; and, for public land, by Articles 40(6) and 62 of the Constitution, which statute cannot override.
2. **The statutory-protection position.** The purchaser at a properly conducted chargee's sale is in a different position from a private buyer: the purchaser is a stranger to the chargor, deals with a regulated lender relying on the public register, and is told by statute not to inquire. Section 99(1)(b) of the Land Act extends protection to a person claiming through the chargee where "*the chargee and the person so claiming obtained the charged land in good faith and for value*". On this view, the policy of the Land Act is to make auction titles marketable, and the person who suffers from a defective root should be compensated by the chargee or the State rather than by the auction purchaser. This was, in substance, the position of W. Karanja JA's dissent in *Marteve*; Okwengu JA's observation in the same case that section 99(3) protects innocent purchasers more widely than the old law points the same way; and it is the position the purchaser has advanced in the Supreme Court in reliance on section 99(3) of the Land Act and section 77(3) of the repealed Registered Land Act (as recorded in the Supreme Court's ruling of 3rd July 2026).

The Supreme Court may also have to decide which statute governs, since the sale in *Telposta* took place in 2004, before the Land Act; it declined to let the appeal proceed on a separate question about applying the law retrospectively to sales under the repealed statutes (ruling of 31st March 2026).

In our view, the first position is more consistent with the text of section 99 of the Land Act and with *Sehmi*'s holding that the bona fide purchaser doctrine protects only against equitable interests. It also has a constitutional anchor where the land was public. The Supreme Court may nevertheless draw a distinction between public land, where Articles 40(6) and 62 of the Constitution are likely to be decisive, and private land with a defective link in the chain, where there may be more room for statutory protection. It may also have the opportunity to say something about compensation, which none of the Court's decisions since *Dina Management* has addressed directly.

## Practical implications

**For banks.** Root-of-title risk is the lender's risk. Under the current Court of Appeal authorities, a charge over a void title is itself void (*Telposta*; *Frank Logistics*), and the bank may be liable to the auction purchaser for the price (*Ochieng*; *Telposta*). Security due diligence should include the root inquiry described in Part 7, particularly for allocated land and land with a history of public use. Banks should also be aware that an unusual indemnity to a buyer was read in *Telposta* as evidence that the buyer was on notice.

**For purchasers at chargee sales.** Section 99 of the Land Act protects against irregularities in the sale but, under current Court of Appeal authorities, not against a void chargor title. Before bidding, buyers should obtain the title history and, for allocated land, the allotment and survey records. They should also comply strictly with the conditions of sale; a buyer who does not, as in *Karanja v Equity Bank*, may not be a "purchaser" at all.

**For chargors.** Complaints about notices, valuation and advertisement must be brought before the hammer falls. After the sale, the remedy for irregularity is ordinarily damages against the chargee (*Etrade*; *Mwambeja*). The exceptions are a void sale (*Ochieng*; *Marteve*) and a purchaser complicit in the chargee's fraud (section 99(3) of the Land Act).

## The bottom line

Section 99 of the Land Act does what it promises: a buyer at a properly conducted bank sale need not worry about notices, valuations or whether the sale was necessary. What the Court of Appeal has held is that it does not protect against a chargor whose title was void from the start. The Supreme Court is now deciding whether that is right, and its answer will shape every bank auction in Kenya. Until then, lenders carry root-of-title risk on their securities, and buyers at bank sales carry it on their bids.

> **Next in the series, Part 6:** *Dina Management* in the Courts. Three years of judgments, and the patterns that tell you who wins.

OK Law acts for banks, purchasers and borrowers across the full life of a charge, from security due diligence to statutory sales and the disputes that follow them, and we are following the *Intercountries* appeal closely. If you hold, are enforcing or are bidding on a charged property, contact us to understand where you stand today and what the Supreme Court's decision could mean for you.

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06

PART 6 OF 8 · WHO OWNS THE LAND?

# *Dina Management* in the Courts

## Three Years of Application and Distinction

Luka Ome, Partner, Real Estate | 26th November 2026

> **Previously, in Parts 1 to 5:** the law. Now the scorecard: three years of judgments, where purchasers lost and where they won. **Next, in Part 7:** turning it all into a due-diligence framework.

Within fourteen months of the Supreme Court's decision, a judge of the Court of Appeal had described it as "*authoritative and all-binding*", and another bench had stated simply: "*We are bound by this decision*". The Environment and Land Court cites it in a very large number of judgments. A decision cited that often is at risk of becoming a slogan rather than a precedent. This article looks at how the courts have actually used *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) ("*Dina*") between April 2023 and October 2026. It looks at where it has been applied, where it has been extended, where purchasers have nonetheless succeeded, and what patterns emerge.

The survey is drawn from published decisions. It is representative rather than exhaustive. Its main finding is that the courts have applied *Dina* rigorously where the root of title is shown to be defective, and that a growing body of decisions protects registered purchasers where the challenger cannot show that.

## The Supreme Court's own development of the decision

Three later Supreme Court decisions shape how the lower courts read *Dina*.

*Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR) concerned land that had been alienated in 1964 and later bought by the old Nairobi City Council, then allocated again to a company that sold it to *Torino*. The Court held that "*an allotment letter in and by itself, is incapable of conferring a transferable title*" and that the transactions with *Torino* "*were a nullity in law*". *Torino* does not cite *Dina*, but it reaches the same result by the same route, and it shows that the reasoning is not confined to land that was public: here the land was not the State's to allot because it was already privately held.

*Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR) is the counterweight. The full Court allowed an appeal by registered proprietors and their lenders, holding that fraud "*must be pleaded and strictly proved*" and that where the root of title is lawful "*the question of whether such third parties were innocent purchasers for value without notice should not arise*".

*Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR) consolidated and extended *Dina*. It placed the burden of proving bona fide purchase on the purchaser, confined the doctrine to defeating equitable interests, and held that it "*cannot be invoked to protect a title to an illegally acquired public land*". It reversed a 2021 Court of Appeal decision that had protected the purchaser.

## Pattern one: public land, applied without exception

Where the land was public, reserved, or held for a public purpose, the Court of Appeal has applied *Dina* consistently, and the purchaser has lost.

In *Frann Investment Ltd v Kenya Anti-Corruption Commission & 6 others* [2024] KECA 714 (KLR), the land in Kilifi district had a customs house on it. The Court said: "*We are bound by this decision*". It held that establishing a good root of title "*is the first step in establishing whether a party is a bona fide purchaser for value*".

In *Galaxy Realtors Ltd v Kenya Forest Service* [2024] KECA 1304 (KLR), the purchaser lost Menengai Forest land because its title was granted and registered before the 2001 degazettement notice, which was itself later quashed. In *Timeless Properties Ltd v Mombasa Polytechnic University College & 2 others* [2025] KECA 1395 (KLR), concerning land formed where the sea had receded, the Court held: "*on the authority of Dina's case, we uphold the decision of the trial court*".

The Environment and Land Court has followed. In *Kenya Agricultural and Livestock Research Organization v Ngoka & 15 others* [2024] KEELC 14132 (KLR), grants carved out of a research station without allotment, survey or planning approval were revoked, the court repeating that "*the title or lease is an end product of a process*". In *Otara v Mukuriah & 4 others* [2025] KEELC 5001 (KLR), a purchaser of government housing land lost the title but obtained a refund order against his vendor.

The pattern is stable, and the Supreme Court has signalled that it regards the principles as settled: in March 2026 it upheld the Court of Appeal's refusal to certify *Frann*'s further appeal, holding that certification cannot be used to reopen its settled decisions on indefeasibility of title (*Frann Investment Limited v Kenya Anti-Corruption Commission & 6 others* [2026] KESC 31 (KLR)).

## Pattern two: extension to private land

The most significant development is the use of *Dina*'s reasoning where the land was always private and the defect lay in a later link of the chain.

The Court of Appeal's clearest decision is *Frank Logistics Limited v Golden Lion Real Estate Company & 6 others* [2025] KECA 1471 (KLR). Two titles existed over the same Kilimani property. The later chain had been registered

through dealings after the alleged vendor's death and while an injunction was in force, and the later proprietor had charged the land to a bank. The Court quoted *Dina*'s instruction to "*go to the root of the title*" and dismissed the appeal, leaving in place the trial court's cancellation of the later title and its declaration that the charge was void. The trial judge had found fraud not proved, but the Court of Appeal held that "*the manner in which the 1st respondent's title was lost was unprocedural and illegal*", engaging section 26(1)(b) of the Land Registration Act, 2012.

The Environment and Land Court has applied *Dina* to a transfer procured by a forged judgment (*Karissa v Juma & 3 others* [2025] KEELC 3137 (KLR)); to a sale by a vendor whose own title was illegitimate (*Kamau & another v Munene & 2 others* [2024] KEELC 4769 (KLR)); and, as a supporting authority, to company land fraudulently transferred and sold on (*Mohammed & 2 others v Wananchi Estates Limited & 5 others* [2024] KEELC 6845 (KLR)).

This extension is less novel than it appears. Long before *Dina*, the Court of Appeal had held that a purchaser from fraudsters takes nothing (*Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR)), and that where there are two titles, the first valid one prevails (*Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v Attorney General & 4 others* [2017] KECA 698 (KLR)). What *Dina* has added is a vocabulary and a willingness to put the burden on the proprietor once a credible challenge is made.

A note of caution is needed on one private-land authority. In *Mbarak v Freedom Ltd* [2024] KECA 160 (KLR), the Court of Appeal, citing *Dina*, examined a reconstructed register and declared a registered purchaser's title void in favour of the estate of an earlier unregistered buyer. On further appeal, the Supreme Court only "*partially confirmed*" that judgment and remitted the case to the Environment and Land Court for rehearing before a different judge. In doing so, it observed that the estate's interest was "*only an equitable or beneficial interest*", "*susceptible to a superior claim by a bona fide purchaser for value without notice*" if the purchase was untainted (*Freedom Limited v Mbarak* [2026] KESC 2 (KLR)). *Mbarak* should not now be cited as a settled statement of the law.

## Pattern three: estates and authority to sell

Sales of a deceased person's land by someone without a grant have been treated as defects in the root. In *Maina & another v Maina & 4 others* [2024] KEELC 5827 (KLR), the land had been transferred in 1994, sixteen years before any grant was issued; the purchasers' title was cancelled, principally under section 26(1)(b) of the Land Registration Act, with *Dina* cited for the governing principle. In *Mbae & another v Mwamba & 5 others* [2024] KEELC 215 (KLR), the court said that after *Dina* and *Torino*, "*the bar has been set higher for innocent purchasers*".

## Pattern four: auctions and charges

The Court of Appeal has applied *Dina* to sales by chargees where the chargor's own title was void (*Telposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others* [2024] KECA 870 (KLR) ("*Telposta*"); *General & another v Hussein & 3 others* [2025] KECA 1022 (KLR)), and lenders' charges have fallen with void titles (*Frank Logistics*). The Supreme Court has affirmed the certification of an appeal on the question whether *Dina* and *Sehmi* apply to a purchaser at a chargee's statutory sale, and the appeal is pending. Part 5 examines it.

## Pattern five: where purchasers succeed

It is a mistake to read the post-2023 case law as a run of defeats for purchasers. Purchasers have succeeded in the following situations:

1. **Where the challenger has no evidence.** In *Munyanya v Keya* [2024] KECA 1831 (KLR), the Court of Appeal upheld a purchaser's title because the challenger produced doubts rather than "*very cogent evidence*". In *APEC Holdings Ltd v Kenya Railways Corporation* [2025] KEELC 4653 (KLR), Kenya Railways relied on uncertified maps whose makers were not called, and the court observed that the certificate of lease "*had not been canceled through a court of law*". It upheld the purchaser's title and awarded damages for trespass.
2. **Where the challenger cannot prove its own root.** In *Trikuti Investments Ltd v Mohamud & 4 others* [2025] KEELC 277 (KLR), the court, citing *Dina*, found that the challenger could not prove its own registration and held the purchaser to be "*an innocent purchaser for value*".
3. **Where the purchaser's chain is the earlier, valid one.** In *Muigai v Ali & 3 others* [2026] KEELC 16 (KLR), a double allocation, the court upheld the earlier lease and sale and declared the purchaser in possession a bona fide owner. In *Kanyua v Munene & 2 others* [2026] KECA 94 (KLR), purchasers from a proprietor under a confirmed grant kept their titles against unproven allegations of trust and fraud.
4. **At chargee sales, where the chargor's title is not impeached**, the purchaser has continued to succeed: *Masto Holdings Limited v Njenga & 4 others* [2024] KECA 510 (KLR), where the Supreme Court upheld the refusal of certification in July 2026.

## Pattern six: the threshold and the burden

The single most useful post-*Dina* statement for practitioners is the Court of Appeal's in *Frank Logistics*: a proprietor "*will not be called upon to prove the root of the title on spurious allegations*"; "*some evidence must be placed before the court*" showing "*reasonable grounds for believing that the title may not have been properly obtained*". Once that is done, the burden of proving the allocation process falls on the proprietor (*Kenya Ports Authority v Africa Inland Church - Kenya (Registered Trustees) & 12 others* [2024] KECA 1431 (KLR); *General v Hussein*). In *Gathondu & 3 others v Registrar & 7 others* [2024] KECA 668 (KLR), where *Dina* was described as "*authoritative and all-binding*", Kiage JA put the point memorably: "*What must now be established by he who would prevail is the solidity of the root of title*", and it is "*not enough to wave an instrument of title or rest easy on the former rock of chronological primacy*". The Court of Appeal refused leave for a further appeal, and the Supreme Court upheld that refusal (*Insurance Training & Education Trust v Gathondu & 5 others* [2025] KESC 58 (KLR)).

## Pattern seven: inconsistent remedies

The weakest area of the post-*Dina* case law is what happens to the purchaser who loses. The Environment and Land Court has ordered a refund against the vendor in the same suit (*Otara*); left purchasers to sue separately (*Maina*); made no order for the purchaser at all (*Karissa*); and ordered the purchaser to pay damages for trespass (*Kamau v Munene*). The Court of Appeal has said that the purchaser's remedy lies against the vendor or, exceptionally, the government agency complicit in the illegality (*Shah & another v Kenya National Highways Authority* [2023] KECA 404 (KLR), *decided shortly before Dina)*, or against the chargee (*Telposta*). The Supreme Court has not taken up the question.

## A word on citation practice

A number of judgments refer to *Dina* only in recording counsel's submissions and decide the case on other grounds. Others cite the Court of Appeal's 2021 decision in the same litigation rather than the Supreme Court's. Practitioners should read the passage before citing a judgment as "applying" *Dina*.

## The bottom line

Three years of judgments tell a clear story. Where the root of a title is shown to be unlawful, the purchaser loses, whether the land was public or private and whether the sale was private or at auction. Where the challenger cannot prove the defect, or the purchaser's chain traces to a lawful root, the purchaser wins. *Dina Management* has not made titles worthless; it has made cogent evidence decisive.

> **Next in the series, Part 7:** Due Diligence After *Dina Management*. The checks that separate a protected purchaser from an unprotected one.

*Who Owns the Land? is a series by OK Law Advocates LLP on title, purchasers and public auctions after Dina Management. It is general commentary on the law as at the date of this publication and is not legal advice on any particular transaction. To discuss what it means for your land, purchase or security, contact our Real Estate team.*

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# 07

PART 7 OF 8 · WHO OWNS THE LAND?

# Due Diligence After *Dina Management*

A Practical Framework for Buyers, Banks and Conveyancers

Luka Ome, Partner, Real Estate | 26th November 2026

> **Previously, in Part 6:** which buyers won and which lost in recent court decisions. Now the practical part: what to check before you buy, lend or bid. **Next, in the final part:** the questions the Supreme Court has yet to answer.

After *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) ("*Dina*"), conveyancers have been asked one question more than any other: how far back must we go? Some now advise clients that every title must be traced to the first allotment in every transaction. Others carry on as before and hope for the best. Neither approach reflects the law.

This article turns the authorities discussed in this series into a working framework. It distinguishes three things that are often run together: what the law requires, what prudent practice demands, and what becomes essential once there is a sign that the title may be challenged. The framework is not a substitute for advice on a particular transaction, but it reflects what the courts have treated, in decided cases, as the difference between a protected purchaser and an unprotected one.

## Why due diligence now matters legally, not just commercially

Before *Dina*, due diligence was largely a commercial safeguard. It is now part of the legal test. The Supreme Court in *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR) held that the burden of proving bona fide purchase "*lies upon the person claiming to be a bona fide purchaser*" and that the doctrine "*denotes a purchaser who exercised due diligence*". The Court of Appeal's formulation in *Samuel Kamere v Lands Registrar, Kajiado* [2015] KECA 644 (KLR) requires the purchaser to prove "*that he carried out the necessary due diligence to determine the lawful owner*".

Two consequences follow. First, a purchaser who did not make reasonable inquiries may lose the protection of the doctrine even where it would otherwise apply. Secondly, the record of those inquiries is evidence in itself, and it should be kept with the same care as the title documents.

There is a limit, however, which advisers must be candid about. Due diligence cannot validate a void title. Where the land was unlawfully allocated, *Dina* and *Sehmi* hold that the purchaser loses, notwithstanding the extent of the inquiries made (*Sehmi*). The purpose of due diligence is therefore to **detect** a defective root before money changes hands, and to **prove** innocence where the doctrine still matters (against equitable claims, and for remedies against the vendor or chargee).

## Tier one: what every purchase requires

These steps are standard conveyancing practice and, after *Sehmi*, are what a court will expect a purchaser claiming innocence to have done.

1. **An official search, and a reading of the register.** The search confirms the registered proprietor and the encumbrances, restrictions, cautions and inhibitions on the title. It must be read, not just obtained, and any entry in favour of a public body must be explained. In *Otara v Mukuriah & 4 others* [2025] KEELC 5001 (KLR), the purchaser's own search certificate showed a restriction in favour of the Government; his case was that there was no restriction when his transfer was registered. He lost the land because it was government housing.
2. **Physical inspection and inquiry into occupation.** The courts treat occupation by someone other than the vendor, and visible public use, as notice. In *Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR), the military's occupation "*sounded a warning of 'buyer be aware'*". In *Shah & another v Kenya National Highways Authority* [2023] KECA 404 (KLR), there were "*telltale signs*" of a road reserve. An inspection should note who is in occupation, any public use (access paths, utilities, drainage, beach access, schools, offices), and the relationship of the land to roads, rivers, the shoreline and forests.
3. **Verification of the vendor's identity and authority.** Impostor sales (*Kamere*), sales by persons who had taken control of a company by fraud (*Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR)) and fraudulent transfers of company land (*Mohammed & 2 others v Wananchi Estates Limited & 5 others* [2024] KEELC 6845 (KLR)) are among the commonest root defects in private land. For an individual, that means identity documents checked against the register. For a company, it means the company's own records of its directors and shareholders and a board resolution authorising the sale.
4. **The statutory consents and clearances** that apply to the transaction, including the consents required for agricultural land (Land Control Board (LCB) consent) and the matrimonial home (spousal consent) where relevant, and rates and land rent clearance.
5. **A search for pending litigation**, including a review of the register for prohibitory orders, cautions and inhibitions, and inquiry with the vendor. Buying with knowledge of pending proceedings has been fatal: in *Dhanji & another v County Government of Mombasa & 3 others* [2024] KEELC 6001 (KLR), purchasers who knew of the pending proceedings lost, and in *Frank Logistics Limited v Golden Lion Real Estate Company & 6 others* [2025]

KECA 1471 (KLR), a chain registered while an injunction was in force was cancelled.

## Tier two: prudent root-of-title inquiry

The cases show that the following inquiries are prudent in most transactions, and essential where the land has an allocation in its history.

1. **A historical search of the register.** The current search shows the present state of the title. A history of the dealings (the green card, the register's entries since first registration, or the abstract of title, depending on the registry and regime) shows how the vendor came to hold it. Look for unexplained gaps, renumbering, reconstruction of the register, conversions of tenure, and transfers in quick succession. In *Mbarak v Freedom Ltd* [2024] KECA 160 (KLR), the register had been reconstructed on documents supplied by one party alone, to the exclusion of other records said to be missing. (The Supreme Court only partly confirmed that decision in 2026 and remitted the case for rehearing, but the warning sign remains instructive.)
2. **Where the land was allocated, the allocation documents.** The Supreme Court in *Dina* found the allocation irregular because there was no application to the Commissioner of Lands and no Part Development Plan before survey, and because the tenure granted was not permitted for a town plot. In *Torino*, "*an allotment letter in and by itself, is incapable of conferring a transferable title*". For allocated land, the purchaser should ask for the letter of allotment and evidence of its acceptance and payment, the approved Part Development Plan, the survey records and deed plan, and evidence that the land was available for allocation. The parcel file at the lands registry and the survey records at the Survey of Kenya are the usual sources.
3. **The land's planning and public-use status.** Land designated as a road reserve, open space, public utility, forest, riparian reserve or coastal strip is the highest-risk category. In *Dina,* a 1971 survey plan showed the land as an open space, which made it a public utility. In *Kenya Wildlife Service v Sea Star Malindi Limited* [2025] KESC 42 (KLR), the Supreme Court reaffirmed, citing its earlier decision in *Kiluwa Limited & another v Business Liaison Company Limited & 3 others* [2021] KESC 37 (KLR), that "*any title purporting to cover the 60-metre coastal strip is invalid unless expressly exempted by the Minister*". Planning and survey records should be checked against the parcel's boundaries.
4. **Estate land.** If any link in the chain passed through a deceased person's estate, confirm that a grant existed at the time and, where the estate sold land, that the grant had been confirmed. Sales by persons without a grant have been set aside (*Maina & another v Maina & 4 others* [2024] KEELC 5827 (KLR); *Mbae & another v Mwamba & 5 others* [2024] KEELC 215 (KLR)).

## Tier three: when there is a red flag

The obligation to go behind the register becomes acute once something suggests the title may be challenged. The Court of Appeal in *Frank Logistics* held that a proprietor need not prove the root "*on spurious allegations*", but must do so once there are "*reasonable grounds for believing that the title may not have been properly obtained*". The same logic applies before purchase: the red flags are the matters that, in litigation, would give those reasonable grounds.

Red flags that the decided cases have treated as significant include the following:

- Occupation or use by a government body, public institution or community
- Restrictions or entries on the register in favour of a public body
- Beach, lake or riverfront land, land next to a road, railway or airport, and forest land
- Title documents with inconsistent dates or areas, or a lease that predates the instrument on which it depends
- A first allocation to a person connected with the allocating authority, or rapid onward transfers after allocation
- An indemnity, retention or unusual warranty offered by the vendor or a selling bank (in *Telposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others* [2024] KECA 870 (KLR) ("*Telposta*"), the Court of Appeal relied on a bank's indemnity to the buyer as showing awareness of a defect)
- A competing claim, caution, or history of litigation

Where a red flag exists, the purchaser should obtain the full allocation and survey history, written confirmation from the relevant public body where possible, and specialist survey advice. If the root cannot be documented, the purchaser should not proceed without a clear allocation of risk in the contract, or at all.

## Auction purchases

Section 99 of the Land Act, 2012 relieves a purchaser at a chargee's sale of any duty to inquire into whether default occurred, notices were given, or the sale was proper. It does not, on current Court of Appeal authority, protect against a void chargor title (Part 5). Auction purchasers should therefore do the root-of-title inquiry in tiers one and two before bidding, as a private purchaser would. They should also confirm that the seller has the power it claims. For a chargee's sale, that means a registered charge, and evidence that the statutory notices required by section 96(2) of the Land Act were served and the forced sale valuation required by section 97(2) was carried out. For a

court sale, it means a decree, a registered prohibitory order over the land and a notification of sale with a reserve price based on a current valuation (Auctioneers Rules, 1997, rule 11(1)(b)(x)). For a rates or tax sale, it means demand, service, expiry of the notice period, and the prescribed procedure. And purchasers must comply strictly with the conditions of sale. In *Karanja v Equity Bank Limited & 2 others* [2024] KEELC 6482 (KLR), a declared buyer who did not pay the deposit at the fall of the hammer was held not to be a purchaser at all.

## For banks

Charges have fallen with void titles: the trial court's declaration that the charge was void stood when the Court of Appeal dismissed the appeal in *Frank Logistics*, and the Environment and Land Court cancelled the lender's charge in *Kasarani Mall Limited & another v Principal Secretary Ministry of Defence & 4 others* [2025] KEELC 4075 (KLR); and the Supreme Court has observed that the banks before it "*are not purchasers but lenders*" (*Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR)). A bank that later sells as chargee may be liable to refund the purchaser if the sale fails (*Ochieng & another v Ochieng & 2 others* [1996] KECA 205 (KLR); *Telposta*). Security due diligence should therefore include the tier-two root inquiry, especially for allocated land, and banks should consider whether title insurance or other credit support is appropriate for higher-risk securities.

## Building the remedy into the contract

Because an innocent purchaser may lose the land and be left with a claim for the money, the contract should make that claim real. The sale agreement should contain express warranties of title and of the lawfulness of the vendor's acquisition, and an indemnity against loss if the title is impeached. Where the vendor's covenant may be worth little, it should be supported by a retention or an escrow of part of the price, usually held by the advocates as stakeholders, or by a guarantee depending on the nature of the transaction. And in any later litigation the vendor should be joined and a refund claimed in the alternative, so that the court can do what it did in *Otara* (refund of KES 17,440,911.10 with interest against the vendor) rather than leave the purchaser to start a second suit, as in *Maina*.

## For conveyancers

The advocate's file will be the purchaser's evidence of innocence. It should record what was searched, what was inspected, what was asked and what was answered, and the advice given on any red flag. Where the client decides to proceed despite a risk, that decision and the advice should be recorded in writing. The advocate should also be clear with the client about what due diligence can and cannot achieve: it can reveal a defective root and prove the purchaser's good faith, but it cannot cure a title that was void from the start.

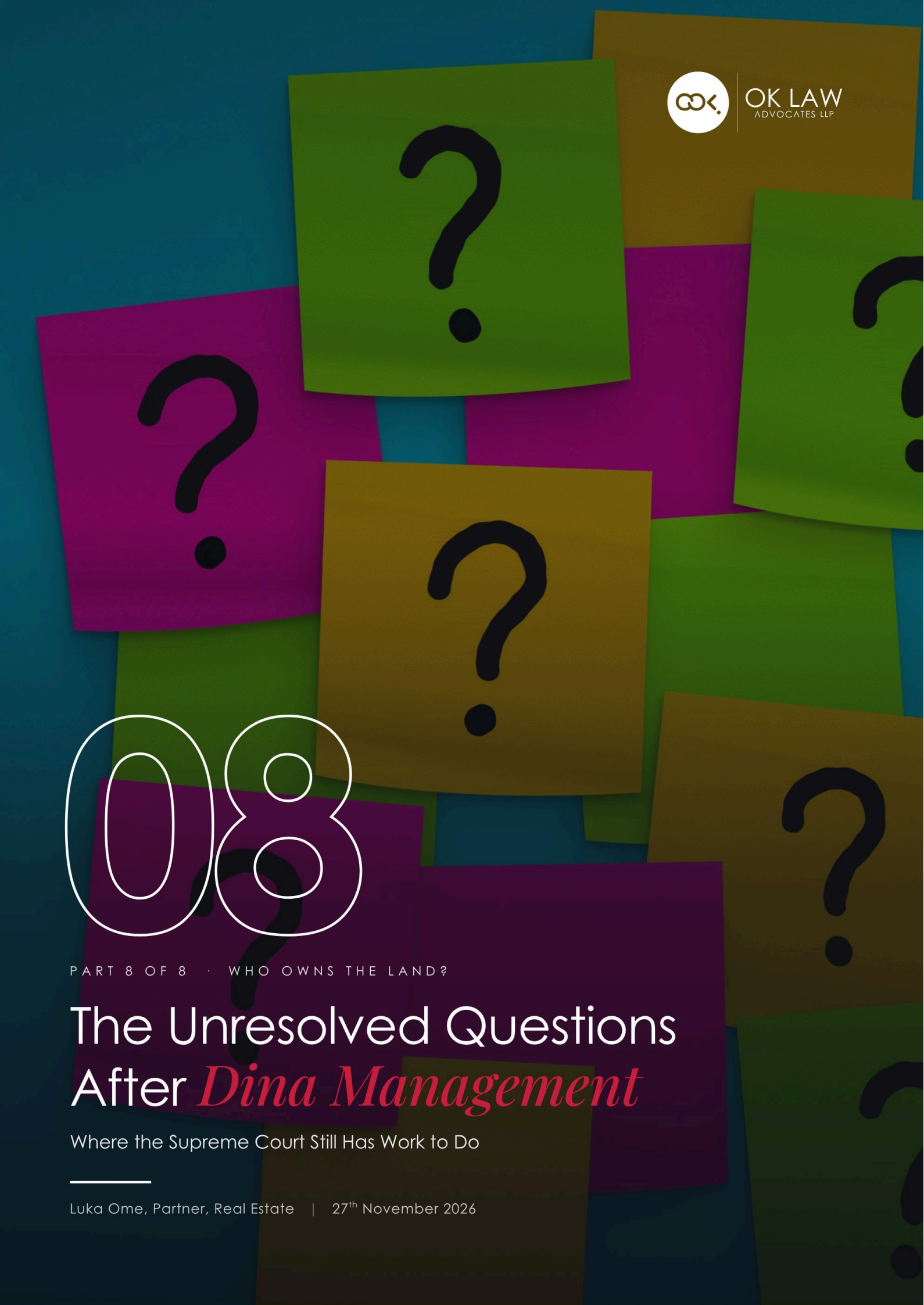
## The bottom line

*Dina Management* does not demand that every buyer dig back to the first allotment regardless of the circumstances. It demands that buyers do what a court will later regard as reasonable, read the warning signs, most of which decided cases have now catalogued, and go to the root when those signs appear. Done properly, due diligence either stops the loss before it happens or puts the buyer in the strongest position to recover it.

> **Next, the final part:** The Unresolved Questions. What the Supreme Court still has to settle, and why it matters to buyers, banks and borrowers.

OK Law's Real Estate team carries out root-of-title investigations for buyers, security due diligence for lenders and pre-auction reviews for bidders, and drafts the warranties and indemnities that make a refund claim real. If you are about to buy, lend against or bid for land, contact OK Law before you commit.

*Who Owns the Land? is a series by OK Law Advocates LLP on title, purchasers and public auctions after Dina Management. It is general commentary on the law as at the date of this publication and is not legal advice on any particular transaction. To discuss what it means for your land, purchase or security, contact our Real Estate team.*



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08

PART 8 OF 8 · WHO OWNS THE LAND?

# The Unresolved Questions After *Dina Management*

## Where the Supreme Court Still Has Work to Do

Luka Ome, Partner, Real Estate | 27th November 2026

> **The final part.** Parts 1 to 7 set out what the law now is. Here is what it has yet to settle, and why one pending appeal could reshape every bank auction in Kenya.

The Supreme Court has twice said, in 2026, that the principles in *Dina Management Ltd v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) ("*Dina*") are settled. In March it upheld the Court of Appeal's refusal to certify a further appeal by a purchaser who had built on illegally allocated land, an application that included a question on compensation, holding that certification cannot be used to reopen its settled decisions (*Frann Investment Limited v Kenya Anti-Corruption Commission & 6 others* [2026] KESC 31 (KLR)). In July it upheld the refusal of certification in a chargee's sale case, holding that its decisions in *Dina* and *Sehmi & another v Tarabana Company Ltd & 5 others* [2025] KESC 21 (KLR) ("*Sehmi*") "*have long settled the extent of the applicability of the said doctrines*" (*Njenga v Masto Holdings Ltd & 4 others* [2026] KESC 52 (KLR)). Yet in between, it allowed one question to go forward as raising "*a substantial question of law*" with "*a significant bearing on the public interest*" (*Telposta Pension Scheme Trustees Registered v Intercountries Importers and Exporters Limited & 5 others* [2026] KESC 27 (KLR)).

The core of *Dina* is indeed settled: a title born of an unlawful allocation is not protected by Article 40 of the Constitution or by the bona fide purchaser doctrine. But the core is not the whole. This closing article identifies the questions that remain genuinely open, explains the competing positions the existing authorities support, and suggests why further guidance would help. The views expressed on how those questions should be answered are our own.

## 1. The auction purchaser at a chargee's sale

**The question.** Does *Dina*'s reasoning defeat a purchaser who buys in good faith at a properly conducted sale by a chargee exercising its statutory power, where the chargor's own title is later found to have been unlawfully acquired?

**Where the authorities stand.** The Court of Appeal has held that it does: a charge over a void title is no charge, there is no power of sale, and the purchaser's remedy lies against the bank (*Telposta Pension Scheme Registered Trustees v Intercountries Exporters Limited & 5 others* [2024] KECA 870 (KLR) ("*Telposta*"); *General & another v Hussein & 3 others* [2025] KECA 1022 (KLR)). Section 99 of the Land Act, 2012 protects the purchaser against irregularities in the exercise of the power, but the Court of Appeal did not analyse it in *Telposta*, and its decision rested partly on a finding that the particular buyer had notice. The Supreme Court allowed the appeal to proceed on that question on 31st March 2026 and granted an injunction pending the appeal on 3rd July 2026. Part 5 sets out the competing positions.

**Why it matters.** Kenya's credit market depends on the marketability of auction titles. If the purchaser at a bank sale carries the root-of-title risk, prices at auction will fall to reflect it, and banks will bear it in any event through refund claims. A clear answer on who bears the risk, and when, would help lenders, purchasers and borrowers alike.

## 2. The threshold that triggers the duty to prove the root

**The question.** What must a challenger show before the registered proprietor is required to prove the lawfulness of the title?

**Where the authorities stand.** The Supreme Court's own formulation is that the duty arises where "*the root of the title*" has been "*challenged*" (*Dina*). The Court of Appeal has added that the proprietor "*will not be called upon to prove the root of the title on spurious allegations*", and that there must be evidence giving "*reasonable grounds for believing that the title may not have been properly obtained*" (*Frank Logistics Limited v Golden Lion Real Estate Company & 6 others* [2025] KECA 1471 (KLR)). The Supreme Court has not itself stated the threshold, and first-instance decisions do not always identify the point at which the burden moved.

**Why further guidance would help.** A clear threshold protects registered proprietors from speculative challenges, reduces the incentive to attack titles in the hope that documents from decades ago cannot be found, and gives trial courts a consistent test. The *Frank Logistics* formulation is a sound one, and the Supreme Court's endorsement of it, or of an equivalent test, would remove a source of uncertainty.

## 3. The standard of proof for illegality

**The question.** Section 26(1) of the Land Registration Act, 2012 (the "LRA") distinguishes fraud to which the proprietor is a party (paragraph (a)) from acquisition "*illegally, unprocedurally or through a corrupt scheme*" (paragraph (b)). Fraud must be "*strictly proved*", to a standard "*higher than proof on a balance of probabilities*" (*Fanikiwa Ltd & 3 others v Sirikwa Squatters Group & 17 others* [2023] KESC 105 (KLR)). What standard applies to illegality under paragraph (b)?

**Where the authorities stand.** The Court of Appeal has applied paragraph (b) where fraud was not proved, holding in *Frank Logistics* that the manner in which the earlier owner's title was lost "*was unprocedural and illegal*".

It has also held that once the allocation is in issue, the burden of proving the lawful process lies on the proprietor (*Kenya Ports Authority v Africa Inland Church - Kenya (Registered Trustees) & 12 others* [2024] KECA 1431 (KLR)). Allegations of "illegality" often rest on the same facts as allegations of fraud: missing documents, irregular approvals, collusive transfers. If paragraph (b) carries the ordinary civil standard and a shifting burden while paragraph (a) carries a higher standard, the choice of label may decide the case.

**Why further guidance would help.** A principled statement of how the two routes relate, and of the standard for each, would prevent paragraph (b) from becoming a way round the stricter requirements for fraud.

## 4. Compensation for the innocent purchaser

**The question.** When an innocent purchaser loses land under *Dina*, who, if anyone, must compensate the purchaser?

**Where the authorities stand.** The Supreme Court in *Dina* described compensation as outside its purview in that appeal. In *Torino Enterprises Ltd v Attorney General* [2023] KESC 79 (KLR) ("*Torino*") it refused compensation to a purchaser it found was not innocent. In *Frann* it upheld the refusal to certify an appeal that raised the question. In *Kenya Wildlife Service v Sea Star Malindi Limited* [2025] KESC 42 (KLR) it cautioned against the risk of double compensation. The lower courts are inconsistent. Some order a refund against the vendor in the same suit (*Otara v Mukuriah & 4 others* [2025] KEELC 5001 (KLR)); others leave the purchaser to sue separately (*Maina & another v Maina & 4 others* [2024] KEELC 5827 (KLR)); others say nothing. We appreciate that this may also largely depend on how a party's pleadings are framed, and courts do not ordinarily travel beyond the pleadings.

Section 81 of the LRA entitles a person suffering damage by reason of rectification of the register to indemnity, excluding a person who caused or substantially contributed to the damage "*by fraud or negligence*" (section 81(2) of the LRA). Where a public officer issued an unlawful title on which an innocent purchaser relied, there is also a respectable argument for State liability.

**Why further guidance would help.** The force of *Dina* falls on the person who paid for the land, while the people who caused the loss (the allocating officers, the first allottee and the intermediate vendors) are often beyond reach. A clear statement of the purchaser's remedies, including whether cancellation under section 26(1)(b) of the LRA is "*rectification*" for the purposes of section 81, would make the system fairer without weakening the protection of public land.

## 5. How far the reasoning extends into private land

**The question.** *Dina* and *Sehmi* both concerned public land, and *Sehmi*'s central holding is expressed in terms of "*illegally acquired public land*". Does every procedural defect in a private chain have the same consequence?

**Where the authorities stand.** The principle that a forged or unauthorised transfer passes nothing is old law (*Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] KECA 816 (KLR)), and the Court of Appeal has applied *Dina*'s language to competing private titles (*Frank Logistics*). But in *Freedom Limited v Mbarak* [2026] KESC 2 (KLR), the Supreme Court remitted a private-land dispute for findings of fact and reaffirmed that a bona fide purchaser for value without notice takes free of equitable interests. There is a real difference between a void link (a forgery, a sale by a person with no authority) and a link affected by a procedural irregularity that might have been cured. The Court has not yet said where that line falls in private land.

## 6. Section 80(2) and the innocent proprietor

**The question.** Section 80(2) of the LRA, as amended in 2016, provides that the register "*shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake ... or caused such omission, fraud or mistake or substantially contributed to it*". How does that protection sit with the cancellation of innocent purchasers' titles under section 26(1)(b) of the LRA and Article 40(6) of the Constitution?

**Where the authorities stand.** Most of the decisions reviewed by this series cancel titles without discussing section 80(2) of the LRA. Where section 80 of the LRA has been considered, as in *Wambui v Mwangi & 3 others* [2021] KECA 144 (KLR), the Court of Appeal read it as confirming that a title founded on a corrupt scheme stands vitiated. The likely reconciliation is that a title acquired unlawfully is declared void under section 26(1)(b) of the LRA and Article 40(6) of the Constitution, rather than "*rectified*" under section 80 of the LRA. But that is our analysis. The point has not been addressed by the Supreme Court, and it bears directly on compensation under section 81 of the LRA.

## 7. Statutory sales without a court

**The question.** The National Rating Act, 2024 allows a county to auction rateable property "*at the current market value in accordance with the provided procedures*" (section 19(3)(d) of the National Rating Act, 2024), and the Tax Procedures Act, 2015 allows the Commissioner to sell property charged for tax by auction or private treaty (section 40(5) of the Tax Procedures Act, 2015). Neither statute contains a protection like section 99 of the Land

Act. What protection does a purchaser at such a sale have?

**Where the authorities stand.** Under the repealed Rating Act, rates sales were judicial sales, and the courts set them aside where the statutory steps were missed (*Electrical Marketing (Wholesale) Ltd v Nairobi City County & 2 others* [2019] KEELC 1982 (KLR); *Dhanji & another v County Government of Mombasa & 3 others* [2024] KEELC 6001 (KLR)). The answer for sales under the 2024 Act will depend in part on county legislation that is still being developed.

## A note on what is not unsettled

It is equally important to say what is not open. It is settled that a certificate of title is prima facie, not conclusive, evidence of ownership; that a title born of an unlawful allocation of public land is not protected; that the purchaser claiming to be a bona fide purchaser bears the burden of proving it, including due diligence; that the doctrine defeats equitable interests but not a legal owner; that a chargee's sale is protected against irregularities in the exercise of the power; and that a challenger must plead and prove the defect. Those propositions are established by the Supreme Court and the Court of Appeal, and a purchaser or lender who builds on them is building on solid ground as things presently stand.

## The bottom line

The core of *Dina Management* is settled. Its edges are not: the bank-sale buyer, the trigger for proving the root, the standard of proof for illegality, the reach into private land and, above all, who compensates the innocent buyer who loses. The pending *Intercountries* appeal will answer the first, and its answer will move the market. The rest will take further cases. Until then, the safest course is to treat the root of title as part of every transaction and to build the remedy into the contract before it is needed.

*Who Owns the Land? is a series by OK Law Advocates LLP on title, purchasers and public auctions after Dina Management. It is general commentary on the law as at the date of this publication and is not legal advice on any particular transaction. To discuss what it means for your land, purchase or security, contact our Real Estate team.*



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