

# Real Estate Law

ALERT | 15 April 2025



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Extend your lease before it is too late:  
An Analysis of the Supreme Court's  
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## Extend your lease before it is too late: An Analysis of the Supreme Court's Decision in *Harcharan Singh Sehmi and Another v Tarabana Company Limited and Five Others* (Petition E033 of 2023)

In our experience, the most prudent approach is to apply for a lease extension at least five years before expiry. This rule of thumb exists for good reasons. In Kenya, there is a legal distinction between a lease extension and a lease renewal. An extension, if applied for before the lease expires, preserves the leaseholder's legal interest and ensures continuity of title. Renewal, on the other hand, occurs after expiry, by which time the land has already escheated to the Government, the lessee's rights have lapsed, and any new grant is subject to reallocation risks and fresh terms. When you factor in persistent delays at the land registry and the complications that can arise when life happens (such as the death of a co-tenant activating a procedural burden in the form of succession proceedings before any land dealings can occur), it becomes clear that waiting too long transforms a manageable administrative process into a precarious legal one.

We will not repeat what you are likely to read in the coming avalanche of legal commentaries on the Supreme Court decision in *Harcharan Singh Sehmi & Another v Tarabana Company Limited and Five Others*, delivered on 11 April 2025 (judgment). Instead, we want to clarify that the judgment affirms what we have long advised as best practice and to draw out the practical, commercial and institutional lessons from that matter.

### What happened in brief

Three co-owners (appellants) held leasehold property in Ngara, Nairobi, as tenants in common. Their lease, originally granted in 1942, expired in October 2001. They claimed to have applied for extension on 13 July 2001, prior to expiry, however, in 2014 they were forcibly evicted by third parties holding a new title. A long legal battle followed and one of the co-tenants passed on in 2019, 18 years after the lease had expired (whose case abated at the Court of Appeal for this reason). The Supreme Court has now issued its decision.

### What the Supreme Court said in substance

Going forward, any reference to the "appellants" means the two remaining co-tenants, the third having since passed away. To understand the practical and legal impact of the judgment, it is important to first examine what the Supreme Court said in substance:

- Once a lease expires and no extension has been formally processed, the land reverts to the Government.
- An application for extension made prior to expiry, without follow-up or completion, does not confer continued rights of ownership.
- A title acquired through irregular or illegal allocation cannot be legitimized, even by an innocent purchaser.
- The doctrine of *bona fide* purchaser does not shield someone from the consequences of an invalid root of title.
- Legitimate expectation must be grounded in timely, documented and administratively supported actions.



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### The doctrine of legitimate expectation

The Supreme Court affirmed that the appellants had legitimate expectation that their lease over the suit property would be extended. The court observed that although the lease had expired in October 2001, the appellants had engaged the Government on the question of extension and had submitted the requisite application. Correspondence from the relevant government agencies acknowledged their application and no formal rejection was ever issued. The court held that this created a legitimate expectation that the lease would not be arbitrarily denied and emphasised that such an expectation must be grounded in a clear and predictable pattern of conduct by the relevant government agencies, and once created, cannot be disregarded without due process. In allowing the appeal, the Supreme Court found that the subsequent allocation of the property to third parties without first conclusively addressing the appellants' application amounted to administrative unfairness and violated the doctrine of legitimate expectation.

### The intersection of land law, succession law and legitimate expectation

The judgment notes that Harcharan Singh Sehmi's appeal abated upon his death in 2019, and it appears that no substitution was made by a legal representative. Accordingly, only the two surviving appellants were granted relief in the judgment. This leaves an important question open for clarification – can a deceased person's estate benefit from a legitimate expectation that arose before their death, even where the underlying legal interest no longer exists?

At law, the suit property had reverted to the Government when the lease expired in 2001. In our view, there was no subsisting leasehold interest in 2019 and therefore, from a strict legal lens, the deceased's estate could not claim a legal entitlement to reallocation. A legitimate expectation may have existed, shared by all co-tenants including the deceased, that the lease would be extended in their favour. However, this expectation is not a legal interest or property right capable of transmission under succession law but rather a residual, procedural expectation that the Government might extend the lease.





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## Balancing citizen responsibility with institutional duty

Another area that remains open for future consideration is the role of Regulation 3 of the Land (Extension and Renewal of Leases) Rules, 2017 (2017 Regulations), which places a positive obligation on the National Land Commission (NLC) to notify leaseholders of an impending lease expiry five years in advance. The intention behind this provision is precisely to avoid the uncertainty and risk that arose in this case. In light of this regulation, questions naturally arise as to whether a leaseholder's failure to secure an extension should be viewed in isolation, or whether it should be considered alongside institutional inaction. These are not questions of fault, but of balance between citizen vigilance and institutional consistency.

While the lease in this case expired in 2001, long before the 2017 Regulations came into effect, Regulation 3 nonetheless reflects a policy shift toward more proactive land administration. It underscores the importance of institutional participation in preventing disputes of this nature. As Kenya's legal framework continues to mature, these are the kind of systemic considerations that future jurisprudence may well need to address.

## Closing reflection

While the Supreme Court ultimately ruled in favour of the appellants, the facts leading up to the disputes reveal a cautionary tale. The lease over the suit property was set to expire on 1 October 2001, yet the appellants only applied for extension on 13 July 2001, barely three months before expiry. The last-minute action exposed them to significant risk as the application for extension of lease was not formally concluded before expiry of the lease, and no clear decision was communicated. Meanwhile, the suit property silently reverted back to the Government by operation of law, as is standard with expired leases. It is within this gap, between application and formal extension, that the suit property was supposedly allocated to third parties, triggering years of litigation.



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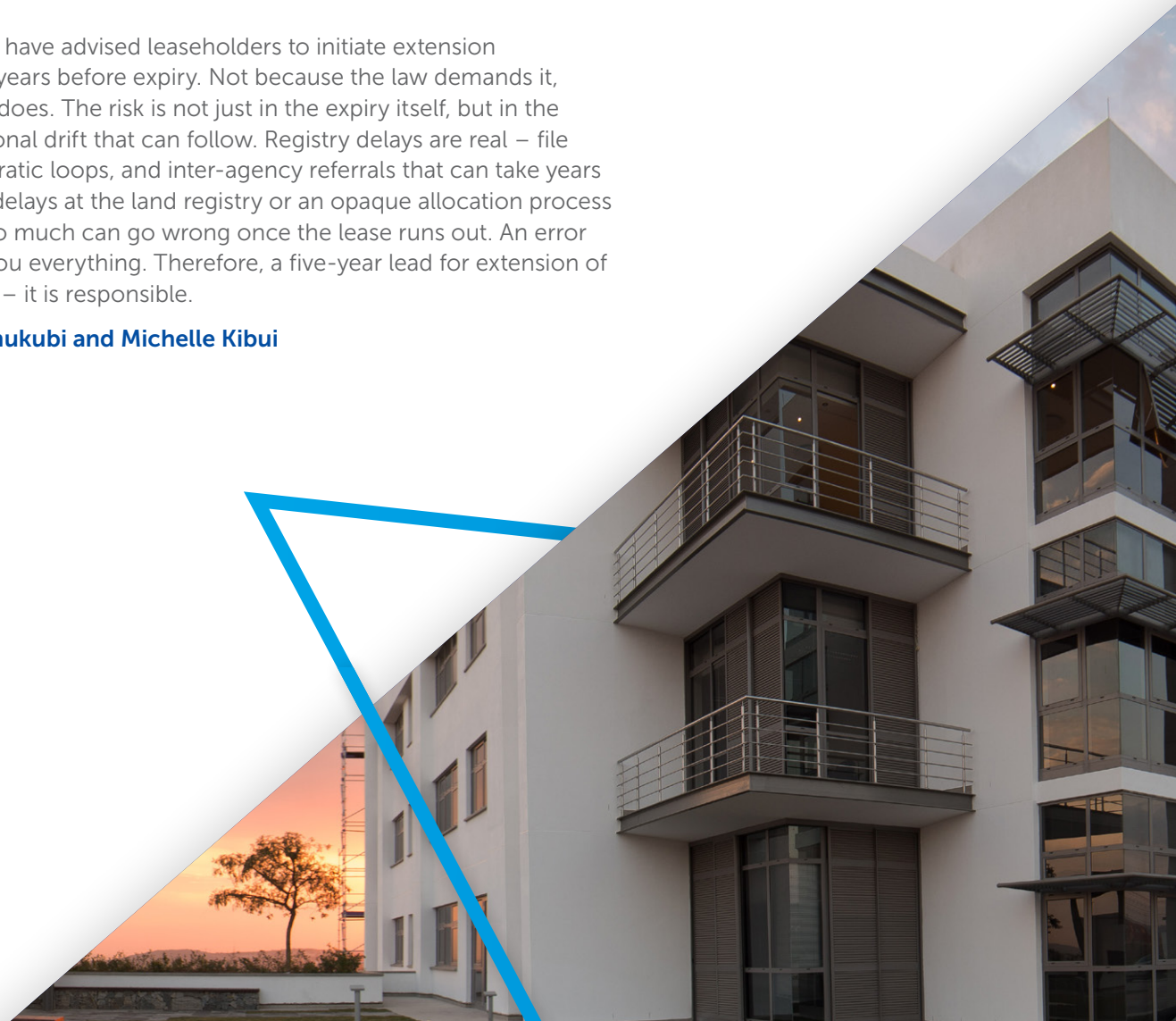
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The appellants' long silence after filing the application, and their failure to escalate or demand resolution with urgency, further compounded their vulnerability. Though the court recognised their legitimate expectation, this case illustrates the real cost of delay. The appellants may have been vindicated, but their experience highlights the danger of waiting until the eleventh hour to act on expiring leasehold interests.

This is why, for years, we have advised leaseholders to initiate extension applications at least five years before expiry. Not because the law demands it, but because experience does. The risk is not just in the expiry itself, but in the backlog and the institutional drift that can follow. Registry delays are real – file misplacements, bureaucratic loops, and inter-agency referrals that can take years to resolve. Whether it is delays at the land registry or an opaque allocation process happening in parallel, too much can go wrong once the lease runs out. An error of timing that can cost you everything. Therefore, a five-year lead for extension of lease is not conservative – it is responsible.

**Lydia Owuor, Henry Omukubi and Michelle Kibui**



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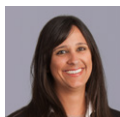
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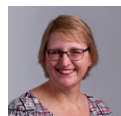
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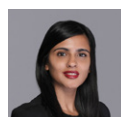
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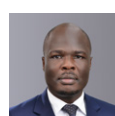
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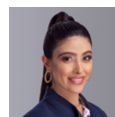
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