IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: KARANJA, ALI-ARONI & OKELLO,

JJ.A.) CIVIL APPEAL (APPLICATION) NO. 224

OF 2020 BETWEEN

CITY FINANCE LIMITED.....APPELLANT

AND

NYANJA HOLDINGS LIMITED 1ST

RESPONDENT GEORGE NJAU MBUGUA NYANJA 2ND

RESPONDENT

MRS. ENID N. NYANJA 3RD

RESPONDENT REDMARS HOLDINGS LIMITED .....

4TH RESPONDENT

(Being an application for certification and for leave to appeal against the Judgment and Decree of the Court of Appeal at Nairobi (D.K. Musinga (President), Joel Ngugi & G.V. Odunga, JJ.A.) dated 30th January 2026

in

Civil Appeal No. 224 of 2020
consolidated with
Civil Appeal Nos. E166 & 174 of 2021)
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RULING OF THE COURT

1. Before the Court is an application by way of notice of motion dated 10th February 2026, brought by the 1st to 3rd respondents(referred in this application as 'the applicants'),

against the appellant (referred to in this application as ‘the respondent’), under ***Article 163(4)(b)*** of the Constitution, ***rule 41(2)*** of the Court of Appeal Rules, 2022, and ***rule 33(1)*** the

Supreme Court Rules, 2020, seeking leave to appeal to the Supreme Court mainly on the grounds that the intended appeal raises matters of general public importance. It also seeks the preservation of L.R. No. 7583/1 pending the intended appeal and the costs of the application.

2. The application is predicated on the grounds on its face and a joint affidavit of George Njau Mbugua Nyanja, the 1st applicant and Enid N. Nyanja, the 2nd applicant, sworn on 10th February 2026, wherein they outline the background of the case, the proceedings and judgement in the High Court and the outcome of the appeal to this Court which has given rise to the application before us. Briefly, they depose that the matter arose from a sequence of transactions involving the appellant, City Finance Bank Limited and the 3rd respondent, Nyanja Holdings Limited, dating back to the early 1990s, secured by mortgage over several properties including the property known as L.R. No. 7583/1 in Karen, Nairobi, (the suit property) measuring 25 acres, registered in the names of the 1st and 2nd respondents who are directors of Nyanja Holdings Limited, the 3rd respondent.

3. They state further that the loan facility made available was Kshs. 11 million against a security limited to Kshs. 8 million. Over time, differences arose over the actual amount of indebtedness, the legality of the interest applied, and the propriety of the bank's accounting, considering the demands for repayment. The applicants claim to have paid in excess of Kshs.

54 million. In addition, the respondent sold three of the applicants' prime properties, namely L.R. No. 72/1327 Langata Southlands; L.R. No. 209/4796/3 Parklands; and L.R. No. 37/256/3 Nairobi West, leading to disputes and multiple legal proceedings over nearly three decades, culminating in the consolidated proceedings before the High Court.

4. The applicants contend further that while the High Court case was ongoing, the bank exercised its power of sale and transferred the property in three days to the 4th respondent, despite a court order that prohibited any sale or transfer. The 4th respondent, Redmars Holding Limited, a newly formed company, allegedly acquired the suit property for Kshs. 60 million, significantly below its true value of at least Kshs. 295.5 million; with no valid forced sale valuation by the respondent, and no evidence that the sale price was credited to the applicants' loan account, which continued to accrue interest unfairly.

5. They further aver that the High Court (Commercial & Tax Division) (Kasango, J.) in its judgment delivered on 30th July 2020, reviewed the bank statements, correspondences, valuation reports, and expert testimony, and concluded that the appellant had charged illegal and excessive interest; there was overpayment of the loan, and the sale of the property by private treaty was unlawful. The court voided the sale and ordered that the property be retransferred to the applicants. Additionally, the court dismissed the bank's counterclaim.

6. Dissatisfied with the judgment, the appellant, along with the 4th respondent and one Singh Gitau, advocate, appealed to this Court. Where, in essence, they argued that the High Court addressed unpleaded issues, misinterpreted evidence regarding the accounts and interest, overlooked purchaser protection, and granted inappropriate remedies after the statutory power of sale was exercised. The 4th applicant claimed that as a purchaser for value, its title was legally protected; that no fraud was proven against it, and that the High Court mistakenly cancelled the sale and ordered the re-transfer of the property.

7. On his part, Singh Gitau, an advocate, was aggrieved and faulted the learned Judge for making adverse findings against him without giving him a hearing, impacting on his professional reputation, and acting beyond the court's jurisdiction.

8. On the other hand, the applicants affirmed the decision of the High Court and were of the opinion that the court was justified in examining the history of the transactions between the parties and arriving at a determination that the bank acted unlawfully, asserting that the reliefs granted were supported by evidence and the law.

9. On hearing the appeal, this Court allowed the consolidated appeals and reversed the High Court's decision, determining that once a valid sale occurs, the equity of redemption is extinguished and the court's jurisdiction is limited. It

concluded that the High Court erred in nullifying the sale and restoring the property to the 1st and 2nd respondents. Further, the Court

was of the view that even if irregularities existed, the chargor's only remedy was damages or accounting against the chargee, not the cancellation of a statutory sale. The Court reiterated that a completed sale conducted under statutory power is unimpeachable unless fraud or collusion involving the purchaser is proved. Additionally, defects in statutory notice do not revive the equity of redemption or justify the cancellation of a completed sale, although they may lead to a claim for damages against the chargee.

10. This Court equally determined that the High Court's findings regarding the bank's conduct did not eliminate the need for a clear decision on the counter-claim as a valid cause of action. Consequently, it remitted the bank's counter-claim for rehearing. The Court also lifted the injunction issued restraining the 4th respondent from dealing with the suit property.

11. This Court's decision aggrieved the applicants who now seek certification to move the Supreme Court on the following questions, which they urge are of general public importance; raise substantial points of law; demonstrate a state of uncertainty in the law; and contradictory precedents by the Court:

    i. Whether, considering the root-of-title principle in Dina Management case, an illegal exercise of the statutory power of sale, can confer a good title to the purchaser and confine the chargor's remedy to damages only, yield a valid agreement

for a valid sale, or extinquish the equity of redemption.

ii. Which of the conflicting Court of Appeal decisions on the chargor's remedies for illegal exercise of the statutory power of sale are consistent with the root- of-title principle?

iii. Whether a court of law, faced with a statutory power of sale marred with proven fraud, collusion, illegality, or irregularity, or other impropriety, is barred from impeaching such a sale or ordering a restoration of the property, but is limited to the remedy of damages or accounts under the repealed Indian Transfer of Property Act or section 99 (4) of the Land Act.

iv. If the above is in the affirmative, whether the field of mortgages and charges permits an exception to the legal and an equitable rule that a wrongdoer cannot keep what they have wrongfully taken is because they can pay for it.

12. The applicants submit that there is uncertainty in the prevailing jurisprudence of this Court. They contend that there are at least three conflicting schools of thought on the consequences of illegal exercise of the statutory power of sale, citing ***Nancy Kahoya Amadiva vs. Expert Credit Limited & Another [2015] KECA 373 (KLR); Mbuthia vs. Jimba Credit Finance Corporation Limited [1988] KECA 116 (KLR), Captain Patrick Kanyagia & Another vs. Damaris Wangechi & 2 Others [1995] KECA 100 (KLR)); Industrial & Commercial Development***

Corporation vs. Kariuki & Gatheca Resources

Ltd [1977] KECA 21 (KLR), Marteve Guest House Limited vs. Njenga & 3 Others [2022] KECA 539 (KLR).

13. The applicants further posit that the conflicting decisions have created uncertainty affecting property transactions by owners, lenders, and purchasers, thereby creating a need for the Supreme Court's authoritative resolution of this issue, which concerns security of title, lender accountability, and equitable remedies. Further, they contend that clarification by the Supreme Court would enhance certainty and uniformity in commercial and property law.

14. They argue that while this Court addressed some issues in Inter Countries Importers and ***Exporters Limited vs. Telposta Pension Scheme Registered Trustees & 5 Others [2025] KECA 1367 (KLR),*** the current application raises distinct chargor-chargee-centered questions that remain unresolved.

15. In an affidavit sworn on behalf of the appellant by Jackson Kimathi, its head of the Legal Department, on 9th March, 2026, in opposition to the application, he states that the application is frivolous as the issue of root-of-title was never raised at the trial or during the appeal, and thus the Court should decline the invitation to certify the appeal herein to the Supreme Court.

16. He asserts further that the applicants' claim that there are three schools of thought regarding a chargee's statutory

power of sale and remedies available to a chargor lacks legal basis, as there is only one applicable school of thought regarding the remedies

available to a chargor, namely, the remedy limited to damages. What is said to be a second school of thought emphasises that equity of redemption extinguishes at the fall of the hammer; and a purchaser acquires title, and where the chargor contests the same, the available remedy is in damages. As regards what has been referred to as the third school of thought, this relates to a situation where the title of the chargor is contested, which is not in issue in this case.

17. He contends further that the applicants have failed to set out any exceptional circumstances warranting the grant of leave to appeal or demonstrate any miscarriage of justice. No novel question has been pointed out arising from the pleadings; there are no contradictory authorities from the Court of Appeal on the applicable remedies to a chargor where a chargee has exercised its statutory power; and no grounds have been set out to allow the applicant leave to appeal to the Supreme Court.

18. In response to the application for stay of execution pending appeal, the respondent states that this Court lacks jurisdiction to grant a stay as it is now functus officio.

19. The 4th respondent filed a replying affidavit sworn on 16th April 2026 by Pomesh Shah, a director of the 4th respondent. He deposes that the application is legally flawed and lacks merit, stemming from the 2nd respondent's attempt to obstruct ownership rights. He states further that the title of

L.R. No. 7583/1 was undisputedly registered in the name of George Njau

Nyanja, with no interest from the 1st respondent, Nyanja Holdings Limited, nor the 3rd respondent, Enid Nyanja.

20. He deposes further that there must be a finality to litigation. The applicant's lawyers had served the respondents with a notice to vacate and a draft decree, which the respondents refused to approve. During the Court hearing on 16th April 2026, the respondents misled the court by claiming they had not been served, a claim that was later proven false. Additionally, the respondents have taken actions to complicate the appellant's possession of the property. However, if the 1st respondent is generally aggrieved, he still has an avenue for redress and can pursue a remedy in damages should he so wish.

21. Learned counsel for the applicants filed submissions dated 10th February 2026 and submits that while this Court acknowledged that their loan was overpaid by Kshs. 54,000,000 and the subsequent statutory sale was unlawful, it restricted the applicants' legal remedy to monetary damages only, effectively upholding the transfer of their property, L. R. No. 7583/1 Karen Estate, to Redmars Holdings Limited. Counsel argues that this decision will result in the applicants losing their home in their old age, and further, that it creates a dangerous legal precedent in which a wrongdoer can "keep what they have wrongfully taken" simply by paying for it.

22. Counsel contends that the core of the legal argument rests

on the need to harmonise the conflicting decisions of this Court

regarding chargors' remedies in the wake of the Supreme Court's ruling in ***Dina Management Ltd vs. County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR).*** Counsel reiterates the applicants' contention that there is a split in the jurisprudence in this area into three schools of thought: where it has been held that damages are the sole remedy once a sale is complete; where it has been held that void sales cannot confer title even if the equity of redemption is technically extinguished; and where the Court has held that the root of title is to be interrogated and the good faith of the mortgagee. Further, it is contended that under the Dina Management case principle, an illegal exercise of the statutory power of sale cannot confer a valid title, and therefore, the current state of the law is uncertain and inconsistent with the sanctity of property rights under ***Article 40*** of the Constitution.

23. Applying the test in ***Hermanus Phillipus Steyn vs. Ruscone (Application 4 of 2012) [2013] KESC 11 (KLR)*** counsel asserts that these issues transcend the private interest of the applicants and affect a broad class of citizens, including lenders, borrowers, and land purchasers across Kenya and the novel question is whether based on the Dina Management case a court can impeach a sale marred by proven fraud or collusion in the exercise of the statutory power of sale, or if in such circumstances the Court's jurisdiction is strictly limited to damages or ordering

accounts.

24. Learned counsel for the respondent filed submissions dated 17th April 2026. Counsel equally gave a history of the case in more or less similar facts as the applicants, indicating that the property was sold by the respondent by private treaty when no injunctive orders were subsisting. He raised three primary arguments against the application. First, he contended that this Court is functus officio and lacks the jurisdiction to grant a preservation order or a stay of execution. In support of this contention, counsel referred to ***Karanja vs. Ndirangu & Another*** ***[2021] KECA 57 (KLR).*** Second, the applicants have failed to raise any matters of general public importance, as their reliance on the Dina Management root-of-title issue is a false premise, since the issue was neither pleaded nor determined in the trial court. Counsel maintains that the law regarding a chargor's remedies is already settled: once a lawful sale occurs, the right of redemption is extinguished, and the borrower is restricted to seeking damages. In this regard, counsel cited the often cited case of ***Hermanus Phillipus vs. Giovinni Gnecchi- Ruscone*** (supra), and ***TMG & Another vs. AP*** ***(Application No. E012 of 2024) [2024] KESC 48 (KLR).***

25. Finally, counsel submits that the questions framed by the applicants are fact-specific, concerning loan overpayments and interest rates, and do not transcend the interests of the particular parties involved to meet the Supreme Court's threshold for jurisprudential moment. Counsel further notes

that while similar issues regarding the Dina Management precedent are pending in other cases, the same are factually

distinguishable from the present dispute. Consequently, the counsel urges the Court to dismiss the application for certification with costs.

26. On the part of the 4th respondent, submissions were filed dated 16th April 2026, wherein counsel reiterates the facts of the case and asserts that the current application is incurably defective due to the failure to include essential documents like the High Court judgment and a statement on what the applicants deem to be of general public importance. The 4th respondent argues that the 1st to the 3rd applicants lack a valid interest in the property and are merely using legal maneuvers as a delaying tactic to avoid eviction after 35 years of litigation.

27. Counsel emphasises that the Court of Appeal already reversed the High Court's decision. He contends further that the application fails to meet the threshold for Supreme Court intervention under ***Article 163(4)(b)*** of the Constitution; the issues raised are neither novel nor of general public importance. Specifically, he argues that the dispute is a private commercial matter that does not extend beyond the interests of the parties involved and that the legal principles governing such sales are already well settled.

28. Furthermore, the 4th respondent argues that the applicants are improperly attempting to introduce new, unpleaded issues at this late stage, such as the root-of-title doctrine from the Dina Management case, which is distinguishable

from the case at hand.

29. This Court has carefully considered the application before it, the rival submissions by learned counsel, the case law cited and the law. ***Article 163 (4)(b)*** of the Constitution provides as follows:

> ***"(4) Appeals shall lie from the Court of Appeal to the Supreme Court-***
>
> ***(a) ….***
>
> ***(b) In any other case in which the Supreme Court, or The Court of Appeal certifies that a matter of general public importance is involved, subject to clause (5)."***

30. The applicants have invoked the foregoing provision of the Constitution in seeking to access the Supreme Court. The issue, therefore, is whether the intended appeal to the Supreme Court raises issues of general public importance. The Supreme Court gave the test for granting certification and leave to appeal in ***Hermanus Phillipus Steyn vs. Ruscone*** (supra) by holding that the meaning of "matter of general public importance" may vary depending on the context. The Supreme Court considered ***Article 163(4)(b)*** of the Constitution and stated at paragraph 58 as follows:

> ***"…a matter of general public importance warranting the exercise of the appellate jurisdiction would be a matter of law or fact, provided only that: its impacts and consequences are substantial, broad-based, transcending the litigation-interests of the parties, and bearing upon the public interest. As the categories constituting the***

public interest

are not closed, the burden falls on the intending appellant to demonstrate that the matter in question carries specific elements of real public interest and concern."

31. In the said case, the Supreme Court set out principles that ought to determine whether a matter is of general public importance as follows; -

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

ii. where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;

iii. such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;

iv. where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;

v. mere apprehension of miscarriage of justice, a matter most apt for resolution in

the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163(4) (b) of the Constitution;

vi. the intending applicant has an obligation to identify and concisely set out the specific elements of general public importance which he or she attributes to the matter for which certification is sought;

vii. Determination of facts in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.

32. The gravamen of the application before us is the legal consequence of an unlawful or fraudulent exercise of the statutory power of sale, and more particularly, the scope of remedies available to a chargor in such a situation. This brings to the fore weighty legal and practical questions as framed by the applicants:

i. Whether, considering the root-of-title principle in <u>Dina Management</u> case, an illegal exercise of the statutory power of sale, can confer a good title to the purchaser and confine the chargor's remedy to damages only, yield a valid agreement for a valid sale, or extinquish the equity of redemption.

ii. Whether a court of law, faced with a statutory power of sale marred with proven fraud, collusion, illegality, or

irregularity,

or other impropriety, is barred from impeaching such a sale or ordering a restoration of the property, but is limited to the remedy of damages or accounts under the repealed Indian Transfer of Property Act or section 99 (4) of the Land Act.

33. The questions raise the interplay between the existing jurisprudence and the principles enunciated by the Supreme Court in the Dina Management case, an issue that has not been conclusively settled in the specific context of chargor–chargee relationships.

34. The questions above, in our view, are of general public importance, as they transcend beyond the interest of the applicants and are of significance to other borrowers, financial institutions exercising the statutory power of sale, and potential purchasers who rely on the validity of titles obtained through such sales.

35. As to whether there is conflicting jurisprudence emanating from this Court, we have had a close review of the cases cited by the applicants and do not share the view that there are three schools of thought, thus creating a split in jurisprudence on the subject at hand. The cited decisions are clear on the remedies available when there are irregularities in the exercise of statutory power of sale; the point at which the equity of redemption is extinguished; and the remedy available where there is proof of fraud in the chargor's root of title.

a. In ***Nancy Kahoya Amadiva vs. Expert Credit Limited & Another*** (supra), takes the position that once a statutory sale is completed, the chargor's remedy is confined to damages, absent fraud or collusion involving the purchaser.

b. ***Mbuthia vs. Jimba Credit Finance*** (supra) emphasises that the equity of redemption is lost at the "fall of the hammer" at an auction sale, provided the contract is valid and that a mortgagor can seek to nullify a sale and preserve their interest if they can prove the sale was fraudulent or characterised by bad faith.

c. Equally, in ***Captain Patrick Kanyagia & Another vs. Damaris Wangechi & 2 Others*** (supra), the court stated that the equity of redemption is extinguished only by a valid sale, and that even if the sale is defective or irregular, title still passes to a bona fide purchaser, and the injured party's remedy lies in damages.

d. In ***Industrial & Commercial Development Corporation vs. Kariuki & Gatheca Resources Ltd*** (supra) and more recently ***Marteve Guest House Limited vs. Njenga & 3 Others*** (supra), the Court was of the view that it has jurisdiction to interrogate the legality of the chargor's root of title, particularly where there is an allegation of fraud, illegality, or procedural impropriety.

36. As regards the second prayer seeking preservation of L.R. No. 7583/1 pending hearing and determination of the intended appeal to the Supreme Court, we agree with the submissions of the appellant that this Court is now functus

officio with jurisdiction only limited to the certification or otherwise of

whether the matter intended for the Supreme Court raises any general matter of public importance. (See ***Karanja vs. Ndirangu & Another*** ***(Civil Application 5 of 2021[2021] KECA 57 (KLR).***

37. In view of the foregoing,

i. We decline to grant any preservation orders pending hearing of the intended appeal to the Supreme Court.

ii. Having found that the issues specifically referred to in paragraph 32 of this ruling raise issues of general public importance, leave is hereby granted to the applicants to appeal to the Supreme Court.

iii. Costs shall abide the outcome of the intended appeal.

Dated and delivered at Nairobi this 8th day of May, 2026.

W. KARANJA

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JUDGE OF

APPEAL ALI-

ARONI

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JUDGE OF

APPEAL DR. J.

OKELLO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR