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FIRMS NEWSLETTER

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A. Significant Update on Stamp Duty for Land Transfers in Kenya's Urban Areas

The Ministry of Lands, Public Works, Housing, and Urban Development has issued a pivotal directive concerning land transactions within Kenya's gazetted urban areas and municipalities. Effective from 5th April 2025, the stamp duty applicable to land transfers in these designated regions will now be levied at a rate of 4%, as per the stipulations of the Stamp Duty Act. This announcement marks a crucial shift in the fiscal landscape for property transactions in the country.

1. Scope of Application

This directive encompasses all gazetted urban areas and municipalities across various counties in Kenya. Notable regions affected include Baringo (Kabarnet), Bungoma (Kimilili), and Kiambu, among others. These changes are detailed comprehensively in the official communication from the Council of Governors. Stakeholders involved in property transactions within these areas must take heed of this new regulation to ensure compliance.

2. Consequences of Non-Compliance

The Ministry has emphasized the importance of adherence to this directive. Any officer or entity failing to comply will be held personally liable and may incur surcharges for any resultant loss of revenue. This strict stance underlines the critical nature of compliance in land transactions, highlighting the necessity for all parties to be thoroughly informed and prepared.

3. Impact on Property Transactions

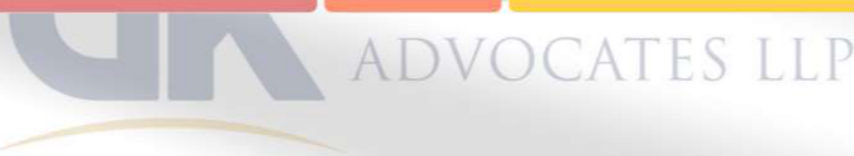
The adjustment in stamp duty rates is poised to have significant implications for future property deals. Buyers and sellers engaged in transactions within these gazetted towns must now factor in the increased stamp duty when planning their financial commitments. It is essential for all parties involved to adjust their budgeting processes accordingly to accommodate this change.

4. Next Steps

To navigate this new regulatory environment effectively, stakeholders are advised to undertake the following actions:

- Review any planned property transactions in the affected areas to incorporate the revised stamp duty rate.
- Seek expert consultation to understand how this change may impact current and future land dealings specifically.

In conclusion, this development necessitates a proactive approach from all parties involved in land transactions within Kenya's urban areas. Ensuring compliance with the new stamp duty rate is not only a legal obligation but also a prudent step towards safeguarding financial interests in property dealings. The affected areas include:



AB. Supreme Court Clarifies Land Ownership Rights in Contentious Lease Dispute: A Deep Dive into Sehmi & Another v. Tarabana Company Ltd & 5 Others

In a landmark ruling delivered on 11th April 2025, the Supreme Court of Kenya provided much-needed clarity on critical legal doctrines affecting land ownership, lease renewal, and the rights of innocent purchasers. The case, *Harcharan Singh Sehmi & Another v. Tarabana Company Limited & 5 Others* (Petition E033 of 2023), arose from a decades-long dispute over prime land in Nairobi's Ngara area, involving issues of expired leases, contested ownership, and allegations of fraud and irregular land allocation.

Background to the Dispute

The appellants, Harcharan Singh Sehmi and Jaswarana Sehmi, were co-proprietors of L.R. No. 209/2759/9 (I.R. 6477), a leasehold property acquired in 1968. The lease, set to expire in 2001, was not renewed despite several attempts by the appellants to extend it. In 2014, they were forcefully evicted from the property by Tarabana Company Limited and Rospatech Limited, who claimed ownership based on a new title, L.R. No. 209/2759/9 (I.R. 12263), issued to Rospatech in 2009 and transferred to Tarabana.

The appellants challenged the eviction in the Environment and Land Court (ELC), seeking reinstatement and damages. The ELC ruled in their favor in 2019, finding the allocation to Rospatech irregular and awarding them Kshs. 25 million in damages. However, the Court of Appeal reversed the decision in 2021, recognizing Tarabana as a bona fide purchaser for value without notice and holding the title indefeasible under the Land Registration Act.

Supreme Court's Certification and Key Legal Questions

Certified as a matter of general public importance, the Supreme Court was asked to clarify three critical questions:

1. Whether the doctrine of bona fide purchaser for value without notice protects those who acquire title through irregular or illegal allocations;
2. The extent to which the doctrine of legitimate expectation applies to lease renewals over public land; and
3. The status of a title derived from a flawed or unlawful process.

Supreme Court's Findings

1. Doctrine of Bona Fide Purchaser for Value Without Notice

The Court reaffirmed that the doctrine only applies when a purchaser acquires a legal estate, for value, and without notice of prior equitable interests. Crucially, it ruled that a title obtained through an illegal or irregular process cannot form the basis of a valid legal estate. A purchaser of such a title, no matter how unaware, cannot invoke the doctrine for protection.

This decision aligns with the earlier precedent in *Dina Management Ltd v. County Government of Mombasa*, where the Court held that titles arising from unlawfully allocated public land could not be shielded under the doctrine of innocent purchaser.

2. Indefeasibility of Title under the Land Registration Act

The Court emphasized the shift in Kenya's land law from conclusive to prima facie evidence of ownership. Section 26(1)(b) of the Land Registration Act renders titles vulnerable if acquired through fraud, illegal means, or a corrupt scheme. Thus, even without direct evidence of fraud by Tarabana, the original illegality in the 2nd respondent's acquisition tainted the title passed to Tarabana.

3. Legitimate Expectation in Lease Renewals

The Court found that the appellants had initiated the lease renewal process prior to its expiry and had received multiple confirmations from government departments that no objections were raised. This, coupled with their continued occupation and the absence of a rejection by the Commissioner of Lands, created a legitimate expectation that the lease would be renewed.

The failure by the government to conclude the process or formally communicate a denial violated the appellants' right to fair administrative action under Article 47 of the Constitution.

Final Orders

The Supreme Court allowed the appeal and reinstated the ELC's decision:

1. The title issued to Rospatech (and transferred to Tarabana) was declared null and void.
2. The appellants were reinstated as lessees upon payment of requisite fees.

1. Tarabana was ordered to vacate the premises within 90 days, and its developments on the land were to be removed under police supervision.
2. Costs were awarded to the appellants.

Significance of the Ruling

This judgment is a watershed moment in Kenyan land jurisprudence. It solidifies the principle that illegality at the root of title vitiates all subsequent transactions, no matter how bona fide the purchaser may appear. It also affirms that the State has a duty to act transparently and fairly when processing lease renewals, and its omissions can give rise to enforceable rights.

The ruling sends a clear message: land transactions must be above board, and the shield of innocent purchase cannot protect titles built on flawed foundations. It also empowers landowners and leaseholders to hold public authorities accountable when administrative inertia threatens their property rights.

As Kenya grapples with increasing land disputes and historical injustices, this case reasserts the constitutional principles of transparency, legality, and equity in land administration, a critical precedent for both courts and landholders moving forward.

C. Proposed Amendments Threaten Affordable Housing Protections in Kenya

A significant legal development is currently unfolding in Kenya that may have profound implications for affordable housing mortgage holders. A proposed amendment to the Land Act is under consideration in the senate, which could severely undermine the legal protections afforded to beneficiaries of the Affordable Housing Scheme. This alert aims to provide a comprehensive overview of the proposed changes and their potential impact.

Current Legal Safeguards

Under the existing framework of Section 90 of the Land Act, borrowers who default on their affordable housing loans are granted a 90-day period to rectify their financial standing before lenders can initiate foreclosure proceedings. This provision serves as a critical buffer, allowing families' time to manage unexpected financial challenges without the immediate threat of losing their homes.

Proposed Amendments

The proposed amendment seeks to drastically reduce this protective period from 90 days to a mere 45 days, specifically targeting affordable housing beneficiaries. This reduction poses a significant risk to countless Kenyan families, many of whom are first-time homeowners and may already be financially stretched. Furthermore, the amendment also proposes changes to Section 96 of the Land Act, which currently requires a 40-day notice period before the sale of a charged property can proceed following a default. The amendment aims to cut this notice

period in half, reducing it to just 20 days for affordable housing mortgages. This accelerated timeline would severely limit homeowners' ability to explore alternative solutions or protect their investments.

Discriminatory Impact

The implications of these proposed changes are particularly concerning given the objectives of the Affordable Housing Act, which seeks to provide accessible housing to vulnerable populations. The amendments appear discriminatory, disproportionately affecting those least equipped to navigate sudden economic hardships. Residents of informal settlements, who are prioritized for homeownership under Section 47 of the Act, would face an increased risk of losing their homes in a fraction of the time afforded to other property owners. This targeted erosion of legal protection raises serious questions about fairness and equity, potentially violating Article 27 of the Kenyan Constitution, which guarantees equal protection and benefit of the law to all citizens.

Potential Consequences

The proposed amendments could facilitate a swift and potentially predatory seizure of properties from vulnerable homeowners by financial institutions. This undermines the core objective of affordable housing and risks establishing a dangerous two-tiered system of property rights in Kenya.

A. Limitation of Actions in Civil Litigation: Why It Is Not a Proper Preliminary Objection

In civil litigation, the law of limitation of actions serves a crucial role in fostering legal certainty and preventing the indefinite threat of litigation. However, the procedural mechanism for raising limitation as a defence has often generated confusion in practice, especially regarding its presentation as a Preliminary Objection (PO). The recent judgment in *Sichuan Huashi Enterprises Corp. Limited v. Michael Misiko Muhindi* [2019] Eklr offers timely clarification on this issue, reinforcing the principle that limitation must be determined as an issue at trial, not through summary dismissal or preliminary objection.

Background of the Case

In *Sichuan Huashi*, the plaintiff (respondent) filed suit seeking damages for injuries allegedly sustained while working at a construction site in 2011. The defendant (appellant) raised a preliminary objection and subsequently filed an application to strike out the plaint on the basis that the claim was time-barred under the Limitation of Actions Act. The trial court dismissed the application. On appeal, the High Court (Gikonyo J) upheld that decision, restating that limitation is an issue for trial and not a matter for preliminary objection.

The Legal Position: Limitation Must Be Tried on Evidence

Justice Gikonyo's ruling provides a powerful restatement of the law: limitation of actions cannot be raised or determined through a preliminary objection. This aligns with a line of authorities that emphasize the evidentiary nature of limitation and the need for it to be addressed through a substantive trial process.

As stated in *Oruta & Another v. Nyamato* [1998] KLR 590, limitation can only be queried at trial, not through a preliminary objection. Similarly, in *Divecon Ltd v. Shirinkhanu Samani* Civil Appeal No. 142 of 1997, the Court of Appeal affirmed that limitation should be determined upon consideration of all evidence at trial, not through interlocutory means.

The court further drew strength from *El-Busaidy v. Commissioner of Lands* [2002] KLR 508, where it was held that limitation, especially under statutes like the Government Lands Act, requires full trial for determination. These decisions underscore that limitation is both a legal and factual issue that may involve contested facts, such as the actual date of accrual of the cause of action or whether an extension of time is applicable.

Constitutional Imperatives and Fair Hearing

The judgment also draws from constitutional principles, particularly Article 50(1) of the Constitution of Kenya, 2010, which guarantees the right to a fair and public hearing. Limitation, if summarily determined at the interlocutory stage, may violate this right by denying the claimant a substantive hearing.

The rationale is clear: striking out a suit based on limitation removes the plaintiff's right to be heard on merit and possibly access to justice. Unless the facts are so clear and uncontroverted that no trial is necessary (which is rare), limitation must be one of the issues framed for trial.

Order 2 Rule 4 of the Civil Procedure Rules

Another key procedural anchor cited in the ruling is Order 2 Rule 4(1) of the Civil Procedure Rules, which requires parties to specifically plead limitation if they intend to rely on it. This reinforces the notion that limitation is not a threshold matter to be raised orally or through PO but must be laid out in the defence and determined through due process.

Failure to do so can result in ambush, violating the principles of procedural fairness and natural justice. Therefore, any party wishing to invoke limitation must do so in a pleading and allow the matter to proceed to trial where it will be tested on evidence.

Policy Considerations

Beyond technicalities, the approach adopted by the courts is informed by important policy considerations. Limitation statutes serve to shield defendants from stale claims, but they must not be used as a procedural weapon to short-circuit litigation before the full facts are known. Furthermore, courts recognize that litigants may, in appropriate circumstances, seek leave to extend time, even after filing suit, under sections such as 27 and 28 of the Limitation of Actions Act, further underlining why premature dismissal is inappropriate.

Implications for Legal Practice

For practitioners, the takeaway is unequivocal: do not raise limitation of actions as a preliminary objection. Instead, plead it in the defence as required, and treat it as a triable issue. Applications to strike out suits based on limitation, without a full trial, are unlikely to succeed and may attract adverse judicial commentary or cost implications.

This judgment sends a strong message to the Bar and Bench alike: fair hearing, proper pleadings, and evidentiary procedures must guide how limitation is litigated. Courts are no longer receptive to procedural shortcuts that undermine the right to a hearing, and any attempt to pre-empt the judicial process through POs on limitation is not just discouraged, it is impermissible.

Conclusion

The ruling in *Sichuan Huashi* is a firm restatement of settled law: limitation of actions is not a valid preliminary objection. It is an issue requiring evidence and must be determined at trial. This decision strengthens due process, protects litigants' rights, and clarifies a procedural misstep that has long persisted in Kenyan practice.

E. Navigating a Landmark Transaction: Legal Perspectives on the Acquisition of National Bank of Kenya by Access Bank PLC

On April 11, 2025, a Gazette Notice marked a significant milestone in Kenya's banking sector, the official approval of the acquisition of 100 percent of the issued share capital of National Bank of Kenya Limited (NBK) by Access Bank PLC. This transaction, involving key regulatory approvals and compliance with statutory provisions, exemplifies the complex interplay of law, governance, and finance in modern mergers and acquisitions (M&A) within the Kenyan banking industry.

Overview of the Transaction

- The acquisition was effected through a Share Purchase Agreement dated March 20, 2024. It involved three major milestones:
- Approval by the Board of Directors of both KCB Group Plc (the parent company of NBK) and Access Bank PLC.
- Regulatory consent from the Central Bank of Kenya (CBK) under Section 13(4) of the Banking Act.
- Approval by the Cabinet Secretary for the National Treasury and Economic Planning under Section 9(1) of the same Act.
- The Gazette Notice No. 4667, issued by the CBK Governor, Kamau Thugge, formally notified the public of these developments, thereby underscoring the regulatory transparency and procedural integrity that underpins such transactions.

Legal Framework Governing Bank Acquisitions in Kenya

- The Banking Act (Cap. 488) provides the primary legislative framework for regulating bank mergers and acquisitions in Kenya. Sections 9 and 13 are particularly instrumental in such processes:
- Section 9(1) mandates that any proposed amalgamation or acquisition of a bank must receive prior approval from the Cabinet Secretary in charge of the National Treasury.
- Section 9(5) further requires public notification of such approvals to ensure transparency.
- Section 13(4) empowers the CBK to approve or disapprove any significant change in the control of a banking institution, thereby playing a gatekeeping role to maintain the integrity of Kenya's financial system.

These provisions ensure that acquisitions are subjected to rigorous scrutiny not only for compliance with financial norms but also for alignment with national economic interests.

Significance of the Transaction

From a legal and strategic perspective, this acquisition has far-reaching implications:

- **Market Consolidation and Financial Stability:** The entry of Access Bank PLC, a Nigerian banking giant with a pan-African footprint, into the Kenyan market through NBK marks a step toward regional financial integration. It also reinforces the trend of consolidation in the Kenyan banking sector, potentially enhancing stability and resilience.
- **Shareholder Rights and Corporate Governance:** The transaction highlights the role of shareholder resolutions and corporate governance in significant commercial decisions. Both KCB and Access Bank adhered to structured board approvals, reflecting a commitment to stakeholder inclusivity and regulatory prudence.

- **Regulatory Oversight and Due Diligence:** The CBK and the National Treasury's involvement reiterates the high level of regulatory scrutiny in Kenya's banking sector. Their approvals are based on extensive due diligence concerning the financial health, compliance history, and future viability of the transacting parties.
- **Public Interest Consideration:** The requirement of a Gazette Notice ensures that such transactions are brought into the public domain, safeguarding transparency and enabling public oversight.

Legal Considerations for Stakeholders

For legal practitioners and stakeholders involved in similar transactions, several lessons can be gleaned:

- **Due Diligence:** Legal teams must conduct thorough due diligence, covering not only financial aspects but also regulatory compliance, tax implications, employment obligations, and pending litigations.
- **Regulatory Filings and Timelines:** Timing is critical. All regulatory approvals must be synchronized with transaction milestones, and any delay in obtaining the requisite consents can derail the process.
- **Contractual Precision:** The Share Purchase Agreement must be meticulously crafted to address risk allocation, indemnities, warranties, and post-acquisition integration measures.
- **Cross-Border Legal Implications:** For transactions involving foreign entities like Access Bank, compliance with both domestic and international legal standards is essential. This includes anti-money laundering laws, exchange control regulations, and cross-border taxation rules.

Conclusion

The acquisition of National Bank of Kenya by Access Bank PLC is not merely a financial transaction; it is a testament to the maturing legal and regulatory ecosystem in Kenya. As the banking sector evolves, legal professionals must stay ahead by mastering cross-border financial regulations, developing innovative M&A strategies, and providing proactive compliance advice.

At Daniel & Kenneth Advocates, we remain at the forefront of advising clients on complex M&A transactions, leveraging our deep understanding of local regulations and international best practices to deliver seamless legal solutions.

As more African banks seek to expand across borders, Kenya's legal framework, as demonstrated in this case, provides a robust model for facilitating responsible and transparent acquisitions. It is imperative that lawyers, regulators, and corporate actors continue working in synergy to uphold the integrity and competitiveness of our financial markets.

A. High Court Directs Treasury to Reveal Sovereign Bond Information in Pivotal Access to Information Ruling

The High Court of Kenya issued a pivotal ruling in the case of Kenya Human Rights Commission & another v Attorney General & another; Law Society of Kenya & another (Interested Parties) [2024] KEHC 15702 (KLR). The judgment, delivered by Justice L.N. Mugambi, represents a significant advancement in promoting transparency, accountability, and the right to access information as enshrined in Article 35 of the Constitution. It stressed that public bodies, including the National Treasury, must proactively share vital information about public finances, particularly regarding sovereign debt.

1. Background of the Case

The petitioners, Kenya Human Rights Commission and Ms. Wanjiru Gikonyo, submitted a request to the Cabinet Secretary of the National Treasury (the 2nd Respondent) on 7 February 2022, seeking detailed information on Kenya's sovereign bonds. They requested access to all sovereign bond agreements from the previous nine years, terms and conditions in case of default, details on the beneficial ownership of bondholders, and the allocation of proceeds from these bonds. Even after intervention by the Commission on Administrative Justice (CAJ), the respondents did not provide the necessary documents. A delayed response was given months later, stating that some information could be found in public budget statements while withholding specific details like bondholder identities due to claimed privacy and data protection issues.

2. Key Legal Issues

The case revolved around several constitutional and legal questions:

- a) Whether the refusal to furnish the financial agreements violated the constitutional right to access information as per Article 35.
- b) Whether the petitioners needed to provide justification for their request.
- c) Whether the respondents had provided lawful grounds for their refusal under the Access to Information Act.
- d) Whether the denial contravened the principles of transparency and accountability set forth in Articles 10 and 201 of the Constitution.

3. Court's Determination

Justice Mugambi ruled in favor of the petitioners, delivering a series of declaratory and mandatory orders. The court concluded that:

- a) **Right to Access Information:** Article 35 states that every citizen has the right to access information held by the State. The Access to Information Act implements this right and mandates disclosure unless legitimate exemptions under Section 6 apply. The court underscored that a citizen does not have to justify the need for information.
- b) **Non-Compliance by the Treasury:** The Treasury neglected to respond within the legal timeframe of 21 days as required by Section 9(1) of the Access to Information Act. The court noted this as a clear violation of both statutory and constitutional obligations.
- c) **Insufficient Justification:** The Treasury's explanation that certain information was publicly available and bondholder identities were protected by privacy laws did not adequately justify the refusal. The court pointed out that the public interest in financial transparency significantly outweighed privacy claims, especially since the State could mask sensitive information if needed.

a) **Mandamus Order:** The court issued a mandamus order instructing the Treasury to provide the requested documents within 45 days. This included the sovereign bond agreements, clauses regarding default, identities of bondholders (considering privacy considerations), and a comprehensive account of how the bond proceeds were utilized.

1. Significance of the Judgment

This ruling reinforces Kenya's dedication to open governance. It asserts the responsibility of public officials to ensure timely and unencumbered access to information. Notably, it clarifies that:

- a) Public interest in transparency supersedes institutional secrecy regarding national debt matters.
- b) The State cannot use broad data protection claims as a defense against legitimate public inquiry.
- c) Access to information is essential for meaningful public engagement and effective oversight of public finances.

Implications for Public Administration and Governance

This judgment establishes a crucial precedent for future information requests from State agencies. Public officials will need to handle such requests with promptness and transparency. Furthermore, it highlights the judiciary's commitment to enforce constitutional responsibilities and ensure that public funds are managed openly, responsibly, and within the legal framework. In practical terms, the ruling is likely to bolster public trust in government operations and financial management, encouraging increased civic engagement as citizens become more informed about their rights and the mechanisms available to hold the government accountable.

Conclusion

The decision of the High Court is a victory for constitutionalism and civil rights in Kenya. It serves as a firm reminder that government transparency is not merely a courtesy, it is a constitutional obligation. Legal practitioners, civil society, and public institutions must now adapt their operations to align with this judicial directive, recognizing that access to information is both a right and a crucial tool for democratic accountability.



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