

## SUPREME COURT DECISION ON LEASE RENEWALS

### Introduction

We are writing to update you on the recent Supreme Court decision: Petition No. E033 of 2023.

The petition involves a property dispute with several respondents. The case highlights significant issues regarding property rights and legal processes of land administration in Kenya.

### Background Facts

The appellants acquired property in Nairobi in 1968 and faced eviction in October 2014 by the respondents, who claimed ownership under a new title. Prior to their eviction, the appellants had sought to extend their lease, which was originally set to expire in 2001. They presented numerous documents demonstrating efforts to extend their lease; however, their applications faced administrative delays, ultimately resulting in unlawful eviction.

The Supreme Court's deliberation centered on the implications of lease expiry, the process of applying for lease extensions, and the concept of "legitimate expectation." The court ruled that the appellants had a legitimate expectation for their lease to be extended given their proactive engagement with governmental authorities. It was found that the allocation of the property to third parties, without addressing the appellants' extension application represented administrative unfairness.

### Key Takeaways

Key takeaways from the decision include:

1. **Timeliness of Lease Applications:** Leaseholders should apply for extensions five years before lease expiration. This helps mitigate risks associated with administrative inaction and ensures the protection of property rights.
2. **Distinction between Extension and Renewal:** The court clarified the legal difference between lease extensions (before expiry) and renewals (after expiry). Extensions maintain the leaseholder's interests, while renewals may subject the land to new terms and reallocation risks by the government.
3. **Legitimate Expectation:** The court reinforced that leaseholders who apply for extensions appropriately have a legitimate expectation that their applications will be fairly considered, thereby preventing arbitrary denial by authorities.
4. **Administrative Fairness:** The government has a duty to process lease extension applications adequately before reallocating land rights. Failure to do so constitutes a violation of a leaseholder's rights.

5. **Irregular Title Allocation:** The ruling emphasized that titles acquired through irregular processes cannot be legitimized, placing the onus on property buyers to ensure due diligence in title validity.

## Summary

In summary, the Supreme Court's ruling in this case underscores the importance of proactive lease

management, the necessity for timely and documented applications for lease extensions, and the implications of administrative fairness in property law in Kenya. It serves as a crucial reminder to stakeholders of the legal ramifications associated with land ownership and lease agreements.

If you have any questions arising from this article, you can contact any of our Partners in Real Estate below.



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