

LEGAL ALERT

PRE-EMPTIVE RIGHTS IN LEASE RENEWALS: PROTECTING A LESSEE'S INVESTMENT AND LEGITIMATE EXPECTATION

In *Nakuru War Memorial Hospital Limited v County Government of Nakuru & 2 Others* [2026] KEELC 5715 (KLR), the Environment and Land Court at Nyandarua reaffirmed the importance of a lessee's pre-emptive rights when seeking renewal or extension of a lease. The decision underscores the need for government authorities to act lawfully and fairly when dealing with existing leasehold interests and cautions against the cancellation of registered interests without a proper legal basis.

What are pre-emptive rights?

Pre-emptive rights are rights that give an existing lessee to land priority or the first opportunity to be considered for the allocation or renewal of a lease over the property occupied, subject to the applicable law and conditions. Under section 13 of the Land Act, 2012, these rights recognise the lessee's existing interest and the investment made in the property. They do not, however, guarantee automatic renewal.

The Court's findings

The dispute concerned Nakuru Municipality Block 11/107, measuring approximately 11.25 hectares, on which Nakuru War Memorial Hospital operates. The Hospital's original 99-year lease, issued in 1922, was due to expire in 2021. Having initiated the extension process in 2019, the Hospital obtained a renewed certificate of lease on 23 April 2021, extending the term by 50 years from 1 March 2021. The County Government subsequently challenged the extension, and the Land Registrar purported to cancel the certificate through Gazette Notice No. 6309 of 19 May 2023.

The Court recognised that the Hospital's existing leasehold interest, long-standing occupation, investment in the property and timely application for extension supported its legitimate expectation that the application would receive lawful and fair consideration. It further emphasised the requirements of Article 47 of the Constitution, which guarantees lawful, reasonable and procedurally fair administrative action.

The Court also questioned the cancellation of the lease on account of an allegedly undischarged charge registered against the property in 1963. The charge had remained on the register when an earlier certificate of lease was issued in 2010, and the chargee had neither complained nor been consulted before the purported cancellation. The Registrar had also sought additional documents from the Hospital through correspondence sent to an incorrect postal address.

The decision highlights the need for a clear legal basis before a registered interest is cancelled, particularly where the action may prejudice third-party security interests. An entry in the land register cannot, without more, justify administrative action that disregards the rights of affected parties.

Practical implications

The decision underscores the importance of according an existing lessee priority and due consideration when determining an application for lease renewal, having regard to the lessee's pre-emptive rights and investment in the property. It further affirms that public authorities must act lawfully, fairly and in accordance with the applicable statutory framework. Any cancellation of a certificate of lease must therefore be supported by a proper legal basis and undertaken with due regard to the rights and interests of all affected parties, including registered chargees.

Conclusion

The decision serves as a reminder that pre-emptive rights protect a lessee's priority and legitimate expectation of fair consideration, rather than confer an unconditional right to renewal. Public interest and administrative powers must be pursued within the law, with due regard to existing property rights, investments and third-party interests.

For expert legal support on land matters, including lease renewals, protection of property rights, land registration and disputes involving registered interests, contact us on info@gkmuturi.ke or gmuturi@gkmuturi.ke.

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