ECRA ATTORNEYS

LEGAL NEWS

21 January 2026

Court of Appeal Clarifies Mortgagee's Duty of Care vis-a-vis Protection of Bona Fide Purchasers

Recently, the Court of Appeal of Tanzania (the Court) delivered its judgment in the case of CRDB Bank PLC & Others vs. Jonas Marco Mgeni, Civil Appeal No. 355 of 2024. This case concerns the exercise of a mortgagee's statutory power of sale, specifically, the duty to conduct valuation, obtain the best price reasonably available, and the extent of protection accorded to a bona fide purchaser at a public auction. The appeal arose from the High Court's decision affirming the nullification of an auction sale of mortgaged property on grounds of undervaluation and breach of statutory duty under the Land Act.

Background

The respondent obtained a loan facility from the bank (the first Appellant) secured by a legal mortgage over his property in Mbeya. Upon default in loan repayment, the bank exercised its power of sale through appointed auctioneers. The mortgaged property was sold at a public auction to the third appellant. Dissatisfied, the respondent challenged the legality of the auction, leading to proceedings before the District Land and Housing Tribunal, the High Court, and eventually the Court.

Arguments Raised by Parties

The appellants argued that the respondent's default entitled the bank to exercise its statutory power of sale; that the law did not impose a mandatory duty to conduct a fresh valuation before auction; and that under section 115 of the Evidence Act, the burden of proving undervaluation lay on the respondent. They further contended that the property was sold at market value and that the third appellant was a bona fide purchaser for value entitled to protection under section 145(3) of the Land Act. In response, the respondent argued that section 143 of the Land Act imposes a mandatory duty on a mortgagee to conduct a valuation and obtain the best price reasonably available before sale; the property was sold at a gross undervalue without any valuation report being produced; the statutory duty placed the burden of proof on the bank; and the auction was illegal and tainted by breach of duty of care and procedural irregularities, thereby disentitling the third appellant from protection as a bona fide purchaser.

Decision of the Court

The Court dismissed the appeal in its entirety, holding that although the respondent was in default and the bank had a statutory right to sell the mortgaged property, section 143 of the Land Act imposes a mandatory duty on a mortgagee to conduct a valuation and obtain the best price reasonably obtainable at the time of sale, which duty was breached as no valuation was conducted and the property was sold at a gross undervalue. Further, the Court held that the burden of proving compliance with this statutory duty lies with the bank, not the respondent. As such, the third appellant could not be protected as a bona fide purchaser because the sale was illegal and tainted by breach of duty of care and procedural impropriety. Finally, the Court affirmed the decisions of the District Land and Housing Tribunal and the High Court by nullifying the auction sale with costs against the appellants.

To read the Judgment ***click here***

To read this Legal News ***click here***

For further information on legal updates please contact:
info@ecraattorneys.co.tz

About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

ECRA Attorneys Address
10th Floor-Left Wing, Mwanga Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania
T: +255 743 024 396 | +255 714 949 604
E: info@ecraattorneys.co.tz
W: www.ecraattorneys.co.tz

Disclaimer
This legal update's contents, along with any attachments, are private, confidential, and meant only for the use of the person or organization to which they are directed. They may also be privileged or otherwise protected from disclosure. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of ECRA ATTORNEYS.

©ECRA Attorneys 2023. All rights reserved