

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA**

AT MWANZA

LAND CASE NO. 47 OF 2023



ALPHA HOTEL LIMITED 1ST PLAINTIFF

ANDREW JOHN SHIRIMA 2ND PLAINTIFF

ALDEGUNDA ROGATH LAKITAYA 3RD PLAINTIFF

VERSUS

CRDB BANK PLC 1ST DEFENDANT

ADILI AUCTION MART LTD 2ND DEFENDANT

JUMANNE Y. MTAFUNI 3RD DEFENDANT

JUDGMENT

5th August & 11th September, 2026

KISANYA, J.:

The 1st Plaintiff is a limited liability company, of which the 2nd and 3rd plaintiffs, who are husband and wife, are the Managing Director and Director, respectively. The 1st Defendant is a public limited liability company engaged in banking business, whereas the 2nd Defendant is a limited liability company licensed to conduct court brokerage and auctioneering business.

The Plaintiffs' case against the Defendants jointly and severally arises from the sale of Plot Nos. 127 and 129, Block "C", comprised in Certificate of Title No. 22924, L.R. Mwanza, L.O. No. 226060, L.D. No. LD/GT/790 (hereinafter "the suit property"), which was conducted by way of public tender on 30th March 2022.

The Plaintiffs challenge the legality of the sale and maintain that the 1st Defendant, in exercising its rights as mortgagee, acted in breach of its duty of care by selling the property at a price below its forced sale value and otherwise contrary to the law. They therefore seek, *inter alia*, an order setting aside the sale and a declaration that the 2nd and 3rd Plaintiffs are the lawful owners of the property.

The material facts pleaded by the Plaintiffs are that the 1st Plaintiff obtained a loan facility of TZS 670,000,000/= from the 1st Defendant, secured by the suit property, and that the facility was subsequently restructured by an agreement dated 23rd May 2017. The Plaintiffs state that the suit property had been valued in 2012 at TZS 1,703,000,000/=: its forced sale value being TZS 751,000,000/=.

Upon default in repayment, the 1st Plaintiff allegedly engaged the 1st Defendant and prospective purchasers in an attempt to sell the suit property voluntarily and apply the proceeds towards settlement of the outstanding loan. It is alleged, however, that the 1st Defendant proceeded to realize the security through the 2nd Defendant.

The Plaintiffs further allege that the 1st Plaintiff communicated with the 1st Defendant on 9th June 2022 concerning the efforts to secure prospective

purchasers, but was thereafter informed that the suit property had been sold for TZS 600,000,000/=, leaving a balance of TZS 276,411,139.24/=. They therefore, challenge the manner and price of the sale, contending that the suit property was not properly advertised and that an October 2021 valuation had placed its market value at TZS 870,000,000/= and forced sale value at TZS 650,000,000/=. They also contend that the latter valuation was undertaken without their participation.

Following the failure of the parties' attempts to resolve the dispute amicably, the Plaintiffs instituted the present suit. Their main reliefs include a declaration that the sale conducted by public tender on 30th March 2022 was illegal, a nullity and of no legal effect; an order setting aside the sale; a declaration that the 1st Defendant had breached its duty of care by selling the suit property below its forced sale value; general damages for the alleged unlawful sale; a permanent injunction restraining the Defendants from registering the transfer of the suit property or otherwise interfering with the Plaintiffs' enjoyment of the property; interest; and costs of the suit.

Upon being served with the plaint, the Defendants filed their respective written statements of defence disputing the Plaintiffs' claims. The 1st Defendant denied any agreement with the Plaintiffs for them to procure a buyer for the suit property and maintained that, following the plaintiffs' default and service of the

requisite notices, it lawfully instructed the 2nd defendant to realize the security by public tender.

The 1st Defendant further stated that, the sale followed a valuation by TKA Company Limited and publication of the sale in the *Sunday News*. The 3rd Defendant emerged as the highest bidder at TZS 600,000,000/=, out of which TZS 441,974,576/= was applied towards the loan, leaving an outstanding balance of TZS 276,411,139.24/=. The 1st Defendant therefore counterclaimed for the outstanding balance, together with accrued interest and costs.

Thus, the 1st and 2nd Defendants maintained that the sale of the suit premises to the 3rd defendant was conducted in accordance with the law. The 3rd Defendant, on the other hand, contended that he purchased the suit premises in good faith and was a bona fide purchaser.

During the Final Pre-Trial Conference, the parties, through their respective counsel, settled and recorded the following issues for determination:

- 1. Whether the sale of the suit property conducted between the Defendants via public tender dated 30th March 2022 was lawful.*
- 2. Whether the 3rd Defendant is a bona fide purchaser of the suit property.*
- 3. Whether the 1st Defendant is entitled to the amount claimed in the counterclaim.*
- 4. What reliefs, if any, the parties are entitled to.*

At the hearing, the Plaintiffs were represented by Mr. Antony Nasimire, learned advocate, while Mr. Galati Mwantembe, learned advocate, appeared for the 1st and 2nd Defendants. The 3rd Defendant was represented by Ms. Penina Mashimba, learned advocate.

The Plaintiffs called two witnesses, the 2nd and 3rd plaintiffs, who testified as PW1 and PW2, respectively. In support of their case, they tendered several documentary exhibits, including the Marriage Certificate (Exhibit P1), Certificate of Incorporation of Alpha Hotel Limited (Exhibit P2), Memorandum and Articles of Association of Alpha Hotel Limited (Exhibit P3), copy of certificate of title in respect of the suit property (Exhibit P4), Loan Facility Letter Variation (Exhibit P5), Valuation Report of the suit property dated 3rd February 2012 (Exhibit P6), the 1st Plaintiff's letter dated 9th June 2022 (Exhibit P7), the 1st Defendant's letter dated 23rd June 2022 (Exhibit P8), and the Certificate of Sale (Exhibit P9). They also tendered the Valuation Report dated October 2021 (Exhibit P10), a letter dated 10th May 2022 from the Land Registry Office, Geita (Exhibit P11, and the 1st Plaintiff's extract of the resolution authorizing the institution of the present suit (Exhibit P12).

On the other hand, each of the 1st, 2nd and 3rd Defendants called one witness, namely Mershil Leonard Kivuyo (DW1), Kennedy Raphael Katera (DW2) and Jumanne Yusuph Mtafuni (DW3), respectively. The 1st Defendant tendered

nine documentary exhibits, namely the Mortgage of a Right of Occupancy and Spouse Consent (Exhibit D1), Director's Personal Guarantee and Indemnity (Exhibit D2), Notice of Default dated 6th April 2018 (Exhibit D3), Valuation Report dated October 2021 (Exhibit D4), Public Tender Advertisements published in the *Sunday News* newspaper on 20th and 30th March 2022 (Exhibit D5), and Tender Reports issued by the 2nd Defendant dated 17th February 2022 (Exhibit D6), 10th March 2022 (Exhibit D7) and 30th March 2022 (Exhibit D8), together with the Calling on Guarantee and Indemnity for payment of TZS 276,411,139.24/= (Exhibit D9).

As for the 3rd Defendant (DW3), he tendered three documentary exhibits, namely two certified copies of bank pay slips (Exhibit D10), the Introduction letter and Acknowledgement Letter (Exhibit D11), and the Power of Sale of Mortgaged Land (Exhibit D12).

It is pertinent to note that the evidence-in-chief of all the witnesses was adduced through their respective witness statements.

Upon closure of the defence case, learned counsel filed their respective final submissions. I have considered the evidence on record and the submissions filed by counsel. For brevity, however, I shall not reproduce the evidence of each

witness or the submissions in *extenso*. Their substance shall be addressed, where relevant, in the determination of the issues agreed upon by the parties.

The first issue for determination is whether the sale of the suit property by public tender on 30th March 2022 was lawful. In determining this issue, I shall consider the complaints outlined in the pleadings against the evidence adduced by the parties.

Both PW1 and PW2 admitted that the suit property was mortgaged to secure the loan advanced to the 1st Plaintiff. The first complaint raised by the Plaintiffs, as pleaded and testified to by PW1 and PW2, is that the sale was conducted while the 1st Plaintiff was engaged in discussions with the 1st Defendant regarding prospective purchasers of the property. This assertion was categorically disputed by the 1st Defendant in its defence. The burden therefore lay upon the Plaintiffs to establish, on the balance of probabilities, that such an arrangement existed and, more particularly, that the 1st Defendant had agreed to suspend or defer the exercise of its power of sale pending the outcome of those efforts. In this regard, I have considered the submission by counsel for the 1st and 2nd Defendants that clause 10.4 of the Loan Facility Letter (Exhibit P5) expressly provided that, upon failure to pay three instalments on their due dates or to comply with any of the terms of the facility letter, the Bank (1st Defendant) would proceed with full recovery measures without any further notice.

Against this contractual background, the Plaintiffs were required to establish, by cogent evidence, that notwithstanding the agreed terms, the 1st Defendant had subsequently agreed to suspend or defer the exercise of its power of sale. However, no written agreement, variation of the loan or mortgage terms, or other documentary evidence was produced to establish such an arrangement. The only document tendered was the 1st Plaintiff's letter dated 9th June 2026 (Exhibit P7), written after the sale had taken place, despite the Land Registry Officer's earlier letter dated 10 May 2026 (Exhibit P11) notifying him of the intended transfer. In the absence of evidence of any prior agreement to suspend or defer the sale, I cannot hold that the sale was unlawful on the basis of the alleged negotiations.

I now turn to the Plaintiffs' complaint concerning the price at which the suit property was ultimately sold. The Plaintiffs complained that the suit property was sold below its forced-sale value thereby breaching its duty of care. PW1 and PW2 testified that, apart from the 2012 valuation which had been undertaken in connection with the loan, the October 2021 valuation placed the market value of the property at TZS 870,000,000/= and its forced-sale value at TZS 650,000,000/=. The property was, however, sold for TZS 600,000,000/=.

It is therefore not in dispute that the sale price was below the forced-sale value stated in the October 2021 valuation. The question, however, is whether

that fact, without more, rendered the sale unlawful. In my considered view, it did not. Under section 143(2) (referred to by Mr. Nasimire as section 133(2)) of the Land Act, Cap. 113, R.E. 2023), the statutory 25% test is based on the average open-market price of comparable interests in land of the same character, not the forced-sale value. As held by the Court of Appeal in **Joseph Kahungwa vs Agricultural Inputs Trust Fund & Others**, Civil Appeal No. 373 of 2019 [2021] TZCA 325, cited by Mr. Nasimire, a party alleging that mortgaged property was sold below the reasonably obtainable price bears the burden of adducing evidence to establish that allegation. The same principle was reiterated in **M & M Food Processors Company Limited vs CRDB Bank Limited & Others**, Civil Appeal No. 273 of 2020 [2023] TZCA 243. It follows that the Plaintiffs were required to establish that the 1st Defendant, as mortgagee, failed to obtain the best price reasonably obtainable for the property at the material time.

However, neither PW1 nor PW2 produced any comparable market evidence or an independent valuation demonstrating the price which could reasonably have been obtained for the suit property at the material time to wit March 2022. The mere fact that the sale price was below the forced-sale value stated in the valuation report (Exhibits P10 and D4) did not, by itself, establish that the 1st Defendant had failed to obtain the best price reasonably obtainable

at the material time. What was required was evidence demonstrating that the price obtained was not the best price reasonably obtainable in the circumstances, having regard to the value of the property and the manner in which the sale was conducted. The Plaintiffs did not adduce such evidence. In particular, there was no sufficient evidence to discredit the 2021 valuation report or to establish that it was invalid, unreliable, or otherwise incapable of reflecting the value of the property at the material time. The existence of an earlier valuation (Exhibit P6) showing a higher value, without evidence from such expert establishing that the later valuation (Exhibit P10/D4) was erroneous, could not, on its own, establish a breach of the mortgagee's duty of care. I therefore find that the Plaintiffs failed to prove that their claim that the suit property was sold below the market value, contrary to the law.

The Plaintiffs raised a further complaint concerning the advertisement of the tender. It is therefore not correct, as submitted by learned counsel for the 1st and 2nd Defendants, that this complaint was not pleaded. Unlike the preceding complaint, which concerns the price obtained upon completion of the sale, this complaint relates to the process through which prospective bidders were invited to participate in the tender. PW1 and PW2 principally referred to the certificate of sale (Exhibit P9) in relation to this complaint. The evidence of DW1 and DW2, however, was that the tender was advertised on 13th March 2022, that the period

for submission of bids was subsequently extended through a further advertisement dated 20th March 2022, and that the tender was opened on 30th March 2022. Their evidence was supported by the public tender advertisements of the respective dates, admitted as Exhibit D5.

The Plaintiffs' evidence, cross-examination of the defence witnesses, and submissions by Mr. Nasimire mainly relied on the notice requirements applicable to sales by auction under section 12(2) and (3) of the Auctioneers Act, Cap. 229 R.E. 2023. However, the sale in question was conducted by public tender, not auction. The decision in **Justus Justus Masalu vs The Registered Trustees of the Agriculture Inputs Trust Fund & Two Others**, Land Case No. 13 of 2011 (unreported), is therefore distinguishable, as it concerned a public auction.

In my view, requirements specifically governing auctions cannot, without a proper legal basis, be imported into a tender process. In any event, the Plaintiffs did not establish that any alleged defect in the advertisement excluded prospective bidders, suppressed competition, or prevented the mortgagee from obtaining the best price reasonably obtainable. To the contrary, the evidence presented by the defence shows that the tender was publicly advertised, bids were received as shown in the tender reports (Exhibits D6, D7 and D8), and the 3rd Defendant emerged as the highest bidder at TZS 600,000,000/=. There is no evidence that a higher bid was rejected, that prospective bidders were

deliberately excluded, or that the 1st or 2nd Defendant acted in collusion with the 3rd Defendant.

In those circumstances, the Plaintiffs have not discharged the burden of proving that the mortgagee breached its statutory duty in exercising the power of sale. Taking the complaints collectively, I find that none of them, whether considered individually or cumulatively, has established that the 1st Defendant unlawfully exercised her power of sale. I accordingly find that the sale of the suit property by public tender on 30th March 2022 has not been shown to have been unlawful. The first issue is therefore answered in the affirmative.

On the second issue, the question for determination is whether the 3rd Defendant was a bona fide purchaser. Having found in the first issue that the Plaintiffs have not established that the sale by public tender was unlawful, it remains to consider whether the 3rd Defendant acquired the suit property in good faith and for value.

Section 145(3) of the Land Act affords protection to a purchaser who acquires mortgaged land from a mortgagee in good faith and for value, unless the purchaser's acquisition is affected by fraud, misrepresentation or dishonest conduct of which the purchaser had actual or constructive notice. In **Godebertha Lukanga vs CRDB Bank Ltd & Others**, Civil Appeal No. 25/17

of 2017 [2021] TZCA 72, the Court of Appeal affirmed the protection afforded to a purchaser for value in circumstances where fraud, collusion or dishonest conduct attributable to the purchaser had not been established. Thus, even where complaints are raised regarding the manner in which a mortgagee exercised its power of sale, such complaints do not, without proof connecting the purchaser to the alleged wrongdoing, by themselves defeat the purchaser's statutory protection.

The question, therefore, is whether the evidence establishes that the 3rd Defendant acquired the property in circumstances falling outside the statutory protection.

The evidence of DW3 is that he became aware of the sale through the published tender advertisement, participated in the tender process, emerged as the highest bidder with a bid of TZS 600,000,000/-, paid the purchase price and was thereafter issued with the certificate of sale. His evidence was not displaced by any evidence demonstrating that he had a prior arrangement with the 1st or 2nd Defendant or that he was otherwise involved in the realization of the mortgaged property.

Moreover, there is no evidence from the Plaintiff that the 3rd Defendant participated in the decision to realize the security, colluded with the 1st or 2nd

Defendant, or had actual or constructive notice of any fraud or dishonest conduct in the sale. The Plaintiffs' complaint regarding the alleged discrepancy between the advertisement, which described the building as three-storey, and their assertion that the building was four-storey, does not, by itself, establish that the 3rd Defendant lacked good faith. There is no evidence that he prepared or caused the advertisement to be prepared in that manner, that he was aware of the alleged misdescription, or that he knowingly took advantage of it in acquiring the property.

In the circumstances, I find that the 3rd Defendant purchased the suit property for value and in good faith and that he is therefore entitled to the protection afforded by section 145 of the Land Act. The second issue is also answered in the affirmative.

The third issue for determination is whether the 1st Defendant has proved its entitlement to the amount claimed in the counterclaim. The evidence of DW1 was that, at the time of the tender, the 1st Plaintiff's outstanding indebtedness was TZS 718,385,715.24. Following the sale of the suit property for TZS 600,000,000/=, the proceeds were applied towards the expenses incurred in the realization of the security and the loan account. It was the evidence of DW1 that, after those adjustments, a balance of TZS 276,411,139.24 remained outstanding.

There is no dispute in principle that the sale of mortgaged property does not necessarily discharge the entire loan obligation where the proceeds of sale are insufficient to satisfy the debt. The mortgagee may, subject to the circumstances of the case and proof of the amount due, pursue the balance remaining after the realization of the security. This position was underlined by the Court of Appeal in **CRDB Bank PLC vs True Colour Ltd & Another**, Civil Appeal No. 29 of 2019, and **Bank of Africa (Tanzania) Ltd vs Rose Miago Asea**, Civil Appeal No. 214 of 2019 [2023] TZCA 184.

The issue before me, therefore, is not whether a balance could in law remain payable after the sale, but whether the particular balance claimed by the 1st Defendant has been proved. Since the 1st Defendant seeks a specific monetary amount by way of counterclaim, the burden rested upon it to establish, by sufficient evidence, how that amount was arrived at.

In support of the claim, DW1 relied on the Calling on Guarantee and Indemnity (Exhibit P9), which stated the alleged outstanding amount of TZS 276,411,139.24. However, the mere statement of an amount in that document does not, in my view, establish the basis upon which that amount was calculated. This is especially so considering that the evidence was that TZS 600,000,000/= obtained from the sale had been applied partly towards the expenses of realization and partly towards the loan account.

The Court was therefore required to be placed in a position to verify the outstanding balance by reference to the relevant loan transactions. Evidence such as the loan statement showing the balance before the sale, the sale proceeds credited to the account, the expenses deducted in the process of realization, and the balance thereafter would have assisted the Court in determining whether the sum claimed was actually outstanding. No such evidence was tendered.

In the circumstances, Exhibit P9, standing alone, was insufficient to strictly prove the alleged balance of TZS 276,411,139.24. I therefore find that, although the realization of the security did not necessarily extinguish the underlying loan obligation, the 1st Defendant failed to prove the precise amount remaining due after the sale. The third issue is accordingly answered in the negative.

Having determined all the substantive issues, I now turn to the reliefs sought by the parties. The Plaintiffs' case was principally premised on the allegation that the sale of the suit property was unlawful and that the 3rd Defendant was not entitled to retain the property. Those contentions have not been established. I have also found that the 3rd Defendant was a bonafide purchaser and the 1st Defendant's counterclaim for TZS 276,411,139.24 has also not been established to the required standard. Consequently, neither the

Plaintiffs nor the 1st Defendant has established entitlement to the reliefs sought in the main suit and counterclaim respectively.

For the reasons I have endeavoured to state, the main suit and the counterclaim are hereby dismissed. Having regard to the circumstances of the case, there shall be no order as to costs between the Plaintiffs and the 1st and 2nd Defendants. The 3rd Defendant, however, having successfully defended the claim, shall be entitled to his costs as against the Plaintiffs.

DATED at **MWANZA** this 11th day of September, 2026.



A handwritten signature in blue ink, appearing to read "S.E. Kisanya".

S.E. KISANYA
JUDGE

Judgment delivered this 11th day of September 2026 in presence of Mr. Galati Mwantembe, learned Advocate for the 1st and 2nd Defendants, who also held brief for both Mr. Antony Nasimire, learned Advocate for the Plaintiffs and Ms Penina Mashimba, learned Advocate for the 3rd Defendant; Hon. D.N. Method, Judge Law Assistant; and Ms. Jackline Samweli, Record Management Assistant.

Right of appeal explained.



A handwritten signature in blue ink, appearing to read "S.E. Kisanya".

S.E. KISANYA
JUDGE
11/09/2026