

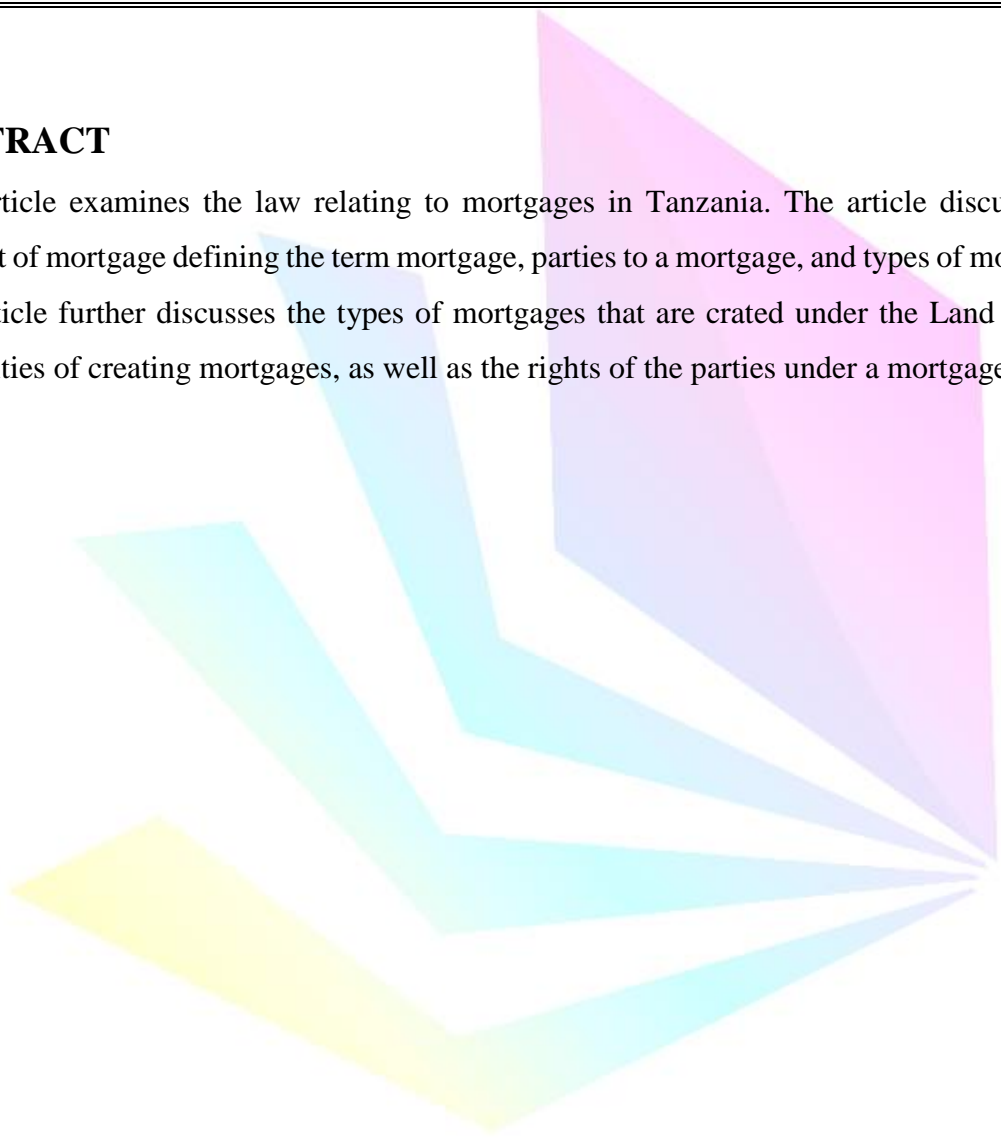
THE LAW ON CREATION OF MORTGAGES IN TANZANIA

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ABSTRACT

This article examines the law relating to mortgages in Tanzania. The article discusses the concept of mortgage defining the term mortgage, parties to a mortgage, and types of mortgages. The article further discusses the types of mortgages that are created under the Land Act, the formalities of creating mortgages, as well as the rights of the parties under a mortgage.



INTRODUCTION

The growth of the Tanzania economy is largely contributed by the banking business, among others. Issuing credit facilities to customers is one of the main activities of banks and financial institutions through which income is generated by charging of interests and imposition of penalties on defaulters. In order to ensure repayment of the credit facilities by borrowers, banks and financial institutions do demand securities that can be of many forms.

Securities of land which can take the form of mortgage or otherwise are the most favourable security demanded by lenders for repayment of moneys advanced to borrowers or fulfilment of some conditions by the borrowers. If the borrower defaults in the loan repayment as per the terms under which the loan was advanced, the lender that have no choice but to take enforcement measures in order to recover the loan as well as the agreed interests.

Mortgage involves the transfer of an interest in land as security for payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.ⁱ In Tanzania, the Land Actⁱⁱ provides for the rights and responsibilities of the parties to a mortgage. Upon default by the borrower and or the mortgagor to repay the money or fulfil a condition imposed on him, the mortgagee may appoint a receiver of the income of the mortgaged land, lease or sublease the mortgaged land, sublease the land, or enter into possession of the mortgaged land, or sell the mortgaged land.ⁱⁱⁱ

THE CONCEPT OF MORTGAGE

The concept of mortgage comes from French term "MORTUS" which means death or slow death. Mortgage is a practice of killing a debt slowly. Under early English and U.S. law, the mortgage was treated as a complete transfer of title from the borrower to the lender. The lender was entitled not only to payments of interest on the debt but also to the rents and profits of the real estate. This meant that as far as the borrower was concerned, the real estate was of no

value, that is, "dead," until the debt was paid in full, hence the Norman-English name "mort" (dead), "gage" (pledge).^{iv}

Mortgage means an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfilment of a condition and included a sub-mortgage and the instrument creating a mortgage.^v Thus, Mortgage is a security and the loan secured by mortgage is mortgage loan/mortgage money.

Mortgage is a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that became void upon payment or performance according to the stipulated terms.^{vi} It is a transaction in which a borrower transfers to the lender an interest in the land the condition of the transfer being that the ownership or interest is vested in the lender as security for the loan. A mortgage is a conveyance or assignment of land with a proviso for re-conveyance or re-assignment. When the money lent and the interest is repaid in full the status quo before the mortgage is restored by re-conveyance or reassignment of the land to the borrower.^{vii} In the case of **Santley vs. Wilde**,^{viii} it was stated that:

“A mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given”.

Also in the case of London County and West Minister Bank Ltd vs. Tompkins^{ix}, mortgage was defined as a conveyance of land or an assignment of chattels as a security for payment of a debt or performance of some other obligation.

The mortgage transaction is always preceded by loan arrangement or loan transaction. The loan transactions are distinct from the mortgage transactions. While the former belongs to the law of contract where all essential elements of a valid contract need to be observed, the later belongs to property law. In the case of Austack Alphone Mushi versus Bank of Africa Tanzania Limited and another,^x a mortgagor/guarantor who was not a party to a loan agreement sued the lender on alleged breach of the loan agreement. The Court of Appeal while affirming the High Court's judgement was of the view that the reference to the mortgaged properties as securities did not

make the mortgagor a party to the loan agreement. He was only a party to the contract of guarantee between him and the lender under which the securities were given and upon which he assumed the obligation to repay the loan upon the borrower's default. He could only sue upon such contract but not upon the loan agreement, which he remained a stranger.

PARTIES TO A MORTGAGE

The party who borrows the money and gives the mortgage (the debtor) is the mortgagor; the party who pays the money and receives the mortgage (the lender) is the mortgagee.

Mortgagor

A mortgagor is a person who has mortgaged a right of occupancy or a lease and includes a transferee of a right of occupancy or lease subject to a mortgage and a person to whom such right of occupancy or lease so subject has passed by transmission.^{xi} As such, a mortgagor is a person who conveys his property by way of a security.

A mortgagor may also be a borrower, while a borrower may not necessarily be a mortgagor. While a borrower is a person who borrows^{xii}, he may also be a person who obtains an advance of money or money's worth or agrees to the fulfillment of a condition on the security of a mortgage of his right of occupancy or lease^{xiii}. In other words, when a person borrows money or money's worth or agrees to the fulfillment of a condition and offers his right of occupancy or lease as a mortgage being a security for repayment of the money or money's worth or fulfillment of a condition, he becomes both a borrower and a mortgagor. On the other hand, the law allows a person who is not a borrower to create a mortgage. In this case, one person borrows money or money's worth or agrees to the fulfillment of a condition relying on a mortgage created by a third party.^{xiv}

In Tanzania, the Land Act is silent on the qualifications of the mortgagor. One only needs to be either an occupier of a right of occupancy or a lessee.^{xv} In order to create a mortgage in favour of the bank, the borrower must have title to the property being mortgaged. Title here

means ownership and is evidenced by possession or a certificate of title, or other documents evidencing ownership of title or lease.

Mortgagee

Mortgagee is a person in whose favour the mortgage is created or subsists^{xvi}. A mortgagee, also referred to as a “lender”, is a person to whom a mortgage has been given as security for the repayment of an advance of money or money's worth or to secure fulfillment of a condition.^{xvii}. In other words, he is a person who obtains an interest in a mortgaged property subject to redemption upon payment of the loaned money or fulfillment of a condition.

In Tanzania, a mortgagee could be an individual or a company in whose favour a mortgage is created. In terms of qualification, it must be a bank or financial institution regulated by the Bank of Tanzania.

TYPES OF MORTGAGES

There are several types of mortgages as per the English law and Tanzania laws. In this matter the types of mortgages can be describes according to the two legal regimes. According to common law, there are three types of mortgages, namely, legal mortgage, equitable mortgage, and a charge.^{xviii} In Tanzania there are several types of mortgages, which inter alia include the formal mortgage or ordinary mortgage, lien by deposit of documents, customary mortgage, informal mortgage, third party mortgage, mortgage of a matrimonial home and a customary mortgage These types of mortgages as per common law and in Tanzania can be explained as hereunder;

Legal Mortgage

Legal mortgage is a mortgage of the legal interest in land or property.^{xix} It is normally the creature of the statute as opposed to equitable mortgage. The forms of legal mortgage depended on the nature of the title of the property holders. It is created by execution of a transfer deed whereby the mortgagor binds himself to repay the mortgage money on a certain date and transfers the mortgage property absolutely to the mortgagee subject that the mortgagee will

transfer it to him on repayment of the mortgaged money^{xx}. Tenga R.W. & Mramba S.J^{xxi} explain that the mortgagor has the right to redeem the mortgaged property not only in the absence of default but also on default provided he can pay up the amount due before his right is disbarred. The right to redeem the property upon payment of the loan money exists as soon as the mortgage is created and it can be granted, devised or transferred in any manner. In the case of London County and Westminster Bank Limited vs. Tompkins,^{xxii} it was held that a mortgage could be legal mortgage where the legal ownership of the property is transferred to the mortgagee.

Equitable Mortgage

It is called equitable mortgage because of equity. A transaction served by equity, so it is not the creature of the statute but the creature of the equity. It is created by delivering to the lender the documents of title relating to the borrower's land provided there is intention to treat the land as security^{xxiii}. It is regarded as a formal mortgage created by an imperfect means having the same effect as a mere agreement to create a legal mortgage of realty.

In the case of London County and West Minister Bank Ltd vs. Tompkins^{xxiv}, it was stipulated that equitable mortgage is created when there is no transfer of legal interest but inferred by the intention of the parties.

Equitable Mortgage is created where the legal ownership remains vested in the owner or some other person, for example a trustee or first mortgagee. The security can only be enforced under the equitable jurisdiction of the court, which carries it into effect either by giving the creditor immediately the appropriate remedies, or by compelling the debtor to execute a security in accordance with the contract.^{xxv} In the case of Swiss Bank Corporation v Lloyds Bank Ltd,^{xxvi} it was held that;-

“equitable mortgage is created when the legal owner of the property constituting the security enters into some instrument or does some act which, though insufficient to confer a legal estate or title in the subject matter upon the mortgagee, nevertheless demonstrates a binding intention to create a security in favour of the mortgagee, or in other words evidences a contract to do so”.

The consequence of creating an equitable mortgage is that equity will look on that as done which ought to be done.

The concept is historical and it emanates from common law. For many years, England used to have laws (Common law) which were used in common law courts. This was before 1870's where the Courts administered the law from statutes and precedents. However after sometimes the laws seemed to be harsh (laws are harsh, rigid, lack commons sense, have lacunas, etc), hence warranting the establishment of the system that reduced the harshness of the law. It marked the establishment of the court called the Court of Chancery, which administers equity. The court of chancery developed principles and remedies that are equitable remedies.

Legal Charge

A legal charge is a form of a simple mortgage, which does not convey the estate in that the mortgagor simply intends to charge the land for the repayment of the loan advanced. The charge could be legal or equitable^{xxvii}. A legal charge is commonly regarded as a specie of the mortgage for most practical purpose. As opposed to a mortgage which vests an interest to the mortgagee in the secured property, a charge confers no such interest but merely gives the charge certain rights like possession and sale, over the property charged as security for the loan^{xxviii}

MORTGAGE UNDER THE LAND ACT 1999

The enactment of the Land Act, 1999 impacted the law and practice of property as it is the main source of law in the overall administration of land matters. The Act repealed among others, the Land Ordinance^{xxix} and the Land (Law of Property and Conveyancing) Ordinance^{xxx}. It retained the Land Registration Act^{xxxi} as the law governing the registration of land and matters relating to land.

With regard to forms of mortgages, Part X of the Act originally provided for creation of ordinary mortgages, small mortgages, customary mortgages, informal mortgages, and a form of mortgages referred to as lien by deposit of certificate of title. This part of the Land Act was

repealed and in the year 2004 by the Land (Amendment) Act, 2004 which repealed and substituted Part X of the Land Act with a new Part X. The amended provisions changed the forms of mortgages capable of being created in Tanzania. Consequently, the forms of mortgages which can now be created in Tanzania under the Land Act are Legal/formal mortgages, customary mortgages, informal mortgages and lien by deposit of certificate of title.^{xxxii}

Formal Mortgage

It is also called an Ordinary or Legal Mortgage. This is the main form of mortgage under the Land Act, 1999. It is created by an occupier of land under a right of occupancy or lease by executing an instrument in a prescribed form whereby mortgaging his interest in the land or a part thereof to secure the Payment of a debt or some other obligations. In creating this kind of mortgage, one has to use a prescribed form. This is provided under section 113(1) of the Act^{xxxiii} which provides;-

“An occupier of land under a right of occupancy and a lessee may, by an instrument in the prescribed form, with such variations and additions, if any, as the circumstances may require, mortgage his interest in the land or a part thereof to secure the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfilment of a condition”.

This kind of mortgage must be in writing and must be created using an instrument in a prescribed form, which is Land Form No. 40.^{xxxiv} There is also the requirement to follow other formalities like the notification of the commissioner for lands,^{xxxv} and requirement to register the interest.^{xxxvi} According to Subsection 4 of Section 113 of the Land Act, this kind of mortgage takes effect only when it is registered in a prescribed register and a mortgagee shall not be entitled to exercise any of his remedies under a mortgage if it is not so registered.

This kind of mortgage is said to be legal mortgage due to the fact that it is the creature of the law and it requires the observance of the formalities for it to be enforceable.

Informal mortgage

This is another form of mortgage capable of being created under the Land Act, 1999.^{xxxvii} In creating this type of mortgage no special form is needed therefore, the parties may use a simple document by which a property will be charged for payment of money. This kind of mortgage is a creature of section 113(5) (a) of the Act which provides as follows; -

“Nothing in this section shall operate to prevent a borrower from offering and a lender from accepting a written and witnessed undertaking, the clear intention of which is to charge the borrower's land with the repayment of money or money's worth obtained from the lender”.

This means an owner of land can by an instrument create a statutory charge by charging his land, lease or charge secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.

The effect of mortgages created under section 113 (5) (a) of the Land Act is provided under section 113 (6) of the Act which states that the arrangement under Section 113(a) of the Land Act may be referred to as an “informal mortgage”.

Lien by deposits of documents

Previously before 1999 this was the equitable mortgage under the English Common Law. However, with the current position, this kind of mortgage is a creature of the Land Act of 1999, and it can be considered as a legal mortgage. This is created of Section 113 (5) (b) of the Land Act, 1999 and it can be created by a deposit of any of the following documents;

- “(i) a certificate of a granted right of occupancy;
- (ii) a certificate of a customary right of occupancy;
- (iii) a document of a lease;
- (iv) any other document which may be agreed upon evidencing a right to an interest in land; or
- (v) any other documents which may be agreed upon, to secure any payments which are referred to in subsection (1)”.

The section is silent on the requirement of writing which means that a naked deposit is possible. However, in most cases the deposit must be accompanied by a memorandum of deposit thus satisfying the requirements of Section 64(1) (a) and (b) of the Land Act, 1999.

The fact that this kind of mortgage in Tanzania is recognised by the law can be the reason or the fact which prove that the creation of this type of mortgage amounts to legal mortgage. For instance, if you created a mortgage of lien by deposit of documents and you follow the formalities enshrined under the law then it is clear that you are going to have a legal mortgage and not an equitable mortgage. The possibility of having an equitable mortgage under kinds of mortgage established under the Act is minimal. This is because equitable mortgages are normally determined by the court and not the creature of the statute.

Third party Mortgage

This is a kind of a mortgage created by one person in order to secure the debt of another person. This is provided under section 113 (2)^{xxxviii} which provides that; -

“The power conferred by subsection (1) shall include the power to create third-party mortgages and second and subsequent mortgages”.

Third party mortgage can be defined to mean a mortgage, which is created or subsists to secure the payment of an existing or future or a contingent debtor other money or money's worth or the fulfillment of a condition by a person who is not the mortgagor, whether or not in common with the mortgagor.^{xxxix} In this transaction, there are three parties which are, borrower, mortgagor and the mortgagee.

A third party mortgage could be a formal mortgage, informal mortgage, a lien by deposit of document or a customary mortgage, if only created to secure a debt of another person.

Initially, there was no possibility of creating a third party mortgage in Tanzania. It was brought by the amendment to the Land Act made vide the Land (Amendment) Act, 2004.^{xi}

Mortgage of matrimonial homes

Matrimonial home means the building or part of a building in which the husband and wife ordinarily reside together and includes where a building and its cartilage are occupied for residential purposes only, that cartilage and any outbuildings thereon and where a building is on or occupied in conjunction with agricultural land or pastoral land, any land allocated by the husband or the wife, as the case may be, to his or her spouse for her or his exclusive use.^{xli}

When creating a mortgage of matrimonial home there are special conditions that require to be observed. These conditions inter alia include the consent of the applicant's spouse or spouses and duty to ascertain marital status as per section 114 (1) (a) and (b) and section 114 (2) of the land Act respectively.

Mortgage of a matrimonial home including a customary mortgage can be valid only when a document or form used in applying for such a mortgage is signed by, or there is evidence from the document that is has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home, or any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the mortgagor and the spouse or spouses living in that matrimonial home.^{xlii}

The law further gives a responsibility to the mortgagor to disclose that he or she has a spouse or not and upon such a disclosure, the mortgagee shall be under the responsibility to take reasonable steps to verify whether the applicant for a mortgage has or does not have a spouse.^{xliii} However, the responsibility to ascertain the marital status of the applicant for a mortgage and any spouse identified by the applicant shall be discharged if by an affidavit or written and witnessed document, the applicant declares that there were spouse or any other third party holding interest in the mortgaged land.^{xliv}

It is an offence for an applicant to knowingly give false information either by an affidavit or written and witnessed document to the mortgagee in relation to the existence of a spouse or any other third party. Upon conviction, that person shall be liable to a fine of not less than one half of the value of the loan money or to imprisonment for a term of not less than twelve months.^{xlv}

The duty imposed on the mortgagee to ascertain the marital status of the applicant was imposed by the amendments made to the Land Act by Section 8(2) and (3) of Mortgage Financing (Special Provisions) Act,^{xlvi} Before that, the law compelled any party who had an interest over a property to be mortgaged to register a caveat so as to protect his or her interest.^{xlvii} The effect of creating a mortgage over a matrimonial home without obtaining a consent from the mortgagor's spouse was well stated in the case of Idda Mwakalindile vs. NBC Holding Corporation,^{xlviii} where it was provided that;

“Mortgage of matrimonial home if alienated or mortgaged contrary to sub section (1), the estate or interest so created shall be subject to the right of the other spouse to continue to reside in that matrimonial home until the marriage is dissolved. In the instant case, as the marriage is still subsisting, the repercussion is that the interest of the appellant is protected under this subsection of the Act until the dissolution of the marriage”.

In the case of Hadija Issa Arerary versus Tanzania Postal Bank^{xlix} the mortgagor provided an affidavit stating that he is single. Basing on that affidavit, the respondent bank advanced a loan to a third party. After default by the borrower and the mortgagor to pay the loaned money, the appellant alleging to be the wife of the mortgagor, sought for invalidation of the mortgage for alleged lack of her consent. On appeal to the Court of Appeal, it was held that since it was sufficiently proved by a sworn affidavit that the mortgagor was not married and there was no caveat whatsoever registered, then the appellant cannot benefit from the provisions of Section 59 (2) of the Law of Marriage Act, and Section 161 of the Land Act on account of the fact that she did not have a registrable interest in the mortgaged property.¹

Customary mortgage

A customary mortgage is mortgage of a land held under customary tenure. Section 115 (1) of the Land Act allows creation of mortgages over customary right of occupancy, only that the creation and operation thereof must be in accordance with the customary law applicable to the land in respect of which the customary mortgage is created.

FORMALITIES OF CREATING A MORTGAGE

Formalities are there to facilitate transfer of a legal interest or estate i.e. to effect conveyance. These formalities are not static as they change from time to time. If formalities are complied with, one will have a formal mortgage or legal mortgage, and if there is noncompliance, the security will be imperfect. These formalities can be categorized as; formalities which go to the validity of the security itself in which case if not complied with the security will be invalid. The other formalities are those, which make the transaction enforceable in which case failure to comply with renders the security to be unenforceable. There are also formalities, which if not complied with renders the transaction inoperative, and those, which if not complied with render the transaction ineffectual. In Tanzania, there are three major formalities as discussed herein below.

The requirement of writing

According to Section 64(1) (a) and (b) of the Land Act, a contract for a disposition of a right of occupancy or any derivative right in it or a mortgage is enforceable in a proceeding only if the contract is in writing or there is a written memorandum of its terms, and the same is signed by the party against whom the contract is sought to be enforced. These formalities were introduced in 1999 by the Land Act. The section is general as it refers to all dispositions. Furthermore, the writing requirement is also provided under Section 113 (1) of the Land Act, which requires that a creation of a mortgage must be done by an instrument in a prescribed form with such variations and additions, if any, as the circumstances may require. As such the law requires the disposition of mortgage to be in writing and signed by the parties so as to be enforceable by law. However, the requirement of writing simply affects enforceability of the transaction as it does not go to the validity of the transaction.

Notification

The law requires the commissioner for lands to be notified of any disposition intended to be done on an interest in land failure of which the disposition becomes void.^{li} The law further requires the commissioner of land to endorse the notification with his signature and official seal and deliver it to the registrar of titles for registration.^{liii} The registrar of titles is not allowed to register unless he has received an endorsed notification from the commissioner for land.^{liiii} If

the registrar registers the mortgage without there being a notification to the commissioner for lands, the mortgage will be void.

Registration

The requirement to register the mortgage of right of occupancy is provided under section 8 and 41(2) of the Land Registration Act^{liv}. The Land Act under section 113(4) states that the mortgage of land takes effect only when it is registered in the prescribed register, if not registered the mortgagee shall not be able to exercise any of his remedies under that mortgage. This means that for a disposition of land to be effectual, it has to be registered in accordance with the laws relating to the registration of instruments affecting land in respect of which the disposition has been made.^{lv} According to Section 113(4) of the Land Act, a mortgage other than that registered under Land Registration Act (CAP 334), shall take effect only when it is registered in a prescribed register, whereby a mortgagee is not entitled to exercise any of his remedies under that mortgage if it is not so registered. Non-observance of this requirement does not invalidate the mortgage, rather it renders the mortgage created to be unenforceable and inoperative. A similar position was held in the case of **Abualy Alibhai Aziz vs. Bhatia Brothers LTD**,^{lvi} a case which was decided before coming into force of the Land Act. The dispute was on sale of land where the court categorized three groups of case namely; unenforceable and inoperative, valid between the parties but unenforceable, and void and unenforceable. The court took the view that a transaction which is said to be void, unenforceable or inoperative for the failure to comply with conditions shall not be void and therefore valid and may be enforced if by enforcing it, it will not prejudice the interests of the superior landlord.

The Land Registry the institution that is involved in administration of registered land. Any disposition of land which is registered must be registered in the land registry to be effective, enforceable and operative in the eyes of the law.

CONCLUSION

As one can observe, the mortgages are very important in the economy as they secure the moneys advanced to borrowers by lenders. An efficient legal regime on mortgages is important in order to ensure the creation, regulation and enforcement of mortgages is done in a manner that protects the rights of the lenders and the borrowers and or mortgagors.

LIST OF CASES

Austack Alphone Mushi versus Bank of Africa Tanzania Limited and another, Court of Appeal of Tanzania at Mbeya Civil Appeal Number 373 of 2020 (unreported)

Hadija Issa Arerary versus Tanzania Postal Bank, Court of Appeal of Tanzania at Iringa, Civil Appeal Number 135 of 2017 (unreported)

Idda Mwakalindile vs. NBC Holding Corporation and another, Court of Appeal of Tanzania at Mbeya, Civil Appeal Number 59 of 2000 (unreported)

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¹ <https://www.encyclopedia.com/social-sciences-and-law/law/law/mortgage> accessed on 15/11/2021

ENDNOTES

ⁱ See Section 113 (1) of the Land Act CAP 113 R.E. 2019

ⁱⁱ CAP. 113 R.E. 2019

ⁱⁱⁱ Under Section 126 of the Land Act, 1999

^{iv} <https://www.encyclopedia.com/social-sciences-and-law/law/law/mortgage> accessed on 15/11/2021

^v as defined by the Section 2 of the Land Act, Cap 113 R.E. 2019

^{vi} Brayan Garner, (2004), *Black's Law Dictionary* 8th Ed. Pg 3198

^{vii} Tenga R.W. & Mramba S.J, *Conveyancing and Disposition of Land in Tanzania: Law and Procedure*, Law Africa Publishing (K) Ltd, Nairobi, 2019, page 181

^{viii} [1899], Ch D at page 474.

^{ix} (1918) 1 KB 515 at page 522.

^x Court of Appeal of Tanzania at Mbeya, Civil Appeal Number 373 of 2020 (unreported) at page 10

^{xi} Section 112(2) of the Land Act CAP 113 R.E. 2019

^{xii} Section 112(1) of the Land Act CAP 113 R.E. 2019

^{xiii} Section 2 of the Land Act Cap 113 R.E. 2019

^{xiv} Section 112 (2) of the Land Act CAP. 113 R.E. 2019 defines a third-party mortgage as a mortgage, which is created or subsists to secure the payment of an existing or future or a contingent debt or other money or moneys' worth on the fulfillment of a condition by a person who is not the mortgagor, whether or not in common with the mortgagor.

^{xv} See Section 113(1) of the Land Act, CAP. 113 R.E. 2019

^{xvi} Section 112 (2) of the Land Act Cap 113 R.E. 2019

^{xvii} Section 2 of the Land Act Cap 113 R.E. 2019

^{xviii} Tenga R.W. & Mramba S.J. *op cit* , page 182

^{xix}George Nathan Mwaiondola, (2007), *The Modern Law Of Mortgages in Tanzania, The Role of the Land Act of 1999*, A thesis submitted to the School of Law of the University of Birmingham. At pg 92.

^{xx}Tenga R.W. & Mramba S.J. *loc cit*

^{xxi}*Ibid*, page 183

^{xxii} [1918] 1 KB 528.

^{xxiii} Tenga R.W. & Mramba S.J. *loc cit*

^{xxiv} *Supra* page 528

^{xxv}*Ibid*.

^{xxvi}[1982] AC 584 at 594.

^{xxvii} Tenga R.W. & Mramba S.J. *loc cit*

^{xxviii} Tom O. Ojienda, *Op Cit*, pp163-164

^{xxix} Cap. 113 R.E 2019

^{xxx} Cap. 114 R.E. 2019

^{xxxi} Cap. 334 R.E. 2019

^{xxxii} Section 113 of the Land Act, 1999

^{xxxiii} CAP 113 R.E. 2019.

^{xxxiv}GN No. 355 of 2009(Land (Mortgage Financing) Regulations of 2009)

^{xxxv}Section 36 of the Land Act.

^{xxxvi}Section 41(1) of the Land Registration Act Cap 334.

^{xxxvii} Section 113 (5) (a)

^{xxxviii} Of the Land Act, 1999

^{xxxix}Section 112(2) of the Land Act Cap 113 R. E 2019.

^{xl} Act No. 2 of 2004

^{xli}*Ibid*.

^{xlii} See section 114(1)(a) & (b) of the Land Act, CAP 113 R.E. 2019

^{xliii} Section 114(2) of the Land Act, CAP 113 R.E. 2019

^{xliiv} Section 114(3) of the Land Act, CAP 113 R.E. 2019

^{xliiv} Section 114(4) of the Land Act, CAP 113 R.E. 2019

^{xliiv} Act Number 17 f 2008

^{xlvii} Section 59(1) of the Law of Marriage Act, 1971

^{xlviii} Court of Appeal at Mbeya, Civil Appeal No. 59 of 2000.

^{xlix} Court of Appeal of Tanzania at Iringa Civil Appeal Number 135 of 2017 (unreported)

^l See page 12 of the typed judgement

^{li} Section 36(1) & (3) of the Land Act CAP 33 R.E. 2019

^{lii} Section 36(4) of the Land Act CAP 33 R.E. 2019

^{liii}Section 36(5) of the Land Act CAP 33 R.E. 2019

^{liv} CAP 334 R.E 2019

^{lv}Section 62(2) of the Land Act Cap 113 R.E. 2019

^{lvi} [2000] T. L. R 288.