

MORTGAGE OF A MATRIMONIAL HOME IN TANZANIA: A REFLECTION OF THE LEGAL OBLIGATIONS AND CHALLENGES

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ABSTRACT

Mortgage of matrimonial home refers to the use of a home in which a married couple have interests in to secure a loan. This proceeds from the increasing willingness of banking and other financial institutions to advance loans to potential borrowers and the ever-increasing demand of people to borrow money from such institutions through the mortgage business. Such a transaction comes in with a multitude obligation on both sides.

This article, thus, probes the legal obligations involved in such transactions and then considers the challenges that exist in both the creation and administration of mortgages of matrimonial homes in Tanzania. The choice of the theme is instigated by the author's awareness of the challenges that face parties to mortgage transactions. The study takes the approach of reviewing literature and the laws and the practice. The study finds that despite the good intentions of the mortgage sector, some legal requirements to be observed and processes to be followed in executing mortgage transaction are cumbersome. It is an appeal from the author that the relevant state organs should revisit and improve problematic mortgage laws in the country so as to get rid of the problem. Among others, this piece suggests that consent of the spouse required by the law should not only be of the one living in the matrimonial home but any legally recognizable.

There being a push to develop strong and efficient mortgage finance in the country so it is hoped that this article will trigger the necessary positive changes in the identified problematic areas on the aspect of the relevant laws in Tanzania.

Keywords: Mortgage- Matrimonial Home-Mortgage of Matrimonial home- Mortgage Loan

CONCEPTUALISATION OF THE KEY TERMS AND PHRASES

Mortgage

The term mortgage is variously defined: Garner (ed.) in the Black's Law Dictionary defines it as a lien against property that is granted to secure an obligation (such as a debt) and that it is extinguished upon payment or performance according to stipulated terms.ⁱ Aiyer on his part identifies a mortgage as the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability.ⁱⁱ Of most relevant in the present context; the Land Act, 1999 conceives a mortgage as an interest in a right of occupancy or a lease securing the payment of money or money's worth or the fulfillment of a condition and includes a sub-mortgage and the instrument creating a mortgage.ⁱⁱⁱ

However, despite the fact that all the above definitions convey the same theme, yet because of the legal language used it may be difficult for a non-lawyer to comprehend what exactly a mortgage is. In a more simplified expression, therefore, a mortgage can be said to mean a business transaction in which interest mostly in land, is temporarily transferred by a borrower to and held by a money lender (the mortgagee) as a security for a debt, usually in money form, that he has advanced to the money borrower (the mortgagor).

In the light of the above view, a mortgage on the part of the mortgagor is a security or an assurance made to the lender by the borrower that in case the borrower defaults on his obligations, the lender may resort on the security and get back his money by realizing it.^{iv} On the part of the mortgagee, a mortgage serves as an assurance for a debt held on the condition that this interest will be returned to the owner when the terms of the mortgage have been satisfied. The mortgage transaction is therefore premised on the assumption that the transferred interest or estate will be re-conveyed after the payment of the money owed or performance of the conditions upon which the mortgage is created and not otherwise,^v thus, a popular saying “*once a mortgage always a mortgage*”. This position is plainly made clear by the Land Act, 1999 where section 116 (1) states:

“...mortgage shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the mortgagor to the mortgagee...”

In Tanzania, the mortgage transactions are done on the basis of powers conferred by the Land Act, 1999 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 fulfillment of a condition”.^{vi} (Emphasis supplied)

Going by what has been stated above, a mortgage can be created by the owner of land and the lessee. Furthermore, in the name of a third-party mortgage, a person who is not a mortgagor can create a mortgage for the interests of the mortgagor.^{vii}

Matrimonial Home

A matrimonial home is defined to mean a building or part of a building in which husband and wife ordinarily reside together. It also includes all the land adjacent to that building.^{viii} A close scrutiny of this definition discloses that there are important ingredients that should be considered when conferring a property status of matrimonial home. These ingredients include the following: first, presence of matrimonial relationship (marriage); second presence of a building or part of the building and third the physical residing of the husband and the wife in that building. The philosophy behind the concept of matrimonial home is to provide for protective machinery on which spouses can base their claims in case disposition of homes on which they have interests is done without their approval.

It should also be clear however that, a matrimonial home is a narrow aspect of matrimonial property. In its widest interpretation, matrimonial property includes any property which belongs to the matrimony family. The disposition of matrimonial property to another person requires consent of the other spouse(s).

Mortgage of a Matrimonial Home

Mortgage of a matrimonial home is premised on the fact that spouses have a home which they can mortgage. In this case, mortgage of a matrimonial home entails the use of a matrimonial home to secure a loan from a source, which can be a bank, a financial institution or any other entity including an individual. Mortgage of a matrimonial home is done on the basis that the law allows a matrimonial home to be used as a security (mortgaged) just like any other security provided that the power is exercised in accordance with the law.

A look at the law on mortgage business reveals that mortgage of a matrimonial home is more regulated than other forms of mortgage transactions involving non matrimonial homes. This has been intentionally designed to protect the interests of the weaker party in the marriage institution. The basis of the said protective measure being to the effect that where any estate or interest in the matrimonial home is owned by the husband or the wife, anyone of them shall not, while the marriage subsists and without the consent of the other spouse, alienate it by way of mortgage or otherwise.^{ix}

Therefore, because of this established legal position any disposition including by way of mortgage is invalid if the same tampers with the interests of the other spouse and without his/her consent. Laws in this regard, thus set out minimum legal requirements that are to be met so as to assert that the interests of both spouses are protected, thus, unless the legal requirements stipulated in the laws namely the Land Act 1999 (as amended by the Land (Amendment) Act, 2004 and the Mortgage Financing (Special Provisions) Act, 2008,); the Land Regulations, 2001, the Land Regulations, 2009, the Mortgage Regulations, 2006, the Land (Procedure for Mortgage of Land) Regulations, 2019; the Law of Marriage Act, 1971, and other recognized legal principles set by case laws relevant on the issue are complied with, no valid mortgage of matrimonial home may be executed in Tanzania.

OBLIGATIONS IN THE CREATION AND ADMINISTRATION OF MORTGAGE OF A MATRIMONIAL HOME

Laws in Tanzania set some minimum standards by which mortgage applicants have to comply with; both prior and after the granting of mortgage advances. These minimum standards, otherwise called obligations, are both legal and procedural and they are binding upon the mortgagor and the mortgagee as well. These obligations in their varied types, aim at ensuring that none in a matrimony relationship, neither the husband nor the wife, is to suffer at any stage of the transaction because of the prejudicial or malpractice of the other spouse. The obligations include:

Obligation by the Mortgagor to Disclose True Information Regarding Marital Status

The law places on the part of the mortgagor an obligation to disclose all the facts in his possession regarding his marital status. It provides in part that “...it shall be the responsibility of the mortgagor to disclose that he has a spouse or not...”^x

The essence for this obligation is to enable the potential mortgagee to satisfy himself that the person offering the property as a security shall have the power to transfer the property.^{xi} It should be known as well that upon failure to repay the loan then it is only such owner who will be made to suffer through remedial means which the mortgagee may opt to pursue to recover the amount overdue. The failure to abide with this statutory requirement on disclosing marital status may render the mortgagor criminally liable.^{xii} The wording of the law is that:

“An applicant commits an offence who, by an affidavit or a written and witnessed document, knowingly gives false information to the mortgagee in relation to existence of a spouse or any other third party and, upon conviction 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.”^{xiii}

The mortgagor’s duty of disclosing their marital status prior to the granting of a mortgage loan observed in the foregoing provision is to be express, which means it has to be done either by words of mouth or reduced into writing^{xiv} example by an affidavit or by a witnessed written document.^{xv}

Obligation of the Mortgagee to Verify the Marital Status of the Mortgage Applicant

We have seen that the mortgagor is required by law to disclose his marital status. Upon doing so the duty then shifts to the mortgagee to prove the truthfulness of the information given to him by the mortgagor (applicant). The express words of the law are: “...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.”^{xvi}

This requirement of the mortgagee to verify the information by the mortgagor is necessary because dishonest mortgagors may decide to cheat so as to facilitate the easy securing of the mortgage loan. So, for this case, it is important for the mortgagee to take steps to ascertain the truthfulness of what is said by the applicant (the mortgagor).

It is the pronouncement of the law that among other methods, the mortgagee can discharge his duty of verifying the information given by the mortgagor by requiring the applicant (mortgagor) to swear by way of an affidavit confirming his marital status; and by doing that, then, the mortgagee will have relieved himself from his duty of verifying the marital status of the applicant. The wording of the law thus goes:

“A mortgagee shall be deemed to have discharged the responsibility for ascertaining the marital status of the applicant and any spouse identified by the applicant if, by an affidavit or written and witnessed document, the applicant declares that there was spouse or any other third party holding interest in the mortgaged land.”^{xvii}

Obligation to Ensure Authentication of the Application Documents

The documents used to apply for a mortgage loan must be signed or assented to. The importance of signature is very obvious, everywhere. In law, it signifies one’s readiness to pursue an act and acceptance of liability of an act thereto.^{xviii} In the mortgage transaction, the law requires that the application document be signed by not only the mortgagor but also his/her spouse or spouses, if any. The law to that effect states:

“A mortgage of a matrimonial home including a customary mortgage of a matrimonial home shall be valid only if any document or form used in applying for such a mortgage homes is signed by, or there is evidence from the document that it

has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home.’’^{xix}

With an understanding of the fact that sometimes it may not be very easy to secure a signature of a spouse of the applicant, the law alternatively and as a substitute for the signature of the mortgagor and spouse(s) requires the evidence from the documents that the application has been assented to.

The aforesaid requirement, therefore, obligates the lender not only to conduct a search in the land registry but also to make enquiries whether the borrower’s spouse has consented to the mortgage or not.^{xx} The creed of the aforesaid legal requirement is to make sure that no mortgage of any matrimonial home is created without the consent of the other spouse. Each spouse has to show his/her willingness to get financial advances and his/her readiness to face the consequent measures against him/her in case of default to repay the loan.

Obligation to Ensure Authentication of the Documents Used to Grant Mortgage Loan

The law also obligates the documents used to grant the mortgage to be signed by the mortgagor and his/her spouse or spouses. In the absence of such signatures alternatively there must be proof from the documents showing that the spouse or spouses to the mortgage applicant has/have consented to such a transaction. The law stipulates:

‘‘A mortgage of a matrimonial home including a customary mortgage of a matrimonial home shall be valid only if 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’’^{xxi}.

The purpose of this requirement is to make sure that the spouse who signs the application forms is really the one to receive the applied loan. It also serves to assist the spouse of the applicant to know that the money applied is now granted and so as an interested party to the transaction, the spouse can now seat with the mortgage applicant and together plan and or implement the purposes for which they requested the financial advances.

Obligation as to Place and Proper Application of the Loan Money

Recently created obligations in the mortgage business are related to the place of investment as well as the utilization of the mortgage money. The mortgagor is required to declare to the commissioner that the money secured by a right of occupancy in Tanzania shall be invested in Tanzania. This requirement disregards the source of the mortgage money; be it from a foreign bank or local bank.^{xxii} In respect of the utilization of the mortgage money; the law requires the mortgagor to submit a report on not only how the mortgage money is utilized to develop the mortgaged land but also the manner in which the mortgage money is utilized.^{xxiii} False declaration of a place of investment and submission of report with false declaration is a punishable offence.^{xxiv}

Obligation to Advise the Mortgagor on the risk of the undertaking

Entering into a mortgage commitment is likely to be a big life's undertaking. Because of the importance of this commitment, it is very crucial to get it right. To correctly do this, it is sensible and advisable to consult an independent mortgage advisor. In relation to this, the banker (mortgagee) has a duty to advise the mortgagor to seek independent adviser on the risk of the undertaking they are about to enter.

CHALLENGES IN THE CREATION AND ADMINISTRATION OF MORTGAGE OF A MATRIMONIAL HOME

The Land Act, 1999 which basically is the law regulating mortgage transactions in Tanzania has been amended several times. For instance, in the year 2004 an amendment was done affecting Part X of the Act. This part specifically contains provisions relating to mortgages. Further, in 2008 other developments were made vide the Mortgage Financing (Special Provisions) Act, 2008, this time amending various laws including the Land Act, 1999, the Land Registration Act^{xxv} and the Civil Procedure Act.^{xxvi} The 2008 Act came with regulations No. 355 which affects mortgage. Of recent development is also the Land (Procedure for Mortgage of Land) Regulations, 2019. Despite all these developments aimed at removing some deficiencies in the law in so far as the mortgage of a matrimonial home is concerned, still the

law is not without problems; and these problems pose several challenges to the stakeholders of the mortgage business. Some of the challenges are articulated herein below:

The Aspect of Acquisition of and the Rights to Property

The definition of matrimonial home we have just seen does not explain or clarify whether the manner of acquisition of a home affect or not the status of a home for purposes of it being regarded as a matrimonial home. In other words, and which seems to be the implication of this definition is that the home may be acquired by only one spouse before or during the union and yet be regarded as a matrimonial home provided husband and wife reside in it.

The above situation causes the law to conflict with the established principle both in law and equity which demands that one's efforts towards acquisition of assets be recognised and used in assessing the rights of the owner of the property; that is what to do with the property, when and how.

It is, however the view of this paper therefore that, the rights accorded to spouses on of matrimonial home have an effect on the property rights of owners.

The Issue of 'Residing in that Matrimonial Home'

In defining a matrimonial home, the element of residing together in the matrimonial home by the husband and wife comes in. It states "matrimonial home" means the building or part of a building in which the husband and wife ordinarily reside together."^{xxvii}

The implication of the foregoing law provision is that for a property to be a matrimonial home the spouses must be living together in that building. This problem was noted even by Muro, J. (as he then was) in *Paula Abdullah v. Mohamed Norman bin Abdullah*,^{xxviii} when he remarked, "the Act (the law) seems to assume that the husband and wife will always be sharing a matrimonial home".

The problem that the above view presents is, when spouses do not reside in the same building; this means such house will not be accorded a status of matrimonial home despite it being acquired jointly by the spouses. Such a situation can be observed for example, in polygamous marriages in which case (and in most cases) female spouses will be in separate roofs so, does

this mean that the spouse living under another roof should be blocked from claiming a right over the premise in which he or she does not reside? And, does this mean also that the home would cease to be matrimonial home in respect of that other spouse? Even if she is the only one? or, in case one spouse is imprisoned,^{xxix} does the home cease to be a matrimonial home? This state of affair presents less than what is desired.

The Doctrine of Separate Property in Matrimonial Relationship

The right over property legally obtained is manifested by one exercising his property rights freely. This right gives the owner such rights of use, to dispose off and even to destroy the property owned. In relation to this, the law also recognises separate property ownership within matrimonial relationship. It is provided that:

‘‘Where during the subsistence of a marriage, any property is acquired in the name of the husband or of the wife, there shall be a rebuttable presumption that the property belongs absolutely to that person, to the exclusion of his or her spouse’’^{xxx}

And also, the law further provides that:

Where, during the subsistence of a marriage, either spouse gives any property to the other, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the donee^{xxxi}.

This doctrine seems to be interfered with the position set by the definition of a matrimonial home provided for in section 112 (2) b of the Land Act that even land allocated by the husband or the wife as the case may be, to his or her spouse for his or her exclusive use, will for the purposes of mortgage entitle the other spouse with interests which can encumber the other spouse’s interest.

The impact of the above position is that leave alone, it being in conflict with the law and practice recognizing separate property ownership in matrimonial relationship, it also denies the use rights of the spouse who exclusively owns property in the relationship.

Requirement of a Signature or Consent of a Spouse living in ('that Matrimonial Home') spousal consent

It is the requirement of the law that for a mortgage of a matrimonial home to be regarded as valid, there must be consent of a spouse living in the matrimonial home which is the subject of mortgage. It provides that that mortgage shall be valid if:

“any document or form used in applying for such a mortgage is signed by, or there is evidence from the document that it has been assented to by the mortgagor and the spouses or spouses of the mortgagor ...;” 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 ...”^{xxxii}

In our opinion, the issue of consent and the way it is structured may pose problems as it seems to preclude spouses not living as by the wording of the section ‘in that matrimonial home’ from signing or consenting to a mortgage transaction that their partners are desirous of engaging in. Provision of the same effect is as well observable when it comes to signatures/consent of a spouse in so far as the document of granting mortgage finance is concerned.

Verification of Mortgagor’s Marital Status by the Mortgagee

In the 2004 land amendments, the responsibility to ascertain the marital status of the mortgagor was completely placed on the mortgagee.^{xxxiii} The 2008 amendments, however, shifted such duty to the mortgagor. The mortgagee was left with less responsibility of verifying the truthfulness of the information by the mortgagor. The law provides:

‘it shall be the responsibility of the mortgagor to disclose that he has a spouse or not and upon such 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.’^{xxxiv}

The move to shift the burden to prove the marital status of the mortgagor from the mortgagor himself to the mortgagee is good but it creates doubts as to the effectiveness of verification by the mortgagee. The doubts are grounded on the fact that the law does not empower the

mortgagee to search for information elsewhere. In our view, by only saying it is the mortgagee's responsibility to take reasonable steps to verify marital status is only to add unnecessary and impracticable duties to the mortgagee, these are duties that he can hardly perform.

The mortgagee will have to ease things; he will only rely on information collected from the mortgagor himself; the information which will somehow match those offered by the mortgagor himself in the mortgage application forms.

The Inferior Position Held by Women in African Societies

Laws empower either of the spouses to protect interests capable of being protected in situations where such interests are at risk of being interfered. They provide that such interests can be protected by way of caveat, caution or otherwise.^{xxxv} No doubt, this law provision is much intended to protect the weaker party in the matrimonial relationship; the female spouse.

However, on the other side we learn from religious and customary teachings that husbands should love their wives and wives should respect their husbands. For example, an extract from the Christian Holy bible reads:

“A Wife should put her husband first, as she does the Lord. A husband is the head of his wife, as Christ is the head and the Savior of the church, which is his own body. Wives should always put their husbands first, as the church puts Christ first. A husband should love his wife as much as Christ loved the Church and gave his life for it”.^{xxxvi}

A provision from the Muslim Holy Quran also insists on wives to love and respect their husbands.^{xxxvii} Respect in this context means more and above semantic meaning of respect but being submissive, fearful and compliant of their husband's instructions.

Because of these teachings and many other similar African customary norms, we observe various behaviors displayed by female spouses; they are to be obedient and submissive to their husbands. This situation has made women unable to challenge whatever decision is intended to be executed by their husbands,^{xxxviii} mortgaging of matrimonial home without their consent being one of them. So, even the right given to female spouses to protect interests over the

matrimonial home as seen herein above is very difficult to be exercised by them because of the inferior positions that they have. This is caused by religious, family and customary teachings as we have just seen. Male spouses because of the female's behaviour seen above do fearlessly mortgage matrimonial homes without seeking consent from their wives or sometimes use undue influence to secure their consent knowing that they cannot openly come out and challenge such transactions.

Titles of Lands Ordinarily Being in the Names of Male Spouse (s)

The notion of men being heads of families has partly made it a custom that all the properties of the family are bought and or registered in the male spouse's personal names. A matrimonial home being not exceptional to that they are in most cases registered in the male spouse's sole names. It is very common to find that a house belongs commonly to spouses on the basis of being acquired by 'joint' efforts of both spouses but bearing the names of husband only in the circumstance it is very difficult to prove with certainty as to whether or not the mortgage applicant is married or not as all property (security) will bear his personal name only and as expected he will claim to be not married. In *Mwakandilile v. NBC Holding Corporation*^{xxxix} the husband mortgaged a house registered in his sole name without the spouse's consent. In this case, the court was of the view that the first respondent, the mortgagee could in no way have known of the interests of the female spouse considering that the house was in the sole name of the husband; the mortgagor. In another case of *Hadija Issa Arerary v. Tanzania Postal Bank*,^{xl} the appellant also lost the case just because the title deed was in the sole name of the husband. The court said the respondent could have not known that the mortgage applicant was married considering that he swore an affidavit that he was single.

In another recent case, *Samwel Olung'a Igogo and two others v. Social Action Trust Fund and others*,^{xli} the two objectors (female spouses) claim to have their joint efforts recognized in the acquisition of the matrimonial home subject of attachment failed. The court's reasoning was that titles to such matrimonial home are in the mortgagor's names only, and that, if there were any joint efforts amongst the spouses such a thing could have been entered in the land register.

Regardless of the challenging situation in protection of the victims' rights, however, in very exceptional cases women have stood firm to defend and protect their rights. An example can be drawn from the case of *Kivuitu v. Kivuitu*^{xlii} where the husband's desire and attempt to

register the jointly acquired matrimonial home in his sole name failed. This failure was possible because the wife was bold enough to challenge such a move. However, it should be understood that the strength shown by this female spouse was unique as very few women can manage to do that.

Matrimonial Homes are Not Registered in that sense as Such

It is clear that as per the laws, in Tanzania, a matrimonial home is only a place where a married couple resides, and there is never a legal requirement that it should be registered as a matrimonial home as such, (though a matrimonial home which is acquired by joint efforts of the spouses can be registered in the land register).^{xliii} So, in defining matrimonial home generally, the issue of ownership of the property is of no importance. What makes an asset a matrimonial home is only the interests which are shared by the spouses in the premises; the interest which in case a spouse has no contribution in its acquisition, is made by his or her living in it or prospects of living therein for a long time.

So proceeding by this fact, it goes even without saying that it is possible for a matrimonial home to solely be a property owned by one party in a matrimony relationship, either a husband or a wife in which case therefore, it is possible that one party who is not the owner of the premise to regard his or her being in the premise as only a mercy of the owner and thus for him /her as a human being it is not easy to object whatever use of the premise the owner intends to make, mortgaging it being one of them.

Obligation as to Place and Proper Application of the Loan Money Hampered by Non formalized Property Rights

In Tanzania, most of properties are not formalized. So, majority of properties which may be used to secure mortgage loans are not in the records. A good example is customary land which as per the law can be one of the mortgage properties. So, on the basis of the foregoing, it will be difficult to obligate the mortgagor to report about the utilization of the mortgage money to have gone to develop the mortgage property and the authorities to ascertain the truthfulness of the report.

CONCLUSION

From the discussion and observations made above and basing on the fact that mortgaging business is advantageous to both the mortgagee and the mortgagor as while it enables the mortgagor to secure financial advances, it on the other side, enables the mortgagee to advance financial loans to the mortgagor with maximum security, therefore for the purposes of improving the business the following recommendations are offered:

First, the law should not insist that consent and signatures of the spouse should necessarily be of the spouse living in that matrimonial house. Second, there should be a legal requirement that matrimonial homes must be registered as such to enable mortgagees easily search from the registrar as to whether a security proposed by the mortgage applicant is a matrimonial home or not. Third, there should be a public education to sensitize women and make them confident with powers to object to their husbands' action to mortgage matrimonial homes in case they are not happy with the move.

Having addressed the aforesaid, it is hoped that the challenges that face the mortgage regime (creation and administration) in Tanzania to a great extent will be addressed. Until these are worked on, the mortgage obligation will still remain obligations without possibility.

ENDNOTES

ⁱGARNER, B., (ed.), (2004), *Black's Law dictionary*, 8th Edn., Dallas Texas. p. 1031.

ⁱⁱAIYER, P., (2004), *the Law Lexicon*, 2nd Edn., New Delh India, Wandhwa and Co. Nagpur. p. 1257

ⁱⁱⁱSection 2.

^{iv} <http://www.businessdictionary.com/definition/mortgage.html> (visited on 23.01.2011).

^vMWAISONDOLA, G., (2007), *The Modern Law of Mortgages in Tanzania, the Role of the Land Act, 1999*, PhD thesis. p. 187.

^{vi}Section 113 (1), of the Land Act, Cap.113.

^{vii}Section 112 (2) and (b) of the Land Act, 1999.

^{viii}Section 112 (2) of the Land Act, Cap. 113 and section 2 of the Law of Marriage Act, Cap. 29.

^{ix}Section 59 of the Law of Marriage Act, *op. cit.*

^x Land Act, 1999, section 114 (2).

^{xi}The law states that it is an occupier of land under a right of occupancy and a lessee who can create mortgage. See section 113 (1) of the Land Act, *op. cit.*, see also *Zakaria Barie Bura v. Theresia Maria John Mubiru* (1995) T.L.R. 211.

^{xii}The remedies that are available to the mortgagee to recover his money, includes to appoint a receiver of the income of the mortgaged land, to lease the mortgaged land or where the mortgaged land is of a lease, sub-lease the land, to enter into possession of the mortgaged land and to sell the mortgaged land. See section 126 of the Land Act, *op. cit.*

- ^{xiii}Section 114 (4).
- ^{xiv}Ibid, Section 114 (2).
- ^{xv}Ibid, See section 114 (3).
- ^{xvi}Ibid, Section 114 (2).
- ^{xvii}Ibid, Section 114 (3).
- ^{xviii}For example, section 23 of the Bills of Exchange Act, Cap 215 is given a free interpretation to mean ‘no signature no liability’.
- ^{xix}Section 114 (1) (a) of the Land Act, 1999.
- ^{xx}*Samwel Olung’a Igogo and two others v. Social Action Trust Fund and others* (2005) T.L.R. 343.
- ^{xxi}Section 114 (1) (b) of the Land Act, 1999.
- ^{xxii} Regulation 5 (1) the Land (Procedure for Mortgage of Land) Regulations, 2019.
- ^{xxiii} Ibid, Regulation 7(1) (2).
- ^{xxiv} Ibid, Regulation 9 (a) (b).
- ^{xxv}Cap. 334.
- ^{xxvi}1966 Cap. 33.
- ^{xxvii}See section 112 (2) of the Land Act, 1999 and section 2 of the Law of Marriage Act, *op. cit.*.
- ^{xxviii}High Court of Tanzania at Dar es salaam, Matrimonial Cause No. 3 of 2001. (Unreported).
- ^{xxix}A good example can be seen in *Leons Challamila v. Mayalla Edward Masunga*, High Court of Tanzania at Dar es Salaam, Civil Appeal No. 150 of 1999 (unreported). In this case while the husband was serving his sentence in prison the wife disposed off the premise jointly acquired. When the matter was brought to the attention of the Court it was held that no spouse can dispose of matrimonial property without consent of the other.
- ^{xxx}Section 60 of the Law of Marriage Act, 1971.
- ^{xxxi}Ibid, Section 61.
- ^{xxxii}Section 114 (1) (a) and (b) of the Land Act, 1999.
- ^{xxxiii}See section 114 (2) of the Land Act, 1999.
- ^{xxxiv}Ibid, Section 114 (2).
- ^{xxxv}Section 59 (1) of the Law of Marriage Act, *op. cit.*, see also *Hadija Mwere v. Ally Mbaga*-High Court of Tanzania at Mwanza, Civil Case No. 40 of 1995 (unreported) in which Lugakingira, J. (as he then was) insisted on the right of a spouse to register a caveat in respect of matrimonial home so as to protect her interests, Lugakingira, J. calls this spouse ‘a prudent spouse.’ Holding this view is also the case of *Idda Mwakalindile v. NBC Bank Corporation and another*, Civil Appeal No 59 of 2000 (Un Reported).
- ^{xxxvi}Ephesians 5:22-24.
- ^{xxxvii}*Suuratil nisaai*.
- ^{xxxviii}This inability of females to challenge their husbands’ decisions is what Justice Kalegeya calls it a ‘handicap.’ See *NBC LTD v. Ms Konje Mult Traders Co. LTD and two others*, High Court of Tanzania at Dar es Salaam, (Commercial Division) Commercial case No. 284 of 2002 (unreported)
- ^{xxxix}(2001) 1 E.A. 148.
- ^{xl} Land Appeal No 135 of 2017 (CA) Unreported.
- ^{xli}(2005) T.L.R. 343.
- ^{xlii}(1991) E.A.L.R. 271.
- ^{xliiii}See *Samwel Olung’a Igogo and two others v. Social Action Trust Fund and others* (2005) T.L.R. 343.