

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND CASE NO. 25 OF 2017

**CELINE EPHRAIM NGAHUGHA.....PLAINTIFF
*VERSUS***

DIAMOND TRUST BANK.....1ST DEFENDANT

**JOYCE DONALD KIMARO t/a
FIFTY FIFTY SUPER SEMBE SUPPLIES.....2ND DEFENDANT**

MAJEMBE AUCTION MART LTD.....3RD DEFENDANT

E-FM COMPANY LIMITED.....4TH DEFENDANT

JUDGMENT

Date of Last Order: 18/06/2021

Date of Judgment: 23/06/2021

E. B. LUVANDA, J.

The plaintiff above mentioned is suing the defendants mentioned above for a declaratory order that the public auction which was carried on 22/4/2017 in respect of property plot No. 150 block B, Tegeta area Kinondoni Municipality be declared null and void for selling the property below the market value and for lack of proper procedure of terminating the contract; permanent injunction to restrain all defendants by themselves or their agents or otherwise however from interfering with the plaintiff's lawful occupation of the suit land; general damages a sum of Tsh 20,000,000.00; costs and other reliefs the court may deem just to grant.

Mr. Charo Shogholo learned Counsel and Ms. Shael Richard learned Advocate are representing the plaintiff, Mr. Dunstan Kaijage learned Advocate and Mr. Abdon Rwegasira learned Advocate appeared for the first and third defendants and Mr. Stocki Joakim learned Counsel appeared for the fourth defendant. Meanwhile the matter had proceeded *ex parte* against the second defendant.

At the final pre-trial conference, the following issues were framed: one, whether the public auction dated 22/4/2017 involving sell of the property on plot No. 150 Block B Tegeta Area is null and void; two, what reliefs are the parties entitled to.

Regarding the first issue. According to the evidence of Celine Ephraim Ngahugha (PW1) she challenged the sale of her house, on the explanation that she was forced by the bank officer one Betty Lupia (who appeared before the Court and testified for the first and third defendant, as defence witness number two), to sign documentation for mortgage deed without affording her a chance to read and threatened to lock her inside DW2's office. PW1 disowned knowing Ms. Fifty Fifty Sembe. PW1 mentioned other irregularities including a fact that her house was sold for Tsh. 350 million below the value of Tsh. 500 millions; the auction was not public; there were only three people who were competing but no one reached a reserve price and the purchaser was not the highest bidder; documents for obtaining loans are copies, as her original title deed is in possession of her partner parent in Denmark who is under lockdown; she was not served with a notification of default.

Principally, the complaints by PW1 are wanting. Regarding a claim that she was forced by DW2 to sign documents is without base. As on cross examination by the learned Counsel for fourth defendant, PW1 stated that she did not complain to police to have been forced to sign documents for her house. PW1 neither stated to had reported or complained either orally or in writing to the management of a particular bank, that she was forced to sign documentation which she didn't know its contents. The testimony of Ives Mlawi (DW1) was to the effects that he never heard any complaint that the plaintiff was forced to sign, as she did not lodge any complaint at the bank that she was forced to sign. According to DW1, the plaintiff had signed at her own volition. DW2 stated that the plaintiff had signed a mortgage deed after she had understood the consequences and nature of her personal guarantee and she said she had proper information and she know the borrower Ms. Fifty Fifty, where she submitted her original title deed. More important, as stated by DW2 that in the plaint the plaintiff did not allege or indicate anywhere if being forced to sign was one of her complaint. As such, an argument by the plaintiff that she doesn't know Fifty Fifty or else that a copy of title deed is the one which was used to the loan as the original is at Denmark, are baseless. PW1 did not mention even the name of the alleged parent partner, neither stated as to when an original title deed was transmitted to Denmark. The alleged lockdown is not a bar for a witness to testify, in these era of transformation, where one can testify through teleconference, video conference, webinar and alike.

Regarding her complaint that her house was sold for Tsh. 350 million below the value of Tsh. 500 million, is unmerited. On cross examination by the learned Counsel for fourth defendant, PW1 stated that she never conducted

any valuation for her property. As such her argument that her house was valued 700 million, or the reserve price was 500 million or else that a plot alone at that location is not less than 350 million, are concoct, as PW1 was merely alleging without any proof. It was the evidence of DW1 that the forced sell as per the valuation report was Tsh 346 million, while it was sold above the forced sell value at 377 million. As such an argument that no one reached a reserve price is also untenable.

Regarding a complaint that the auction was not public, is also devoid of merit. Dickson Kitima (DW4) the auctioneer explained at length on the procedures taken to ensure the auction is done publicly, including advertisement on the Tanzania Daima gazette exhibit D5 which was also read by the purchaser, as per the testimony of Scolastica Mazula (DW5); they issued fourteen days notice to the plaintiff; involvement of local council leaders; including announcements on loud speakers on the street. According to DW5 there were many customers who attended and on the second auction there were more than four bidders (purchasers). As such, a complaint by the plaintiff that only four people had attended, is without any base.

The plaintiff also complained that she was not served with a notification of default. But DW1 tendered a notification of default exhibit D4, that it was received by the plaintiff on 2/2/2016 and she did not rectify the default, as such the argument of the plaintiff is invalid.

That said, the first issue is answered in negative, that the public auction dated 22/4/2017 involving sell of the property on plot No. 150 Block B Tegeta Area was legally conducted.

Having premised as above, there is no any relief which is available to the plaintiff, in the circumstances.

The suit is dismissed on its entirety with costs.



E.B. Luvanda
Judge
23/6/2021