

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 22 OF 2016**

**ISACK BILAURO MURRAY ..... 1<sup>ST</sup> PLAINTIFF**

**GLENS PETROLEUM TANZANIA LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SAMIR PATEL ..... 1<sup>ST</sup> DEFENDANT**

**JACKSON SUMMARY ..... 2<sup>ND</sup> DEFENDANT**

**CRDB BANK PLC ..... 3<sup>RD</sup> DEFENDANT**

**PROPERTY MASTERS LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

25/6/2021 & 20/8/2021

**ROBERT, J:-**

The Plaintiffs sued the Defendants jointly and severally for a declaratory order that the sale of the suit land described as Plot No. 3, Kitefu area, Arumeru District by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the 1<sup>st</sup> and/or 2<sup>nd</sup> Defendants and any subsequent sale to any third party is illegal, null and void, the 3<sup>rd</sup> defendant to be ordered to receive the loan balance as of 27<sup>th</sup> April, 2017, payment of general damages and costs of the suit.

The case against the Defendants is to the effect that, the Plaintiffs are the lawful owners of the suit land. On 26/9/2013 the first Plaintiff received a loan of TZS 25,000,000/= from the third Defendant repayable in monthly instalments with an expiry date of 30/9/2016 and placed the suit land as security for the loan. The Plaintiffs allegedly failed to pay the agreed installments according to the loan agreement and on 8/3/2016 the fourth Defendant issued a demand notice to the Plaintiff asking him to settle the outstanding debt amounting to TZS 19,859,252/= within fourteen (14) days failure of which the said Defendant would institute legal proceedings. The loan was not repaid hence the mortgaged property was auctioned on 27<sup>th</sup> April, 2016 to recover the outstanding loan. The Plaintiffs claim that they were not given sufficient notice of sale of the disputed property and the property was sold at a throw away price.

When the matter came up for hearing the Plaintiffs were represented by Ms. Edna Mndeme, learned Counsel whereas the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were represented by Mr. Matua Samwel, learned counsel. The case proceeded ex-parte against the 2<sup>nd</sup> defendant as he failed to file his Written Statement of Defence or enter appearance.

The court framed three issues for determination of this matter. **One**, whether the Plaintiffs were given default notice before the auction. **Two**, whether the mortgaged property was legally sold by the Defendants. **Three**, to what reliefs are the parties entitled.

To prove their case, the Plaintiffs called three witnesses; Jonathan Nderingo Sarakikya (PW1), Dominck Timotheo Mungure (PW2) and Isack Bilauri Murray (PW3). The Defendants called three witnesses as well; Winstone Makuri (DW1), Samir Patel (DW2) and Isack Emily Lyimo (DW3).

On the first issue, whether the Plaintiffs were given default notice before the auction, PW3 informed the Court that, Glens Petroleum Tanzania Ltd is a company which he operates. The company took loan from CRDB Bank for purposes of constructing a petrol station. He tendered the Board Resolution of Glens Petroleum Tanzania Ltd which was admitted as exhibit P1. He stated that he brought this matter to court because the disputed land which he used as security for loan at CRDB Bank was sold unlawfully and at a lower price.

He noticed that the first defendant had deposited funds in his account as the purchaser of the disputed land due to the bank statement

dated 23/5/2020. The bank statement was admitted as exhibit P2. When the auction was being conducted he owed the bank TZS 17,900,000/= and he came to know that the mortgaged land was sold on 28/4/2016.

He testified that, he came to know that he had a dispute with the bank on 9/3/2016. He received a notice from the Property Masters informing him that if he didn't pay the outstanding loan and the fees he would be taken to court. He went to the Branch manager and requested for extension of time to pay but he was denied. Later he deposited TZS 5,500,000/= on 28/4/2016 and TZS 5,000,000/= on 4/5/2016. These payments were done after the auction.

The other Plaintiffs' witnesses (PW1 and PW2) did not testify on whether the Plaintiffs were given default notice before the auction.

On the defence side, the first Defendant called DW1 who is the Credit Manager of the third Defendant. He testified that, Glens Petroleum Tanzania Ltd took a loan of TZS 25,000,000/= from the bank in 2013 and placed as security a property in plot No. 3, Kitefu area, Arumeru District in the City of Arusha. The debt repayment period was 36 months. The Plaintiffs failed to repay the loan according to the agreement and was

served with a Demand Notice on 23/11/2015. He tendered a copy of the Demand Notice and dispatch book which were admitted collectively as exhibit D1 (a and b). The Dispatch book shows that he received the Notice on 1/12/2015. After that, the bank instructed the 4<sup>th</sup> Defendant to collect the debt from the customer by conducting an auction. The auction was advertised in a Newspaper called Habari Leo dated 12/4/2016 which was admitted in Court as exhibit D2 and the auction took place on 27/4/2016. DW2 testified that, he read in Habari Leo Newspaper dated 12/4/2016 about the auction which was to take place on 27/4/2016 in respect of the property located at Plot No. 3, Itefu area, Arumeru district in Arusha city and he attended on the date of the auction.

DW3 informed the court that he works with the 4<sup>th</sup> defendant and they were assigned by the 3<sup>rd</sup> defendant to sell the mortgaged property. Before putting an advert on the newspaper, they first issued a 14 days demand notice to the plaintiffs on 8/3/2016. After the lapse of 14 days without payment they issued another Notice in Habari Leo Newspaper.

From the evidence adduced by both parties, it seems that this issue will not detain this Court. It is apparent from the evidence adduced that the Plaintiffs were given default notice prior to the auction. The first

Plaintiff admitted that, having received the default notice he visited the Branch manager seeking extension of time to settle the payments but his request was denied. Having looked at exhibit D1 it is clear that the Plaintiffs were indeed given 60 days' Notice by CRDB bank dated 23/11/2015 which the Plaintiffs received on 1/12/2015. The Notice required the Plaintiffs to pay the principal sum and the interest accrued thereon within 60 days from the date of service of the Notice. Further to that, the Plaintiff was subsequently served with a 14 days' Notice issued by the 4<sup>th</sup> Defendant on 8/3/2016 (exhibit P5) and the auction was advertised on Habari Leo Newspaper dated 12/4/2016 after the said notice. The first issue is therefore answered in affirmative.

On the second issue, whether the mortgaged property was legally sold by the Defendants, the Plaintiff alleged that, the disputed property was sold unlawfully and at a throw away price. PW1, John Nderingo Sarakikya testified that, he went to the auction at around 13:00 hours and found the auction had already started. There were many people at the auction, he placed a bid of TZS 26,000,000/= and Jackson Sumari placed a bid of TZS 27,000,000/=. Mr. Sumari emerged as the highest bidder and the auction ended there. He didn't know for how long the auction was

announced. PW2, Dominic Timotheo Mungure testified that, the disputed property was bought by Jackson Sumari at the bid price of TZS 27,000,000/=. The second bidder was John Nderiyo Sarakikya who placed a bid of TZS 26,000,000/=. Before the bid one Mr Samir Patel asked to buy a piece of land adjacent to the disputed property. Mr Samir Patel never went to the auction. He explained that the structure of the disputed property was constructed by using bricks and roofed with South African aluminum sheets. PW3, Isack Bilaury Murray informed the Court that having received the default notice from the bank, he found a customer who was willing to pay TZS 97,000,000/- but he was told to ask that customer to attend the auction to bid with others. At the auction the suit property was only sold at TZS 27,000,000/=. At the time of taking loan the property had a market value of TZS 51,000,000/= and the forced sale value of TZS 38,000,000/=. Valuation report was admitted as exhibit P3. The property was not evaluated during auction.

PW3 submitted further that, on 19/4/2016, eight days prior to auction the balance in his account was TZS 11,894,461/=which was not the money he deposited. He went to see the loan officer and was told that probably his land was already sold and that is the remaining balance. His request to

print a bank statement was denied because he was told his account was new while at the moment he had already operated the account for more than three years. He claimed that the auction was advertised on the morning of the day of the auction. The auctioneer did not inform him of the day of auction or evaluate the property. He received a notice from Property Masters on 8/3/2021. The Notice was admitted as exhibit P5.

DW1 stated that, the auction took place on 27/4/2016 and he attended the auction. The auction started at around 10.00 HRS to 11:00 HRS and there was an attendance of approximately 50 people. When the house was being sold the outstanding debt was TZS 17,458,280/=. The winner in that auction was Jackson Sumari who offered a bid of TZS 28,000,000/=but the property was not sold to him because he failed to meet the auction conditions of paying 25% of the bidding price. The Second bidder was Samir Patel and Ujawal Patel with a bid of TZS 27,000,000/=, they paid 25% on the date of the auction which is TZS 8,000,000/=. The balance of TZS 19,000,000/= was paid on 6/5/2016. After the auction the Plaintiff deposited money on his account on 28/4/2016 and later TZS 5,000,000/=. After settling the outstanding debt the balance of the proceeds of sale TZS



9, 000,000/= remained in the Plaintiffs account but that amount is no longer in the customer's account because he withdrew it.

DW2 testified that he knew the disputed property was for sale because his friend showed him an advert at Habari Newspapers and asked him to buy it if he is interested. On 27/4/2016 he stopped at the auction with his brother Ujjawal Patel. He found a group of 40 to 50 people getting prepared for the auction. Bidding started around 10.00HRS. They participated but they didn't win. The highest bidder gave an offer of 28,000,000/- and there were about 5 bidders. When they were about to leave the highest bidder was asked to pay the required 25% but he failed then they were asked to pay. They paid around TZS 8,000,000/= on the date of bidding and the remaining amount on 6/5/2016. The ownership of the property is now in their names. He testified that the property was bought lawfully.

DW3 testified that the auction started at around 10:00HRS to 11:00 HRS and it had the attendance of about 50 people. Those who participated in the bidding were about 5. The first bidder failed to meet the requirements so they resorted to the second bidders. He stated that they observed all the bidding requirements.

From the evidence adduced, it is not clear how the disputed property was sold unlawfully or at a throw away price as alleged by the Plaintiffs. This Court is aware that, under section 133(1) of the Land Act, Cap. 113 of the laws, the mortgagee owes a duty of care to the mortgagor to obtain the best price reasonably obtainable at the time of sale. In the present case, evidence adduced shows that, the 4<sup>th</sup> Defendant having been instructed to sell the disputed property by auction, she gave a 14 days' notice to the Plaintiffs on 8/3/2016 which was followed by an advert on the Newspapers more than one month later, that is on 12/4/2016, and the auction took place two weeks after the advertisement on the Newspapers. Majority of witnesses testified that the auction was attended by many people about 40 to 50 in number and there is no any evidence which proves that there was a bidder who offered the highest bid than the one offered at the auction. PW3 informed the Court that he managed to get a customer who was willing to pay TZS 97,000,000/= for the disputed property and the third Defendant asked him to bring the said Customer to the auction to bid with others but there is no evidence to suggest that the customer attended the auction. All this indicates that efforts were made to

obtain the best price at the time of sale. In the circumstances, this Court finds that the mortgaged property was legally sold by the Defendants.

In the end, I find no merit in this matter and I hereby dismiss the Plaintiffs' case with costs.



  
**K.N. ROBERT**  
**JUDGE**  
**20/8/2021**