

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 67 OF 2020

EDWARD SAGUDA MADUHU.....1ST PLAINTIFF

EDOSAMA HARDWARE LIMITED.....2ND PLAINTIFF

VERSUS

TIB CORPORATE (T) LTD.....1ST DEFENDANT

ADILI AUCTION MART LTD.....2ND DEFENDANT

RULING.

S.M. MAGHIMBI, J:

On the 28/04/2020, the two plaintiffs, one Edward Saguda maduhu and Edosama Hardware Limited (a company incorporated under the Companies Act, Cap. 212 R.E 2019), filed a plaint against the two defendants praying for judgment and decree against the defendants as follows:-

- i. Any order that the defendants not to harass the plaintiffs until their claims with the Municipals/government of the United Republic of Tanzania are settled.
- ii. A declaration that the 1st defendant illegally altered the terms and conditions of the credit facility signed on 29th June, 2016.
- iii. An order that, the defendants failed to follow the procedures prior to publication of notice.

- iv. An order restraining the defendants from interfering with the plaintiffs lawful possession and ownership of the suit premise by the applicant.
- v. Any other or further relief as your Honorable Court may see appropriate to grant.

On the 03/06/2020, while filing their Written Statement of Defence which was accompanied by a counter claim, the defendants raised a preliminary objection on point of law that the plaintiff has not issued a 90 days' notice of intention to sue the 1st defendant. On the 21st day of April, 2021, I struck out the suit with costs for being incompetent. Having struck out the suit; there is still a counter claim filed by the defendant, TIB Bank. However, having gone through the counter claim. I find a concern and I hereby directed the parties (particularly the plaintiff to the counter claim) to address the court on the competence of this counter claim with regard to the remedy available to the mortgagor under Section 127 and 132 of the Land Act, Cap 113 R. E. 2019, as the plaintiff to the counter claim has not exercised those rights before coming to this court.

The issue was to be addresses by way of written submissions, the Plaintiff to the counter claim was to file submission on 29/04/2021, a reply by the defendant to counterclaim on 06/05/2021. Rejoinder (if any) was to be filed on 14/05/2021. Until when I am constructing this ruling, no submissions have been filed by any of the parties.

I need not be detained much by this objection. Section 126 of the Act provides:

Where the mortgagor is in default, the mortgagee may exercise any of the following remedies –

- (a) appoint a receiver of the income of the mortgaged land;*
- (b) lease the mortgaged land or where the mortgaged land is of a lease, sub-lease the land; (c) enter into possession of the mortgaged land; and*
- (d) **sell the mortgaged land**, but if such mortgaged land is held under customary right of occupancy, sale shall be made to any person or group of persons referred to in Section 30 of the Village Land Act.*

One of the prayers of the plaintiff is for attachment and sale of the suit property, a remedy which is available to the plaintiff in the counterclaim under Section 126 (c) of the Act, the procedure which is provided for under Section 132 of the Act. Therefore the for as long as the breach of facility and mortgagees power to exercise her rights under the Act, those matters are clearly provided for under the law and the plaintiff to the counterclaim ought to have exercised those powers before seeking intervention of this court. That said, I find the counterclaim, as stand alone suit to be prematurely before this court. It is hereby struck out with no orders as to costs.

Dated at Dar-es-salaam this 04th day of June, 2021.




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S.M. MAGHIMBI.
JUDGE.