

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

REFERENCE NO. 5558 OF 2024

(Originating From Application No. 163 of 2019, Ilala District Land and Housing Tribunal)

VALENTINA SERAFINA.....APPLICANT

VERSUS

NMB BANK PLC.....1ST RESPONDENT

ADILI AUCTION MART LTD.....2ND RESPONDENT

AMEDEUS JOACHIM MALLYA3RD RESPONDENT

RULING

1st to 2nd July, 2024

E.B. LUVANDA, J

This case was referred to this Court after the learned Chairperson entertained reasonable doubt on how to go about, while at the stage of crafting judgment where he discovered that issues framed at the commencement of hearing are contrary to facts pleaded in the pleading.

Going by the pleadings particularly the amended application filed on 14/09/2020 at paragraph 6(a)(iii), (iv) the Applicant pleaded facts that the suit property is a matrimonial home which was jointly acquired and at the same time is saying it is her property. However, on the reliefs, the Applicant claim for a declaration that the suit property is a matrimonial home which was jointly acquired and she seek the Tribunal's declaration that the mortgage created between the First and

Third Respondent over a suit property, is null ab initio. The Applicant is also claiming for permanent injunction restraining the Respondents from auctioning the suit house. There is no relief where the Applicant is claiming to be declared a sole proprietor of the suit property.

Meanwhile the latest amended written statement of defence which was filed by the First Respondent on 23/03/2023, pleaded that the Third Respondent affirmed an affidavit proclaiming himself as single man living a quite solitary life as sole proprietor of the suit property located at Kitunda Area, Ilala Municipality. The First Respondent averred further that she is taking recovery measure for the loan granted to the Third Respondent.

In her evidence, the Applicant (PW1) asserted facts that she was served by a notice for auctioning the suit house for explanation that her husband (Third Respondent) borrowed money from the First respondent. PW1 stated that she sued because the suit house is a matrimonial home sheltering children and that she was not involved in the loan agreement.

In my respective view, issues framed as to whether the Applicant did not consent for the suit house to be mortgaged and whether the First Respondent was legally funded to instruct the Second Respondent to auction the suit property along an issue as to the reliefs parties entitled to, are in order and take

into board what was pleaded by parties and reflects the real question on controversy.

I therefore direct the Tribunal to proceed to dispose of the case in conformity with the above note.

The Deputy Registrar to transmit this note to the Tribunal with immediate dispatch.



E.B. LUVANDA
JUDGE
2/07/2024