

Examination of Legal Challenges on Protection of Matrimonial Homes Against Unlawful Dispositions in Tanzania

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Abstract

The Law of Marriage Act, 1971 and the Land Act of 1999 prohibit dispositions of matrimonial home by the owner without consent of the other residing spouse. Recent appellate courts' decisions in Tanzania show that dispositions of matrimonial homes contrary to law, particularly, in the form of gifts to children, sale, and mortgage are many. Based on literature and cases qualitatively analyzed, this article establishes the legal challenges behind continued unlawful dispositions of matrimonial homes. The data from literature and cases were around the following issues: a) The law does not punish violators who take part in unlawful dispositions, instead, third parties are left without a remedy (at risk), and b) personnel in local government administrative structure, while participate in disposition of matrimonial homes in practice, in law they do not feature anywhere. The article argues that public awareness on the current law is long overdue and there should be legislative reforms on areas that encourage violation of the law.

Key words: *Matrimonial home, matrimonial property, accommodation rights, spousal consent, unlawful disposition*

1.0 INTRODUCTION

The Law of Marriage Act, 1971[hereinafter the LMA] in Tanzania, imposes a responsibility to a husband to provide accommodation to his wife or wives.ⁱ Husbands provide accommodation facilities in many forms, for instance, rented houses or matrimonial homes. The LMA was the first law in the country to introduce protection of wives in accommodation facilities. It established three mechanisms of protection under section 59: First, actual occupation; Second, lodging a caveat in the land registry;ⁱⁱ Third, spousal consent.

The 'actual occupation' in residential premises did not protect spouses fully because matrimonial homes could be disposed of and the spouse with no legal title over the property would only be allowed to remain in occupation subject to the overriding interests of the buyer.ⁱⁱⁱ The courts were relying heavily on filing a caveat in the land registry.^{iv} The Appellate courts considered the filing of a caveat in the land registry as a better way of balancing interests of third parties and spouses who wished to protect their interests. Lodging a caveat in the land registry, put third parties on a wider notice of taking necessary steps in compliance with that notice.^v Spousal consent was not viewed as a primary factor in the disposition of matrimonial home.^{vi} The failure to secure consent never rendered the contractual transaction void; instead, the transaction was valid subject to the interests of the spouse in actual occupation.

When the Land Act (hereinafter LA)^{vii} was enacted, it enhanced the spousal consent mechanism. Initially, it required spouses to sign a document consenting to the disposition of the matrimonial home.^{viii} There were further improvements on the LA in 2004, followed by the regulations of 2005.^{ix}

The regulations introduced two aspects: the concepts of informed and genuine consent,^x and independent advice.^{xi} Despite all these improvements in the law, recent appellate court decisions still show that wives' accommodation rights in the form of matrimonial homes are still violated.^{xii} This article examines the law in order to establish legal challenges behind continued unlawful dispositions of matrimonial homes in Tanzania.

Data used in this article is purely based on documentary review. In this regard, decided cases, journal articles and books were used. Decided cases were gathered from law reports published by the Judiciary in Tanzania. Unreported cases were sourced by the author through practising lawyers in the legal fraternity and Mzumbe University Faculty of law staff. The case management unit of the Court of Appeal prayed a big assistance in availing the author most recent cases used in this paper. *Ulii data base* of Uganda was used to track information from Uganda, while Heionline database helped to provide various journal articles. The literature and case laws were updated using law reports index and statute indexes. The materials gathered were qualitatively analysed by way of content analysis technique. Inferences drawn from the review process, were discussed and finally this paper was developed.

The article is divided into five parts including this introduction. Part two explains the legal duty imposed upon husbands in the provision of accommodation to their wives. Part three examines the protection of wives' accommodation rights under the LMA and the LA. The protection of matrimonial homes in rural areas is also considered here. Part five provides a conclusion and future implications.

2.0 HUSBAND'S DUTY TO PROVIDE ACCOMMODATION TO A WIFE

The LMA imposes a duty to husbands to provide accommodation to their wives.^{xiii} Traditionally, in Africa, married couples do not always live together, or at least not until after a period following the marriage.^{xiv} Some tribes even have two types of designated residences, the initial, and the subsequent residence. The choice of whether a couple should live together, normally, involves more than a simple decision by the spouses alone. Many societies have a culturally preferred place of residence for their married members. In some societies, if a married couple decides to live together, the two may not decide alone where they wish to establish a household. Either the marital residence is already culturally stipulated, or is negotiable between the affine groups. Customary law^{xv} never recognized wives having enforceable interests in accommodation provided to them by their husbands.^{xvi} That is why wives could be easily divorced and evicted from their residence at the discretion of their husbands.^{xvii} Before the enactment of the LMA, the Marriage Ordinance and the Matrimonial Causes Ordinance were in force in Tanzania.^{xviii} These laws never protected wives interests in their respective accommodation. Such interests were regarded to be personal interests. The remedy, which was available to such women, was to apply for maintenance while living with their parents or relatives. This practice is still applicable in Kenya.^{xix}

In 1971, the LMA, under section 63(1), introduced a duty to husbands to provide accommodation to their wives. Although the basic forms of accommodation which husbands normally provide to their families include houses constructed by husbands in rural or urban areas, houses given to husband(s) by parents, and rented houses (towns or in urban areas). Others include houses provided by employers by virtue of employment (service tenancy houses), inherited houses, or generally family homes. The LMA chose to recognize accommodation in the form of matrimonial homes.^{xx} Other forms of accommodation such as houses in the form of service tenancy^{xxi} and rented houses^{xxii} are not recognized by the LMA to confer such interests capable of being protected under the law. Matrimonial property acquired by way of indirect contribution used by a couple for residential purposes are not also protected under the LMA, despite the precedence decision of the Court of Appeal in **Bi- Hawa Mohamed v. Ally Sefu**^{xxiii}, which recognized such interests. The reasons for not protecting other forms of accommodation husbands provide to their spouses are outside the scope of this paper; the paper focuses on matrimonial home.

3.0 PROTECTION OF MATRIMONIAL HOME IN TANZANIA

In Tanzania, there are two specific legal regimes, which protect matrimonial homes, namely the LMA and the LA. Before examining these legal regimes, a brief explanation of the concept 'matrimonial home' is provided. According to section 2 (1) of the LMA, the concept matrimonial home is defined as,

'...the building or part of a building in which the husband and wife ordinarily reside together and includes- (a) where a building and its cartilage are occupied for residential purposes only, that cartilage and any outbuildings thereon; and (b) where a building is on or occupied in conjunction with agricultural land, any land allocated by the husband or the wife, as the case may be, to his or her spouse for her or his exclusive use.'^{xxiv}

Deducing from the definition above, matrimonial homes have three attributes: (a) place of residence of the couple; (b) residence is a statutory right. In South Africa, such a right arise *sui generis* (that is, unique) and as an invariable consequence of marriage;^{xxv} (c) a spouse owning the matrimonial home^{xxvi} or renting the premises is denied the right to eject the other spouses from the matrimonial home without providing him or her with suitable alternative accommodation. A spouse threatened with eviction may approach a court for injunction or file a case in the form of a suit to challenge, for example sale.^{xxvii} Although matrimonial home rights are personal rights in nature,^{xxviii} the LMA and the LA recognize them as if they are property rights against third parties.^{xxix} It however terminates upon death of one of the spouses or divorce.^{xxx} It has to be noted from the outset that residence, which is owned by spouses by way of joint occupancy^{xxxi} or occupancy in common^{xxxii} is known as matrimonial property,^{xxxiii} which is out of the scope of this article. Having defined the concept of matrimonial home and looked at its basic attributes, the next section discusses how it is protected under the law in Tanzania.

3.1 Protection of Matrimonial home under the LMA

The LMA protects matrimonial homes under section 59(1) and (2).^{xxxiv} Three mechanisms are integral in that provision, namely: entering a caveat in the land register, being in the actual occupation, and seeking consent. The three mechanisms are explained hereunder.

3.1.1 Entering a caveat in the Land Register

Section 59(1) of the LMA, provides in part thus '*... and the other spouse shall be deemed to have an interest therein capable of being protected by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds*'.

The concept 'caveat' is not defined under the LMA. According to the **Oxford Advanced Learner's Dictionary**,^{xxxv} the concept 'caveat', means, 'a warning that particular things need to be considered before something can be done'. According to the **Black's Law Dictionary**,^{xxxvi} the concept 'caveat' is etymologically from the Latin word 'kav-ee-aht or kay-vee-at', meaning 'let him or her beware', a warning or proviso'. Hence, entering a caveat on the Land Register in Tanzania is a process governed by the Land Registration Act [LRA].^{xxxvii} The procedure for entering a caveat on the register is provided for under section 78 of the LRA, requiring two steps: first, the preparation of a statutory declaration under the Oaths and Statutory Declaration Act.^{xxxviii} This aspect requires a lawyer to prepare this form for the maker of the declaration at a cost. Second, is the filing of the form to the Registrar of Titles.

The message envisaged under section 78 of the LRA is that, spousal's interests could be protected only when such a spouse had entered or inscribed a caveat in the Land Register.^{xxxix} This means, the matrimonial home that qualifies to receive a caveat entered against it, is a registered land. Caveats do not apply to land held in the form of letters of offer, residential licenses (year-to-year or even long term leases) or Customary Land Title, because they do not have a registry for such interests. Similarly,

interests in the form of customary right of occupancy do not benefit from section 78 of LRA, because, in Tanzania there are no registries for unregistered land.^{xi}

The judiciary in Tanzania recognizes caveat as the best means of protecting matrimonial homes and interprets the law accordingly.^{xii} In **Hadija Mnene v. Ally Maberu Mbaga & National Bank of Commerce**,^{xiii} the judge observed that a mere interest in an estate would not operate to prevent its alienation where registered land is involved. The appellant (wife) lost the appeal. The Court of Appeal of Tanzania in **Idda Mwakalindile v. N.B.C. Holding Corporation & San Saijen Mwakalindile**,^{xiiii} upheld the reasoning in **Hadija Mnene** by saying that there being no caveat to protect the registrable interest of the appellant, there was no way in which the first respondent could know that the house was a 'matrimonial property'.^{xlv} In these two cases, the courts viewed the filing of a caveat in the land registry as the best mechanism of protecting matrimonial homes. The Judges reasoned that lodging a caveat in the land registry, put third parties on a wider notice to take necessary steps in compliance with it.^{xlv} The approach has now changed. The emphasis is put on requirement of consent as discussed under 3.1.3, below.

3.1.2 Actual occupation

According to section 59(2) of the LMA a spouse in the actual occupation could retain occupation of the premises until he/she dies or his/her marriage dissolves. As noted in the cases of **Hadija Mnene** and **Idda Mwakalindile** (supra), a third party could sell the property, but could not evict the spouse in occupation. In the case of **Hadija Mnene v. Ally Maberu Mbaga and National Bank of Commerce**, Lugakingira, J. held, 'it is clear to me that s. 59 does in fact contemplate the possibility of an estate being alienated without the consent of the other spouse. Hence, sub-section (2) provides for this eventuality, namely, the right of the other spouse to continue to reside in the matrimonial home until the marriage is dissolved or the court on a decree for separation or an order for maintenance otherwise orders'.

The actual occupation assists the spouses living in matrimonial homes. In **Aida Kyenkungu v. John Kyenkungu, Equator International & N.B.C. Limited**,^{xlvi} the collateral, which was used to secure the loan, was situated in Mikocheni, while the spouses lived in Kawe. Upon an application for injunction before the High Court, the issue was whether lack of spousal consent was a bar to the alienation by way of a sale of a mortgaged property situated at Mikocheni. The court observed that by virtue of S.59 (1) of the LMA, the property was not a matrimonial home. The court declined to grant injunctive orders.

For accommodation rights to bind the third party such interests must have existed immediately before the registration of mortgage or transfer of ownership has been effected. For example, in **Chhokar v. Chhokar**,^{xlvii} the husband sold the matrimonial home without the consent of his wife when she was in hospital for delivery. The wife was excluded from the house by the purchaser but the Court of Appeal in England, ruled that, temporary absence from the house did not mean the wife was not in actual occupation. In Tanzania, Makame, J. (as he then was) in **Rukia Diwani Konzi v. Abdullah Kihanya**,^{xlviii} held that a spouse who is out of her home due to constructive desertion is assumed to be in actual occupation of the premises in dispute. In this case, the wife deserted her matrimonial home due to the cruelty caused by the husband. The husband pushed the wife to move out of the matrimonial home and therefore she was construed to have been in actual occupation all that time when she lived in desertion with her parents.

3.1.3 Spousal consent

The LMA requires the spouse having legal title over the matrimonial home to seek for consent from the 'non-owner' of the title before carrying out any disposition. The LMA does not provide guidance on how such consent is to be sought. However, reading section 59 of the LMA and section 14 of the Law of Contract Act, Cap. 345, one would deduce one key element that consent must be freely given. That

means consent must be free from coercion, undue influence, fraud, misrepresentation, and mistake. The reviewed cases show that disputes based on failure to seek for consent under the LMA were not successful. Consent was not viewed as a primary factor in the disposition of matrimonial home.^{xlix} That is why appellate courts preferred the entering of a caveat in the land register. Failure to secure consent never rendered the contractual transaction void, but valid subject to the interests of the spouse in actual occupation.

In early 1990s, the application of spousal consent involving credit advancement had not yet gained popularity. In the case of **National Bank of Commerce v. Shebe Mtumwa Nassoro**^l, the appellant had advanced a loan to Nassor Said Nassor in 1987. The loan was secured by mortgage of Maulid Hussein's house, the house in which the respondent and her husband (borrower) were living. The borrower passed away before settling the debt. The appellant sold the collateral to recover the loan money. The respondent successfully challenged the sale in the Resident Magistrates' Court of Kisumu on two grounds: lack of notice and that section 48(1) (e) of the Civil Procedure Code, 1966, prohibited sale of such property. The Bank appealed. The High Court upheld the appeal on two grounds: (1) N/A (2), the owner of the property was not Nassor Said Nassor, the husband of the respondent. Maulid was not bothered by the sale of the property. The judge observed that the suit was misconceived and that the respondent had no locus stand to sue the bank despite her living there. It is argued that the premises were matrimonial home at the time the loan was taken by the respondent's husband. No consent had been sought. However, since the respondent's husband had died at the time of disposing the house, there was no longer the matrimonial home.

In **Idda Mwakalindile v. N.B.C. Holding Corporation & San Saijen Mwakalindile**,^{li} the 2nd respondent defaulted to service the loan, hence the matrimonial house was auctioned for sale. The appellant objected to auctioning, claiming that the said house belonged to her and her husband. The appellant claimed that she was not aware of the loan and neither did she consent to their house being mortgaged. The High Court dismissed the suit. On appeal, in the Court of Appeal, the appellant argued strongly that section 59 of the Law of Marriage Act, 1971, protected her and that the High Court erred when held otherwise. The Court of Appeal dismissed the appeal because no caveat had been filed by the appellant. The Court, while agreeing with the trial judge, observed that the transaction took place in such circumstances that the mortgaging and alienation of the house was not null and void in contravention of section 59(1) of the Law of Marriage Act, 1971.

Drawing inference from the cases discussed above,^{lii} up-to and until early 2001, the requirement of spousal consent was not mandatory. According to the High Court and the Court of Appeal, section 59 of the Law of Marriage Act, required a spouse to protect matrimonial rights by way of actual occupation or by filing a caveat.

3.2 Protection of matrimonial home under the Land Act,^{liii}

The Land Act (LA) came into force in May 2001.^{liv} It provided for spousal consent under section 112(3) (a)&(b), in relation to mortgages. There were no details. The Subsidiary legislation,^{lv} prescribed the manner in which a spousal consent could be obtained. Form No 40 was introduced.^{lvi} Unfortunately, the regulations did not address the problems, which were facing spousal consent. At that time, the disposition of matrimonial homes in the form of mortgage would be considered valid in law if the bank had a document evidencing that the spouse had consented to the mortgage of the matrimonial home. The above provision of the law did not take into consideration situations of polygamous marriage,^{lvii} which is why it provided for 'any spouse' of the borrower, as if one spouse could sign for the rest of the spouses (if any). In addition, the Act did not regulate the manner of securing the consent; and finally, it erroneously treated the borrower as synonymous to mortgagor.^{lviii} These weaknesses prompted the Parliament to make further amendments to the law. Part X of the LA was repealed and replaced by section 114 of the Land (Amendment) Act.^{lix} Section 114(2) of the Land (Amendment) Act introduced the responsibility to the mortgagees to take reasonable steps to ascertain whether the applicant for a mortgage had a spouse or spouses. This approach proved impossible. How could the mortgagee

undertake the responsibility of ascertaining the spouses without getting information from the mortgagor? Then, the Parliament in 2008^{lx} amended section 114 of the Land (Amendment) Act by reversing the duty of the mortgagee to ascertain applicant's/potential mortgagor's spouses in the matrimonial home. The duty was imposed on the mortgagor to inform the lender about his wives, in order to enable the lender to approach them for obtaining consent. Under section 114(4) of the LA amended in 2008, made it an offence in case the applicant by an affidavit or a written and witnessed document, knowingly gives false information to the mortgagee in relation to the existence of a spouse or any other third party. The effect of section 114(4) is yet to be seen in practice. Since 2008 to date, it is a single case of the High Court in which it was invoked.^{lxi} It is submitted that if lenders were to use this provision seriously, possibly an impact would have been noticed in practice.

The Land Act (as amended from time to time) works along with the Land (Mortgages) Regulations, 2005^{lxii} as modified by the Mortgage Financing (Special Provisions) Act of 2008. The regulations provide under part two for the conduct of the business of a mortgage. In brief, the regulations require mortgagees to take steps to ascertain matrimonial status of the applicant for mortgage. According to regulation 4(1), three steps need to be taken by mortgagees. One, a mortgagee shall require an applicant to sign a form stating that either he or she is married or not. Two, if the applicant states that he or she is married, he/she is required to state the names and address of his or her spouse. In the case of a male applicant, the names and addresses of his spouse need to be stated if he has more than one. Three, if the applicant states that he or she is not married and the mortgagee has a reason to believe that the statements might be incorrect; the mortgagee may require the applicant to produce an affidavit to the effect that the applicant is not married. A mortgagee may take such other steps in addition to the steps set out in this regulation as he/she considers it necessary and desirable to satisfy him/herself as to the matrimonial status of the applicant. These steps shall be made known to the applicant when he or she applies for a mortgage.^{lxiii} This part has updated the law applicable in the mortgage of matrimonial home Tanzania up to 2008.

The import of the regulation is to fix the banks that do not bother exercising diligence to find out the whereabouts of the spouse in occupation of the matrimonial home. In **Maria Goreti Katura Mutarubukwa v. National Bank of Commerce Ltd, Innocent Chacha Magoti Nshoya & Leonce Benedict Mutarubukwa**,^{lxiv} the first defendant advanced money to the second defendant by offering the matrimonial home as security. The second defendant defaulted to settle the debt. When the first defendant attempted to sell the collateral to recover the debt, the plaintiff successfully sued the defendants. The judge observed that since the bank conducted evaluation of the property, they had the opportunity of seeing those who were in actual occupation. The judge remarked that she was enjoined to protect the interests of the woman. Furthermore, the bank had a duty of conducting an inspection of the premises to ascertain who were living in the accommodation; but at whose costs?

The assent by a spouse to a mortgage other than a customary mortgage of a matrimonial home is regulated under regulation 5 of GN. No. 43/2006. The regulations provide under regulation 5(1) & (2) that, where a matrimonial home is a subject of mortgage, the mortgagee has to make sure that assent of a spouse is an informed and genuine consent. This duty is to be discharged by the mortgagee in two ways: first, advising the mortgagee in writing that his/her spouse receive independent advice on the terms and conditions of the mortgage, which is being applied for. Second, a spouse or spouses provide a signed and witnessed document to the effect that they have received independent advice on the mortgage, which is being applied for, and they have understood and assented to the terms and conditions of the mortgage or waived to take an independent advice. It is argued that the law does not specify how and by whom a legal advice should be given and at whose costs. It is submitted that, to a banker, it would be enough if the spouse submitted a signed document declaring that she has been advised as required. The challenge, which the regulations are posing to bankers, is to avoid conducting surprise visits. The regulations insists that the mortgagee should inform the borrower/applicant as to the steps which will be taken in order to verify the marital status of the applicant. Although this approach upholds privacy principles, but practice in Tanzania, demands the opposite.

3.3 Protection of matrimonial homes in rural areas

Wives' accommodation facilities in the form of matrimonial homes in rural areas in Tanzania are also facing legal challenges. The Land Act applies to matrimonial homes in case it involves customary mortgage.^{lxv} Evidence from case law shows that married women are faced with unlawful dispositions in many forms, particularly in the form of gifts to children and sale. Others are denied free and relaxed occupation in such homes. Examples of this situation will explain better. Dispositions in the form of (a) gifts to children, we have, **Salum Matiga v. Kuruthum Abeid Mfinanga**,^{lxvi} the case originating from Morogoro, in which the judge observed that, the property was given to children by the appellant without involving the wife (respondent). The gifts were nullified and on appeal to the high court, the judge dismissed the appeal. (b) Pledging a matrimonial home as security, **Itembwe Mnana v. Esther Faida**,^{lxvii} in this case, the husband (appellant) and one Emmanuel entered into a contract on the sale of cotton. Emmanuel committed himself to repay the loan and failure to that he promised to mortgage his matrimonial home. He did not secure consent when transacting the contract on sale of cotton. When Emmanuel failed to repay the loan, the appellant enforced the contract in the Primary Court of Busisi. The Respondent successfully challenged the sale in the District Court of Sengerema. On appeal to the High Court, the judge dismissed the appeal basing on sections 112(3) of the Land Act and 59(1) of the LMA.^{lxviii} (c) Unlawful evictions, **Tabu Charles v. Maduhu Ng'ondi**,^{lxix} the respondent used to throwing out the appellant and threatening to kill her. Similarly, in **Andrew s/o Mtumusha v. Abibi d/o Rajabu**, the respondent petitioned for divorce in Kisekese Primary Court in Masasi Mtwara. The reason advanced by the petitioner and approved by the trial court on appeal was cruelty. The respondent told the court that the appellant was frequently chasing her from the matrimonial home. This alienation of matrimonial home to self has no solution under s. 59 of the LMA and the LA. The aggrieved person ends up petitioning for divorce or separation. It is argued that this position of the law does not protect women in matrimonial homes.

4.0 ISSUES AND DEVELOPMENTS IN THE APPLICATION OF THE LAW

The cases examined below are those, which were filed after the Land amendment of 2008. They are picked to form the basis for discussion in this article because they reflect the law in force. Four cases are discussed, namely: Thabitha Muhondwa (2017), Devota Shukuru (2018), Hesokanga (2017), and Nasra (2018). The cases of Thabitha Muhondwa and Devota Shukuru are based on the disposition of matrimonial homes/property. The cases of Hesokanga and Nasra, although not purely based on matrimonial home, they demonstrate disposition of landed property by husbands without seeking consent from their spouses (i.e. unlawful disposition). In the course of discussion of these cases, the emerging legal issues and developments in the law are pointed out.

4.1 Thabitha Muhondwa's Case

In **Thabitha Muhondwa v. Mwango Ramadhani Maindo and Rehema Abdallah Mussa**,^{lxx} the second respondent, Rehema, the wife of the first respondent (Maindo) purchased a plot of land in Mabibo, Dar es Salaam, in her name. The land was developed by both the wife and husband, by constructing a residential house, which they lived in. Later, the first respondent (Maindo), processed a residential permit [Leseni ya Makazi] in his name and subsequently sold the property to the appellant without the consent of Rehema. The respondent challenged the sale. The sale was nullified by the Court of Appeal for want of consent by the wife. What is worth noting is due diligence exercised by the appellant (buyer). First, she inspected the house and found it vacant although there were some properties, which were kept in such a way that the owner was in the process of shifting them.^{lxxi} She did not inquire about all those who were occupying the premises.^{lxxii} Second, she saw the residential permit bearing the name and the photograph of Maindo (seller and husband of Rehema). Third, she confirmed the ownership of the plot from the Municipal Council of Ilala. Fourth, she obtained a letter of introduction from the ten-cell leader and submitted it to the Executive Officer of the Street of Mabibo where the house was situated. Fifth, the sale took place at Sinza/Manzese Primary Court based on the

letter of introduction from the Executive Officer of the Street of Mabibo. All these precautions failed to secure the interests of the wife (Rehema). The matrimonial home was disposed of by sale without consent.

The main question is whether the legal requirements of spousal consent under section 59 of the LMA and section 114 of the Land Act is known by local leaders in the administration of local authority? Other pertinent questions include, did the ten-cell leader know Rehema and Maindo as husband and wife? Did the Street Chairman, Mr. Ally Mohamed Mdee know Rehema and Maindo as husband and wife? Did the Municipal Council caution itself about the ownership and occupancy of the plot, when they advised Thabitha that the owner is Maindo, without putting a caveat that the property could be subject to spousal consent requirement in case the property was occupied by spouses? Why did the Magistrate at Manzese Primary Court fail to advise the buyer to seek for consent from the spouse who was in actual occupation? The chain of leadership from the grassroots up to the higher level in the local administration does not seem to be conscious about the requirement of spousal consent when a matrimonial home or property is to be disposed of. This, it is argued, leaves the position of female spouses who are in matrimonial homes at risk of being disposed of without consent.

When the matter went to the Tribunal, the District Land and Housing Tribunal dismissed the application of Rehema on grounds that she was not the wife. The Chairperson observed that the applicant (Rehema) had a forged marriage certificate because it was issued in 2005, while marriage was celebrated in 1999. Rehema called the Imam of Jabal Hilla Mosque and a Madrasa teacher to testify that he officiated the marriage between the applicant (Rehema) and Maindo (husband of Rehema) at their Mwembechai's home. The Tribunal did not believe this witness. The Court of Appeal found the decision of the Tribunal erroneous because the evidence by the applicant (Rehema) was consistent and not contradicted by any witness from the respondents' side (Thabitha's side). While one could have thought that the law is contravened by, less educated people, the cases below show that the banks are also not observing the law. Diligence is lacking as demonstrated in the case of Devota Shukuru and Hesokanga.

4.2 Devota Shukuru's Case

In Devota Shukuru Augustine v. Hosea Daniel Jeremiah, Musa Mbakile, CRDB Bank PLC, Jockem Auction Mart & Brokers Ltd,^{lxxiii} the first defendant (Hosea) took a loan in 2009 from CRDB Bank PLC, Bukoba Branch against the matrimonial home in dispute. The second defendant purchased the property when it was auctioned by the third defendant. At the time of taking the loan in 2009, the first defendant was married to Dr. Siima. The plaintiff was married to the first defendant in 2012, that is, three years after the loan was taken. Consent forms mentioned Dr. Siima, but they were not signed by her, as she was working in Shinyanga at that time; instead, they were signed by the borrower himself. The photograph of the plaintiff was affixed on the forms. The first defendant defaulted to settle the debt. When the third defendant attempted to auction the property, the plaintiff filed a suit in the High Court objecting to the auctioning of the matrimonial home. The plaintiff lost the case because at the time of taking the loan she was not a lawful wife. Although the house was used as a matrimonial home, but she could not successfully object to sale because she was not the wife at that time when the first defendant took the loan. She could have objected successfully, against vacant possession to the disputed premises because she was a lawful wife in the premises and she was not given notice to vacate.

Another important observation in this case, is the evidence, which was adduced by court witnesses CW1 (Siima, first wife) and CW2 (loan officer of the bank). The loan officer CW2, under oath told the court that the first defendant came for a loan and was given forms to fill in including the spousal consent forms; exhibit D3. Further, 'he had earlier produced a marriage certificate to show that he had a wife'. CW2 believed the borrower and processed the loan in his favour. When he was requested to look at the picture in D3 and tell the court whether the same resembled, CW1 looked at the photo and told the court that the photograph did not resemble CW1 (Siima). The evidence reveals that the manner in which consent is processed is faulty. First, the loan forms were given to the borrower to fill in, in the absence

of a bank officer to witness the situation. Second, the loan officer accepted the loan forms executed by the borrower and affixed a photograph in the absence of the borrower and the wife.

4.3 Hesokanga's Case

In **Hesokanga Investment Co Ltd v. Henry Adrian Kaozya, National Microfinance Bank & Yono Auction Mart**^{lxxiv}, the plaintiff sued the bank and one Henry Adrian Kaozya, for mortgaging the school premises in Mtimbira Ulanga Morogoro region without her consent. She testified in court that she did not sign any document to consent the issuing of the said property to the bank. The loan was taken in 2012 (see DW2 Testimony, Mr. Ahmed Kasuku). The relevant part in this case for this paper is with regards the manner the consent was processed. The judgment reads on page 9 as follows:

'DW2 further testified to the court that, before issuing the loan to the client, they normally give the same spouse consent form which is to be signed by the spouse if consented and return the same to the bank. DW2 further asserted that, as he was the one who was handling DW1's loan proceedings, he can still remember that the client (DW1) went to the bank with PW1 as his wife who signed the consent form before him.

...DW2 clearly identified PW1 as Mr. Kaozya's wife the one he saw at the school and at the bank the day she went to sign the consent form before him. To support his assertion on the issue of the spouse consent, he tendered the document namely 'Kibali cha mwanandoa cha kuhaulishwa hati miliki dated 01/08/2012 dully signed by one Sophia Francis Kaozya as Henry Adrian Kaozya's wife with the latter's photograph', which was dully admitted by the court after Sophia Francis Kaozya and Henry Adrian Kaozya having no objection to the same, where the document was admitted as Ext D4. respectively.p.11, on cross-examination, DW2 testified that the day the consent form was signed, he was the one who attended both PW1 and DW1 at the bank where PW1 signed the consent form before him followed by finalization of the same at the court where the client and his wife proceeded'.

The extracts from the judgment are extensor purposely in order to demonstrate full experience of a loan officer handling issues of spousal consent in light of the law and regulations applicable in Tanzania. Although the evidence of PW1, the wife and DW1, the husband, seems to create controversy, as PW1 alleged forgery of her signature, which was also supported by DW1 in his examination in chief, the evidence of DW2 was believed by the court. DW2 testified that PW1 signed the consent forms before him. This confirmation, it is argued was not good news to the bank. It is argued so because, the wife was not given a chance for independent legal advice and it is doubtful if the consent was genuine. The doubt is created by two things, first, the relationship, between PW1 and DW1, was of husband and wife. This relationship in law, automatically creates what we call presumed undue influence under section 14 of the Law of Contract Act.^{lxxv} DW1 told the court that he never wanted to involve his wife because he would not support the idea of mortgaging the school premises. How could she have given free consent for mortgage in the presence of her husband? In addition, at the time of signing the consent forms, it was not disclosed if the wife had any knowledge of the content of the loan (amount, interest, mode of payment and repayment schedule). These issues cast doubt on the genuineness of the alleged consent. The mortgagee won the case because the Plaintiff, Hesokanga Investment Ltd, could not in law complain against DW1 (husband) failing to give consent to the mortgage transaction between DW1 and the Bank (NMB Bank PLC). Because the case was misconceived, Sophia Frances, PW1 (the wife of the mortgagor) lost the case. However, the lesson remains that spousal consent was not processed, as the law requires.

4.4 Nasra Said's Case

In **KCB Bank Tanzania Limited v. Nasra Said**,^{lxxvi} the Plaintiff (the bank) extended to the defendant and one Nuru Niah Ogutu a banking facility in the form of a term loan. The pleadings alleged that the

term loan facility was secured by a legal mortgage, which was charged by the defendant's landed property situated at Plot no 699, Block F Tegeta Area Kinondoni Municipality in Dar es Salaam registered under the Certificate of Right of Occupancy no 105548. The defendant upon being served with the summary suit successfully applied for leave to appear and defend the suit. In her written statement of defence, she denied to have taken any loan from the Plaintiff bank and denied to have traded in partnership with Nuru Niah Ogutu. She acknowledged that Nuru Niah Ogutu had an Account Number MG 1129400007; and that Nuru Niah Ogutu was the one who took the loan. The defendant further averred that she never mortgaged her property rather she entrusted her Certificate of Right of Occupancy to one Anyangisye with the intention of securing a loan of Tsh. 28,000,000/=, but Anyangisye misused his position and in collaboration with Nuru Niah Ogutu forged the defendant's signature on all documents and used it illegally to secure Tsh. 70,000,000/=.

In the trial, the bank failed to prove that the defendant signed the loan facility forms and mortgaged the deeds. The judge stated, 'I have found in issues number one and two that the defendant never executed exhibits P1 and P2. Since there is no other evidence to connect the defendant with the said loan and since the defendant never executed the legal mortgage then issue number three is also answered in the negative'.^{lxxvii} The witness for the bank admitted to have not witnessed the defendant signing the loan facility forms, but also failed to call in court the lawyer who was alleged to have witnessed Nasra Said, the defendant, signing the said loan documentations. The judge decided the matter in favour of the defendant and awarded her the costs of the case.

5.0 CONCLUSION

This article set out to examine legal challenges behind continued unlawful disposition of matrimonial home by husbands. To achieve this objective, the duty imposed on husbands to provide accommodation facilities to their wives is stated (part 2.0); and the scope of the protection is outlined and examined (part 3.1-3.3). The article analyses four current cases. It points out and discusses the possible reasons behind unlawful disposition of matrimonial home. This paper concludes and recommends as follows:-

5.1 Punishment to violators of law

Section 114 (4) criminalizes all persons who tell lies in their affidavit or documentation submitted to the bank at the time of processing a loan pretending that they are either single or bachelor in order to mislead the banks. The law imposes a penalty of paying half of the outstanding liability to persons who tell lies on oath or else be sent to prison for three years. The banks are the ones to invoke such a provision when the occasion arise. This provision when read together with section 7 of the Criminal Procedure Act,^{lxxviii} the inference is that every person has a duty of reporting to the police people known to have told lies to the bank so that proper measures could be taken against the wrong doers.

Section 114(4) of the LA has a very narrow scope. Its focus is limited to dispositions relating to mortgages. What happens when one sells or leases the premises without consent of the spouse living in the premises? What happens when a bank officer violates the law deliberately? The LMA is silent on this. It is suggested that the law should be reformed to capture such violators.

It is also submitted that, there could be a possibility where a spouse unreasonably refuses to give consent to the property owner of the premises to carry out a disposition. The LMA and the LA do not give room to such people to challenge their spouses on that. To avoid punishing spouses who are innocent, the law should be reformed to provide room to property owners to challenge unreasonable refusals to the intended dispositions. The best examples may be obtained from the Family Protection Act 1976 of Ireland and the Land Act of Uganda^{lxxix} that provide such room.

5.2 Need for guidelines

Spousal consent giving under the LMA and the LA as amended in 2008; has to be read together with section 14 of the Law of Contract Act,^{lxxx} in order to have a broader view of handling consent giving in Tanzanian cultural environment. The combination of the two laws brings the interpretation of the law in line with the highly precedent authority in O'Brien's Case (above). The consent involving spouses is presumed vitiated unless the material conditions in which it is given are clarified by legal advice, briefings on what is borrowed and the manner the loan may affect the spouse. It is further argued that the manner in which the banks should approach customers and spouses in actual occupation of matrimonial homes for seeking their consent is a practical issue, which must be approached carefully and technically. The law discourages surprise visits at the borrower's premises.

5.3 Public awareness and Training

The case of Thabitha Muhondwa (supra) has demonstrated a chain of local government leaders who participate in the disposition of matrimonial homes. These leaders are highly trusted by community members due to historical reasons. However, the outcome of such a case has revealed that the appellant (wife) of Maindo (first respondent) was not taken into consideration by the entire local leadership in the process of the sale of the matrimonial home while she was living with her husband. She was not consulted at all in anyway, let alone being asked to give consent. It is irresistible to draw an inference that these leaders lacked knowledge regarding sale of matrimonial home.^{lxxxi}

On the other hand, the cases of Hesokanga (supra) and Devota Shukuru (supra) show how the banks obtain consent without observing the law. The manner in which consent is obtained is in contravention with the law. The critical parts of the law, which are skipped by mortgagees, are the elements of independent legal advice and genuine consent. These two elements emanate from section 14(1) (b) of the Law of Contract Act.^{lxxxii} There is no single case reviewed in which mortgagees proved to have complied with the law fully. In any transaction involving husband and wife, the case law has stated that it operates under presumed undue influence.^{lxxxiii} This position, in turn, exposes accommodation rights in matrimonial homes to risk of being alienated without observing the law. Accordingly, a tailor made training to such staff is important. The training should also focus on ways of handling spouses, who at the time of processing a loan were not in occupation, but are found present at the time of enforcing the security. The law protects such spouses by requiring lenders to issue notice to them before enforcing the security. In the case of **Devota Shukuru Augustine v. Hosea Daniel Jeremiah, Musa Mbakile, CRDB Bank PLC and Jockem Auction Mart & Brokers Ltd**^{lxxxiv}, the judge dismissed the suit. This is because, the plaintiff (Devota) posed as if she was a lawful wife who was not consulted to give consent at the time of taking the loan; but, if she stood as a wife in the occupation of the premises, which was to be auctioned without a notice given to her, she could have won the case.^{lxxxv}

END NOTES

ⁱ See Section 63(a) of the Law of Marriage Act, Cap. 29 R.E. 2019.

ⁱⁱ See Section 59(2) of the Law of Marriage Act [LMA], Cap 29 R.E. 2019.

ⁱⁱⁱ See **Hadija Mnene v. Ally Maberu Mbaga & National Bank of Commerce**, HC Civil Appeal No. 40/1995, HCT Mwanza registry (unreported). Lugakingira, J. See also: **Idda Mwakalindile v. N.B.C. Holding Corporation & San Saijen Mwakalindile**, Civil Appeal No. 59/2000, CAT at Mbeya (unreported).

^{iv} **Hadija Mnene v. NBC & Mbaga and Idda Mwakalindile v. NBC**, Civil Appeal No 40/1995, HC Registry Mwanza (unreported), Lugakingira, J.

^v **Pilcher v. Rawlins**(1872) 7 Ch App 259; See also **Joyce Beda Mpinda v. CRDB Bank Ltd & others**, Commercial Case No. 67/2000, High Court of Tanzania Commercial Division Registry at DSM (unreported).

^{vi} In **Tanzania Investment Bank & Eric Auction Mart & Court Broker v. M/S ILabila Industries Ltd and 2 others, Mrs. Elizabeth Ngeleja Cheyo** (objector), the High Court dismissed the objection application once found the objector to have given consent although she purported to have given it by comfort only. See also: **Magdalena Baruti v. New Century Construction Co Ltd and another**, the applicant, lost the case when the court observed that the applicant gave consent, although disputed as forgeries.

^{vii} Cap. 113 R.E. 2019.

^{viii} Section 112 Cap. 113 R.E.2002.

^{ix} See GN. No. 43/2002. Dated 12th May 2006.

^x See GN. No. 43/2002, reg.5(2).

^{xi} See GN. No. 43/2002, reg. 5(2) (a).

^{xii} See **KCB Bank Tanzania Limited v. Nasra Said**, Commercial Case No. 130/2013, High Court of Tanzania, Commercial Division Dar es Salaam (unreported), Saleh,J. Judgment delivered on 23rd /01/2018; **Hesokanga Investment Co Ltd v. Henry Adrian Kaozya, NMB & Yono Auction Mart**, Land Case No. 90/2014, High Court of Tanzania, Land Division, Dar es Salaam (unreported), judgment on 27th /10/2017; **Devota Shukuru Augustine v. Hosea Daniel Jeremiah, Musa Mbakile,CRDB Bank PLC and Jockem Auction Mart & Brokers Ltd**; Land Case No. 8/2014, High Court of Tanzania, Bukoba Registry (unreported). Judgment on 16/11/2018.

^{xiii} See Section 63(1) of the LMA, Cap. 29 R.E. 2019.

^{xiv} See William G. Blum(N.A.) **Forms of Marriage: Monogamy Reconsidered**,

^{xv} Types of Customary law in Tanzania are provided in Salma Maulid, (2005) 'Rethinking Property: Women and Matrimonial Property Rights in Tanzania', in **Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania**, pp.235-236.

^{xvi} See also Rwezaura, B. (1994-1995) 'Tanzania: Building a new family law out of a plural legal system', 33 **U. Louisville J. Fam. L.** 523, at p. 524.

^{xvii} See Ghai, Y.P. (1971) 'The New Marriage Law in Tanzania', **11 Africa Quarterly (New Delhi)** 101-109, at p. 106. Under the old system, the intervention of the court was necessary only for divorces in civil and church marriages. Muslim as well as customary law husbands could divorce their wives by their own unilateral action, often without the need for witnesses, and such divorces would be unrecorded.

^{xviii} Rose Mtengeti-Migiro (1990) 'The Division of Matrimonial Property in Tanzania', **the Journal of Modern African Studies**, vol. 28(3), pp. 521-526, p. 521.

^{xix} See Jennifer Smith et al (2008) 'Women's Land and Property Rights in Kenya-Moving Forward into a new era of equality: A Human Rights Report and Proposed Legislation', George Town University Law Centre, Accessed on 29/April/ 2020, pp.72-74, ' a woman...must live on the land as a guest of male relatives by blood or marriage'. See also **JacintaWanjiku Kamau v. Isaac Kamau Mungai**(2006)59K.LR9(C.A.K.) Kenya, held that a husband was under no obligation to obtain his wife's consent before selling land used as matrimonial property when it is registered solely in his name.

^{xx} See Section 59(a) LMA, Cap. 29 R.E. 2019.

^{xxi} **Norris v. Checksfield** [1991] 4 ALL ER 327; See also **Errington v. Errington and Woods** [1952]1 KB 290.

^{xxii} See Part IX of the Land Act, Cap. 113 R.E. 2019, on leases.

^{xxiii} [1983] T.L.R. 32 (CA).

^{xxiv} See S. 2 of the LMA. In Kenya, the Matrimonial Property Act, No. 49/2013, defines the concept under section 2 as any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.

^{xxv} See **Buck v. Buck** 1974 1 SA 609(R) 610D. See also Cronje, DSP. & Heaton, J. **South African Family Law**, 2ndEd, p. 65.

^{xxvi} See Kalegeya, J. in **Mrs Grentina Kabisa Mwakyami v. CRDB and Four Others**, Commercial Case No 51 of 2000, HC of Tanzania at Dar es Salaam District Registry (unreported).

^{xxvii} See **Anna Peter Mkomea v. Mussa S. Msangi & Raffia S. Msangi**, Land Appeal No 10 of 2020, HCT , Land Division at Dar es Salaam, the appellant successfully challenged sale of the matrimonial home they were living in Msasani Mikoroshini, Kinondoni. No consent was obtained from the wife. Justice Ngwala, invoked section 161(2) and 161(3) of the Land Act, Cap. 113 R.E. 2019 to declare the sale of the house null and void.

^{xxviii} See Cretney, S.M. et al, (2007) **Principles of Family Law**, (7th Ed) Sweet and Maxwell, London, at pp.168-169. Because they cannot be assigned, and come to an end on termination of the marriage by death or legal process unless the court has otherwise ordered.

^{xxix} See S. 161(3) and S. 180 (3) of the Land Act, Cap. 113 R.E. 2019.

^{xxx} See **National Bank of Commerce v. Shebe Mtumwa Nassoro**, Civil Appeal No. 68 of 1994, High Court of Tanzania at Dar es Salaam District Registry (unreported).

^{xxxi} See S. 159(1) Cap 113 R.E. 2019. Co-occupancy means the occupation of land held for a right occupancy or a lease by two or more undivided shares and may be either joint occupancy or occupancy in common.

^{xxxii} See S. 159(5) LA Cap 2019. In brief, it means land or lease is occupied by two or more persons in form of undivided share in the whole and on the death of occupier, his share is treated as part of his estate.

^{xxxiii} Kalegeya, J. in **Mrs Grentina Kabisa Mwakyami v. CRDB and Four Others**, Commercial Case No 51 of 2000, HC of Tanzania at Dar es Salaam District Registry (unreported).

^{xxxiv} In South Africa, accommodation in the form of rented premises is also protected. In the case of **Badenhorst v. Badenhorst** [1964] (2) SA 676(T), The Court prohibited the wife from evicting her husband from the matrimonial home merely because she was the owner. The court stated further that the owner of the home (or the renting spouse) must provide the other spouse with suitable alternative accommodation.

^{xxxv} p.224.

^{xxxvi} 4thEd, p.215.

^{xxxvii} See section 78 (1) and (2).

^{xxxviii} Section 10, Cap 34.

^{xxxix} Cap. 334 R.E.2002.

^{x1} In England, there are two forms of registries, those for registered land and for unregistered land. See Mackenzie, J. & Phillips, M. (1997) **A Practical Approach to Land Law**, 7thEd, Livesey Ltd, Shrewsbury.

^{x2} See **Hadija Mnene v. Ally Maberu Mbaga & National Bank of Commerce**. HC Civil Appeal No. 40 of 1995, High Court of Tanzania Mwanza Registry (unreported).

^{x3} *ibid*-

^{x4} Civil Appeal No. 59/2000, CAT at Mbeya, judgment delivered on 2/04/2001.

^{x5} The concept 'Matrimonial Property' in this case was wrongly used. The property was a matrimonial home: See Kalegeya, J. in **Mrs. Grentina Kabisa Mwakyami v. CRDB Bank Ltd, Malava Transport Company Ltd, Forman Malava Ndogo, Emmanuel Mwakyami, Mmamba Auction Mart & Court Brokers**, Commercial Case no 51/2000, HCT Commercial Division, at Dar es Salaam(unreported). The decision was delivered on 6th June 2001.

^{x6} **Pilcher v. Rawlins**(1872) 7 Ch App 259; See also **Joyce Beda Mpinda v. CRDB Bank Ltd & others**, Commercial Case No. 67/2000, High Court of Tanzania Commercial Division Registry at DSM (unreported).

^{x7} Civil Case No. 57/2001, HCT DSM (unreported). Muro, J.

^{x8} [1984] F.L.R 313

^{x9} HC Matrimonial Cause No. 6 of 1971, Dar es Salaam District Registry, (unreported).

^{x10} In **Tanzania Investment Bank & Eric Auction Mart & Court Broker v. M/S I Labila Industries Ltd and 2 others, Mrs. Elizabeth Ngeleja Cheyo**(objector), the High Court dismissed the objection application once found the objector to have given consent although she purported to have given it by comfort only. See also: **Magdalena Baruti v. New Century Construction Co Ltd and another**, the applicant, lost the case when the court observed that the applicant gave consent, although disputed as forgeries.

¹ Civil Appeal No. 68 of 1994, High Court of Tanzania at Dar es Salaam District Registry (unreported).

² Civil Appeal No. 59 of 2000, Court of Appeal of Tanzania, at Mbeya High Court Registry (unreported).

³ Hadija Mnene, Idda Mwakilindile and Shebe Mtumwa Nassoro's cases.

⁴ Cap. 113 R.E. 2019.

⁵ See GN. 485/2000 dated 1st May 2001.

⁶No. GN 71/2002.

⁷ In Uganda, Form no 41 made under regulation 64(3) of the Land Regulations , 2004, Statutory Instruments 2004 No. 100 is used. It has eight(8) items to fill in. (a) Location of land the subject matter of consent; (b) Approximate area; (c) If land is registered, stating PIN, FRV/LRV; Fol; Block; Plot; (d) Use or occupation of land(e.g. farming, housing); (e) Stating Nature of transaction(f) Grant of consent of refusal; (g) Reasons for refusal; finally, name and signature. Despite the above formality, the case of **Bukenya Muhamood & Fatuma Nalukwago v. Kirumira Godfrey, Rev. Father Joseph Fiscerkortotum & Fred Mukwaya**, Civil Suit No 220 of 2008, High Court of Uganda at Kampala, reveal how spousal consent is violated. The lawyer, the first defendant secured the signature of the second plaintiff without advising the wife and in the presence of the husband(first plaintiff). Justice Kawesa, nullified the transaction (see p.9 of the judgment).

⁸ Kibodya, F.G. (2000) 'The Land Act No. 4 of 1999: Deficiencies and Excesses', **The Tanzania Lawyer**, pp. 25-27.

^{lviii} See the Hansard dated 10th /02/2004, pp.84-85, brief note on by the Attorney General.

^{lix} See the Land (Amendment) Act No 2 /2004.

^{lx} See the Mortgage Financing(Special Provisions) Act, No. 17 of 2008.

^{lxi} See Mlacha, J. in **Devota Shukuru Augustine v. Hosea Daniel Jeremiah, Musa Mbakile, CRDB Bank PLC, Jockem Auction Mart & Brokers Ltd**, Land Case No. 8/2014, High Court of Tanzania, Bukoba High Court Registry (unreported).

^{lxii} See GN. No. 43/2006.

^{lxiii} See regulation 4(2) of the GN No. 43/2005.

^{lxiv} Land Case No. 28/2004, High Court of Tanzania, Land Division Dar es Salaam Registry (unreported), E.A. Kileo, J. Judgment delivered on 4/4/2006.

^{lxv} See **Itembwe Mnana v. Esther Faida**, PC Civil Appeal No. 47/2017, HCT Mwanza District Registry (unreported).

^{lxvi} PC. Civil Appeal No. 31 of 2017, HCT at Dar es Salaam, Dar es Salaam Registry(unreported).

^{lxvii} PC. Civil Appeal No 47 of 2017, HCT Mwanza District Registry (unreported), A.Z. Mgeyekwa, J. Judgment delivered in November 2018.

^{lxviii} The Judge cited section 112(3) of the Land Act, Cap. 13(sic) R.E. 2002 in error. That provision was repealed on 14th April 2004 by Act No 2/2004. The proper section should have been section 114(1) of the Land Amendment Act, 2004 as amended by the Mortgage Financing (Special Provisions) Act, No. 17 of 2008.

^{lxix} PC. Matrimonial Appeal No. 25 of 2016, HCT, Mwanza District Registry (unreported).

^{lxx} Civil Appeal Number 28 of 2012, (CAT) at Dar es Salaam (unreported).

^{lxxi} See p.4 of the word processed judgment.

^{lxxii} See Land Case No. 28 of 2004, **Maria Goreti Katura Mutarubukwa v. National Bank of Commerce Ltd, Innocent Chacha Magoti Nshoya and Leonce Benedict Mutarubukwa**, High Court of Tanzania Land Division (unreported), E.A. Kileo, J. judgment delivered on 04/04/2006. No proper inquiry were made by the buyer, hence, sale proceeded without consent. The judge nullified the sale.

^{lxxiii} Land Case No. 8/2014, High Court of Tanzania, Bukoba Registry (unreported), Mlacha, J. Judgment delivered on 16th November 2018. The signature of the lawful wife (Dr. Siima) was forged by the first defendant (Hosea Daniel Jeremiah).

^{lxxiv} Land Appeal No 90 of 2014, High Court of Tanzania Land Division at DSM(unreported) judgment delivered on 27th October 2017.

^{lxxv} Cap. 345 R.E. 2002.

^{lxxvi} Commercial Case No 130/2013, High Court of Tanzania, Commercial Division, at Dar es salaam (unreported), Sahel. Judgment delivered on 10th January 2018.

^{lxxvii} See p. 20 of the word processed judgment, Commercial Case no 130/2013, **KCB Bank Tanzania Ltd v. Nasra Said**.

^{lxxviii} Cap.20 R.E. 2002

^{lxxix} See Cap. 227 of 1998 as amended in March 2004.

^{lxxx} Cap. 345, R.E. 2002.

^{lxxxi} See also Rwezaura, B., Wanitzek (1988) 'Family law reform in Tanzania: A socio-legal report', **International Journal of Law and the Family**, Vol. 2, pp. 1-26 at p. 15. The authors observed the imperfect understanding of the LMA but also the countervailing influence of certain customary rules, which tend to blur perceptions of the applicable law.

^{lxxxii} Cap 345 R.E.2002.

^{lxxxiii} See **Barclays Bank PLC v. O'Brien** [1994] 1 AC 180[HL]; See also Christine N. Booth, 'Undue Influence and Triangular Situations: The Husband, the Wife, and the bank, 26 **Hong Kong Law Journal**, 58 (1996); Ruth Plato-Shinar & Rolf H. Weber, 'Three Models of the Bank's Fiduciary Duty', 2 **Law & Fin. Mkt Rev.** 422 (2008),

^{lxxxiv} Land Case No. 8/2014, High Court of Tanzania Bukoba Registry (unreported), Mlacha, J. (judgment delivered on 16th November 2018).