

15 August 2024



Mortgagors must be joined in suits

- Non-joinder of mortgagor (necessary party) renders suit incompetent
- Trial Court judgment, proceedings and decree declared a nullity and set aside
- Appearance as witness held not to make a person a party to proceedings

Facts of the Case

The appellant, Chiyanga Enterprises (T) Limited, on 12 September 2014, procured an overdraft facility of TZS 290M for a term of 12 months from the First National Bank Tanzania Limited (FNB) before FNB was acquired by Exim Bank Tanzania (Exim). It was agreed that the overdraft was payable in equal monthly installments of TZS 9M. The facility was secured by two properties. The first security belonged to Francis George Manyama and was a residential property located at Kigogo area within Kinondoni District. The second security belonged to George Manyama Mangaru and was a commercial property also located at Kigogo area, in Kinondoni District.

The Appellant adhered to the repayment schedule until 11 June 2016, when she requested the lender to reduce the monthly repayments from TZS 9M to TZS 5M. Apparently, FNB refused to reduce the monthly installment amounts and subsequently assigned Tranquil Bureau Limited (Tranquil) to take charge in realizing the properties.

The Appellant was aggrieved by the move of the Respondents and commenced a suit at the High Court of Tanzania, Land Division (the trial Court), suing FNB, as the first Respondent, and Tranquil, as the second Respondent. The Appellant's claim was based on breach of the overdraft facility agreement. The trial Court heard the matter and decided in favour of the Respondents, reasoning that the appellant failed to adduce sufficient evidence to prove the breach. Aggrieved by the decision of the trial court, the Appellant lodged an appeal to the Court of Appeal of Tanzania (the Court).

Ruling of the Court

On the day of hearing the appeal, Exim Bank was joined as a successor in title of FNB which was phased out of existence in July 2022. Further, before the hearing of the appeal on merit, the Court raised a doubt on whether it was appropriate for the Appellant to commence a suit at the trial Court without joining the mortgagors.

The Court observed that as the Appellant's claim at the trial Court was, among others, a declaration that the notices of default in respect of the two securities were illegal, it was fatal for the trial Court to hear and determine the matter without joining the two mortgagors. The Respondents were of the view that non-joinder of the mortgagors was not fatal as one of them testified as a witness at the trial Court. However, the Court disagreed with that proposition by clarifying that a person does not become a party to the proceedings just because he appeared as a witness. The Court insisted, by citing its previous decisions, that determination of a suit without joining a necessary party is a fatal irregularity which renders the decision and proceedings thereof a nullity.

Based on the above, the Court invoked its revisionary powers to set aside the judgment and decree of the trial court, and nullified the proceedings thereof. Consequently, the suit was struck out for being incompetent.

To read the Ruling [click here](#)

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