

4 March 2025



## Marital Status Affidavit Adequate to Register Mortgage

- Court holds bank took enough precaution
- Must strike balance between safeguarding matrimonial rights and ensuring operational efficiency of banks

Recently, the Court of Appeal of Tanzania (CoA) delivered its judgment in Civil Appeal No. 335 of 2020. This appeal sought to challenge the decision of the High Court of Tanzania (the High Court) in Land Case No. 21 of 2014, which held that a mortgaged house was a matrimonial property and there was no spousal consent. Further, the High Court observed that the mortgagee (Bank) should have taken reasonable steps to make thorough inquiry and verify the mortgagor's marital status with relevant authorities, such as the Registration, Insolvency and Trusteeship Agency (RITA). Failure to do so constituted a breach of due diligence in fulfilling the mortgagee's duty. The Court of Appeal however did not agree with the High Court's findings.

### Brief Background

In 2014, Lucy Maketa who is the mortgagor's wife (the spouse) initiated an action against the Bank, Chot Transport Co. Ltd (the borrower), Frank Benedict (the mortgagor) and two others. The spouse alleged that the mortgagor mortgaged the matrimonial house (the suit property) to the Bank to secure the loan facility which was advanced to the borrower without her consent. The spouse sought the nullification of both the mortgage and sale transactions concerning the suit property and the costs of the suit.

The Bank denied all claims and averred that the mortgagor voluntarily executed an affidavit in compliance with the applicable law prior to registration of the legal charge instruments. In the affidavit, the mortgagor swore not to be married, therefore, issues of consultation and consent were not relevant, which led the mortgagee to disburse the loan to the Borrower using the mortgagor's title deed as collateral. The borrower defaulted in servicing the loan and as a result of the default, the Bank issued the required statutory notices to the borrower who failed to settle the outstanding arrears, which led to debt recovery measures to be invoked. The High Court nullified the sale. Being aggrieved, the Bank and two others (the mortgagee) preferred an appeal to the CoA.

In the said appeal, the Bank advanced a number of grounds of appeal which were framed into two issues, namely: (i) whether the mortgagee had taken due diligence in protecting spousal interest before it accepted

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the suit property as a collateral for the loan; and (ii) whether the sale of the suit property was proper.

## The Judgment

In determining the first issue, the CoA held that if the mortgagor provides an affidavit declaring his marital status as single, and the Bank takes reasonable steps to verify this information, the mortgage can be considered valid even without explicit spousal consent. The CoA cited regulation 4(1)(c) of the Land (Mortgage) Regulations, 2005 which prescribes clearly how such extra due diligence should be carried out by the mortgagee. The above-mentioned regulation provides that, "if the applicant states he or she is not married and the mortgagee has reason to believe that, the statement might be incorrect, the mortgagee may require the applicant to produce an affidavit to the effect that the applicant is not married." Relying on the aforementioned regulation, the CoA found that the Bank took reasonable steps to verify the status in question, and accordingly acted in reliance of the mortgagor's affidavit which was sufficient to validate the mortgage without the explicit consent of the spouse. Further, the CoA emphasized that the purpose of the law is to strike a balance between safeguarding matrimonial rights and ensuring the operational efficiency of financial institutions, thereby preventing undue burdens on such institutions in the disbursement of loans. Moreover, the CoA observed that the requirement for verification of the mortgagor's marital status with RITA was an undue extension of the Bank's obligations.

Regarding the second issue, the CoA ruled that since the mortgagor executed an affidavit stating that he was not married, he confirmed the validity of the mortgage. Consequently, the spouse was not a party to the mortgage deed and, therefore, not involved in the mortgage transaction. In this context, the CoA concluded that the spouse had no locus standi to challenge the sale of the mortgaged property as she was not a party to the transaction and found that the sale of the suit property should have not been nullified by the High Court.

Banks should however tread very carefully with this judgment, for if the bank has some knowledge or suspicion that the mortgagor is married, then this judgment does not guide as to what extra steps should be taken. In the instance case, the bank had no such knowledge or suspicion.

To read the Judgment [click here](#)

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