

LEGAL UPDATE

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6 January 2026



CoA Reaffirms Mortgagee's Duty of Care, Limits Protection of Bona Fide Purchasers

- Pre-sale mortgagee's conduct of valuation emphasized
- Sale below 25% of market value declared unlawful
- Burden to prove valuation lies on the mortgagee
- Non-compliance with statutory requirements renders auction void
- Bona fide purchaser protection unavailable on unlawful sale

Background

On 10 December 2025, the Court of Appeal of Tanzania (the Court) delivered its judgment in Civil Appeal No. 355 of 2024, dismissing an appeal filed by the Bank, its appointed Auctioneer, and the Purchaser of a mortgaged property.

The dispute originated from a loan facility of TZS 50,000,000 advanced by the Bank to the Borrower in 2016, secured by a legal mortgage over a residential property. The loan was later restructured to extend the repayment period to December 2023. Despite the restructuring, the Borrower defaulted. Following the default, the Bank exercised its statutory power of sale and instructed an Auctioneer to auction the mortgaged property which was sold to the Purchaser at a public auction for TZS 22,500,000.

Aggrieved by the sale, the Borrower instituted proceedings before the District Land and Housing Tribunal (the Tribunal), seeking nullification of the auction on the ground that the property was sold at an undervalue and without compliance with the Land Act, Cap. 113 [R.E. 2023] (the Act). The Tribunal partly allowed the claim by declaring the auction unlawful and setting it aside, while affirming that the Borrower had indeed defaulted. The appeals to the High Court were dismissed, leading to the present appeal before the Court.

The Court's Decision

The Court dismissed the appeal in its entirety and upheld the findings of both the Tribunal and the High Court. It reaffirmed the position that under section 143(1) and (2) of the Act, a mortgagee exercising a statutory power of sale owes a duty of care to the mortgagor to obtain the best price reasonably obtainable at the time of sale. The Court emphasized that where a mortgaged property is sold at a price that is 25% or more below

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the market value, a rebuttable presumption arises that the mortgagee has breached that statutory duty.

The Court held that compliance with this duty necessarily requires the mortgagee to conduct a fresh valuation of the mortgaged property prior to sale, prepared by a qualified valuer and approved by the Chief Valuer. In the absence of such valuation, the mortgagee cannot demonstrate compliance with the statutory requirement that the property must not be sold below the prescribed threshold. Although the Bank's witness claimed that valuation had been conducted, no valuation report was produced in evidence. The Court found that the burden to prove valuation lies on the mortgagee/Bank, as the duty is imposed directly by statute and does not shift to the mortgagor under the Evidence Act.

The Court further observed that the property, which had been valued at TZS 68,000,000 at the time the loan was advanced, was sold for TZS 22,500,000 in 2021, despite the outstanding loan balance being approximately TZS 20,000,000. In the absence of valuation and in light of the significant difference in value, the Court agreed with the lower Courts that the property was sold at an undervalue and in breach of the mortgagee's duty of care. The auction was therefore declared unlawful and void.

On the issue of whether the Purchaser was entitled to protection as a bona fide purchaser under section 145(3) of the Act, the Court held that such protection is not absolute. It reiterated that a purchaser can only be protected where the sale is substantially lawful and free from fraud, misrepresentation, or other dishonest conduct. The Court agreed with the High Court that the Purchaser had actual or constructive notice of the irregularities surrounding the sale, including the absence of valuation, sale at an undervalue, failure to pay the purchase price in accordance with the prescribed procedure, and failure to credit the proceeds to the Borrower's account. In those circumstances, the Court held that the mortgagee/Bank was incapable of passing valid title through an unlawful auction, and the doctrine of bona fide purchaser for value could not be invoked to sanitize an illegal sale. Consequently, the appeal was dismissed with costs.

This decision of the Court acts as a reminder to banks, auctioneers and the would be 'bonafide purchasers' to observe conditions stipulated under the law when dealing with mortgaged properties.

To read the Judgment [click here](#)

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