

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO. 58 OF 2016

BETWEEN

LENGAI LEMAKO LAIZA@PAULO LENGAI.....PLAINTIFF

VERSUS

CRDB BANK PLC.....1ST DEFENDANT

PROPERTY MASTERS LIMITED.....2ND DEFENDANT

RAJAN VERMA.....3RD DEFENDANT

JUDGEMENT

MWENEMPAZI, J.

In this case the plaintiff is praying for court declaration that the sale of his property a house located at Plot No. 216, Block "kk" Olorien, in Arusha measuring 835 square meters, comprised under Certificate of Title No. 12293, Land Office No. 165025, by way of a Public auction which was purported to have taken place on the 10th September, 2016 is void.

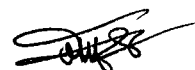
The plaintiff mortgaged his property for a loan facility amounting to Tanzania Shillings Three hundred million only (Tshs. 300,000,000/=). The loan facility was for three years and was to end in the year 2018. The plaintiff was required to service the loan by paying monthly installments. Then the plaintiff delayed in paying two of the installments. He was issued with the



reminder for payment of Principal Arrears and interest Arrears to the tune of Tshs. 57,080,077/23 on the term loan by notice dated 12th April, 2016 and also issued with 60 days' notice, Land Form No. 54 A dated 28/04/2016. These two notices were tendered as Exh. P3. The plaintiff could not pay the money in time according to the promises he had made during the reminders. Therefore, on the 10th September, 2016 the 1st Defendant through the services of the 2nd defendant sold by way of a Public Auction the property at the price of Tanzania Shillings Three hundred thirty-five million only (Tshs. 335, 000,000/=).

The plaintiff is complaining that the 1st defendant breached a duty of care towards the plaintiff by failing to obtain the best price for the mortgaged property after failing to properly advertise the sale of the property before selling in a public auction. In this suit therefore he prays for the following reliefs:

- (i). That, 1st defendant (mortgagee) be declared to have breached the duty of care towards the Plaintiff (Mortgagor) by failing to obtain the best price obtainable at the time of sale of the plaintiff's mortgaged property located at Plot no. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate of Title No. 12293, Land office No. 165025.
- (ii). Declaration that, the price which the mortgaged land is sold is twenty-five per centum (25%) and or more below the average price at which comparable interests in property of the same character and quality are being sold in the open market.



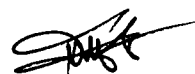
- (iii). That the purported sale of Plaintiffs property located at Plot No. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate of Title No. 12293, Land office No. 165025 by the 1st and 2nd Defendant which took place on the 10th day of September, 2016 be declared void.
- (iv). Pay general damages to the plaintiff.
- (v). Costs of suit.

The 1st defendant and 2nd defendant in their written statements of defence have averred that the sale of the property was in exercise of the mortgagee rights following default in payment of installments as agreed in the loan agreement; and the sale was conducted according to the law of the land governing securities and public auctions. It was sold to the 3rd defendant because he was the highest bidder. The defendants are praying the suit by the plaintiff be dismissed with costs. Essentially, the 3rd defendant also has the same view.

At the hearing the plaintiff was being represented by Mr. Moses Mahuna, Advocate, the 1st and 2nd defendant were being defended by Mr. Raphael Emmanuel, learned advocate and the 3rd defendant was being defended by Mr. Boniface, learned Advocate.

Issues for determination which were framed and agreed by the parties are:

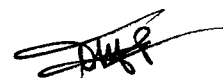
1. Whether the sum of Tshs. Three Hundred and thirty-five million (Tshs. 335,000,000/= obtained during the auction of the mortgaged property situate at Plot No. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate



of Title No. 12293, Land office No. 165025 was the best price obtainable at the time of sale.

2. To what reliefs are the parties entitled to.

The plaintiff brought only one witness, Lengai Lemako Laizer who testified as PW1. In his testimony he stated that prior to obtaining a loan he conducted a valuation of the property he had intended to mortgage as a collateral in order to secure the loan. That was done pursuant to the advice by the 1st Defendant. The valuation was done by a company named Prolaty Consult in favour of Private Agricultural Support Services a guarantor for the plaintiff. It was a valuation of the property located in Plot No. 216 Block 'KK' Olorien Arusha entered in Land office No. 165025 and Certificate of Title No.12293. The plaintiff paid for the service at the tune of Tshs. 4,000,000/= and a receipt was issued to him to that effect. A valuation report was prepared by Prolaty Consult and approved by the Chief Government valuer of the Northern zone on the 8th April, 2015 and together with the receipt they were admitted as Exh. P1. The report shows that at the time, the property had an actual value of Tshs. 921, 000,000/- and a forced sale value of Tshs. 736.8 Million. Based on the property as a mortgage a loan agreement was entered and Tshs. 300,000,000/= were advanced to the plaintiff. The loan agreement was admitted as Exhibit P2. The loan was for three years ending in 2018. The plaintiff testified that he delayed paying two installments. This led for him to be issued with a 60 days' notice and another notice for reminding him to pay the installments. Despite efforts to repay the installment he could not pay in time which resulted into a public auction conducted by the 2nd Defendant in order to sale the property to recover the



principal sum plus interest. According to the plaintiff it was advertised in the Habari Leo Newspaper, though he could not remember exactly the date.

The record shows that the loan was advanced by the 1st Defendant to the plaintiff on the 11th September, 2015. On the 12th April, 2016 and 28th April, 2016, the 1st Defendant issued to the plaintiff notices of default respectively. The same are evidenced by Exh. P3. Eventually, due to default the collateral had to be sold by way of Public Auction. The 2nd Defendant sold the property under the instruction of the 1st Defendant. The auction was held on the 10th September, 2016. It was sold at the price of Tanzania Shillings Three Hundred Million only (Tshs. 335,000,000/-).

In his testimony, the plaintiff does not dispute that the loan of Tshs. 300,000,000/= was advanced to him and that he defaulted in servicing the same at two installments which led the 1st defendant to issue a reminder notice and subsequent statutory 60 days' notice. At this level it will be clearer if I quote the exact words of the witness: -

"I am not disputing that I had taken the loan at the Bank, and that I have defaulted. This is not why I am here. I am here because the value of the house that was sold is under 25% of the value that was set by the bank. The house was sold at Tshs. 335,000,000/= as I have been informed by the buyer of the house Rajan..."

In his testimony he told this court that he informed the 3rd Defendant that he was not involved in the sale but he was ready to return the money to the 3rd defendant. The latter, however, told the plaintiff that he had used extra Tshs. 100,000,000/= for the brokers and other procedures and informed the plaintiff, if at all he is to repay him then the plaintiff should give him Tshs.



435,000,000/=; The plaintiff decided to approach this court for relief.

According to the plaintiff if the house was to be sold, the minimum price would have been Tshs. 691 Million which is equivalent to the 75% of the value of the house. In his evidence the sale was tainted with irregularities. One, the plaintiff was not informed of the sale and he came to know while at the 3rd defendant's office. Two, the advertisement was not intensive as to make people know that the house is being sold. The 1st defendant did not show any effort to look for a better price; no enough advertisements were made. Three, the payment of the first money at the public auction was not done. The 3rd defendant paid Tshs. 80 Million only after three days. Four, apart from valuation report done at the acquisition of the loan, no other valuation was conducted. In re-examination the plaintiff testified that after he had defaulted the payment it was the obligation of the Bank to value the house before selling it as I have valued it before taking the loan. The obligation to obtain the best price was on the bank and the plaintiff if he would have been given the chance. The plaintiff prayed the sale of the house be declared as null and void.

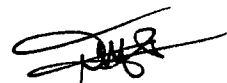
In the defence, the 1st Defendant called Samwel Elia Kiweru who testified as DW1. He testified that according to the Loan Agreement, the plaintiff was supposed to pay after every six (6) months until full payment. The loan had an interest of 20%. And it was secured by the house belonging to the plaintiff, located at Olorien with Certificate of Title No. 12293 entered in Land office No. 165025. According to clause 10(2) the plaintiff was required to inform the bank in case there is any challenge. The plaintiff has never sent any information to the Bank. He defaulted payment of the installments and according to the agreement that is a breach of the loan agreement. He



missed two installments and that required the bank to sell the collateral to recover the money.

The witness testified that the steps taken were first to call the plaintiff who was promising to make payment according to the agreement but he did not keep the promise. Later the 1st Defendant wrote 14 days reminder letter on the 12/4/2016 and later statutory notice, Land Form No. 54A dated 28th April, 2016 the two notices form part of Exhibit P3. Then, the 2nd defendant, Property Master Ltd were approached as auctioneers. They advertised in the local Newspaper Habari Leo dated 24th August, 2016 and the public address system on the 9th September, 2016 and the morning of the day an auction took place. The auction took place on 10th September, 2016.

Isack Emily Lyimo, testified as DW2. This is an auctioneer based at Moshi. He works with the Property Masters Ltd since 2008. He is a Zonal Manager for Northern Zone including the region of Tanga, Kilimanjaro, Arusha Manyara and Mwanza. His company works with the 1st Defendant as their appointed auctioneer. He was instructed to deal with a sale of the property of Lengai Lemako Laizer. After he received the instruction, he contacted the plaintiff and in their meeting the plaintiff promised to pay some money to the tune of Tshs. 150,000,000/= . The plaintiff failed to honor his promise which made DW2 on the 24th August, 2016 to issue an advert for a public auction published in Habarileo on the 24/8/2016. A copy was tendered for identification as the legal requirement of tendering the same were not complied. On the 9th September, 2016 before travelling to Arusha he had to check if there were any changes given the promise by the plaintiff and when he found nothing had changed, he proceeded to Arusha where he

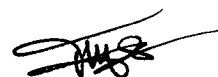


mad advertisement through Public Address System being assisted by the person named Rama. They moved around the city and the exercise was repeated on the 10th September, 2016 before conducting an auction. On the date they had two properties to sale. One at Moshono belonging to Warioba and the other at Olorien, the subject of this case.

At Olorien the Public Auction started at around 2:45 PM. People started bidding and the highest bidder on the date was Mr. Rajan Werma, the 3rd Defendant herein who offered the price of Tshs. 335, 000,000/= . On the date it was late at 3:00PM. He attempted to pay cash Tshs. 83, 750,000/. The Banker refused. Thus, he wrote a cheque of DTB. The amount was for 25% required to be paid at the auction after the fall of the hammer. The rest 75% is supposed to be paid after 14 days. The 3rd defendant complied and a Certificate of Sale was issued by the witness. According to DW2, Rajan has all the rights. As to the price of sell the witness testified that the Bank did all the valuation and they told him if he gets the price of Tshs. 305, 000,000/= or more, he should proceed with the sell. He did not know if at all the 1st defendant made any effort to make sure he sells at a certain price.

At the auction DW1 also was present and he testified as to the logistical issues of payment of the 25% of the price at the scene where the public auction was conducted. When he was asked whether 25% of the purchase price was made on the date of auction, he testified as follows: -

"We received a cheque as evidence to show that the bidder was committed to pay 25% of money. Money in the account was deposited by wire transfer. That was on 12th September, 2016. 25% was paid.



The cheque was taken to DTB and a transfer was made to transfer money to CRDB"

He testified that payment by cheque is a genuine payment. Rajan wrote a cheque in place of cash because of security reason. Then DTB paid the amount in the cheque through a secure way using TISS.

Sylvester Abel Kuyega testified as DW3. He is a valuer. He worked with Prolaty Consult and then District Valuer of Hanang District Council but now works with Niche Consult. He recognized the Valuation report, Exh.P1. He prepared the report and it was certified by Deodatus kahanda, a licenced valuer. He testified that there are factors which may affect the price of landed property. However, his opinion was that the house could be sold at Tshs. 520,000,000/ which is the market value taking into account tear and wear or if sold at the 75% market value would be Tshs. 376,000,000/=. At the price it was sold it may be by dictate of the market value because at the auction there is no negotiation; second, information may not have reached more customers. In general, the house was sold below 75% of the market value. The report Exh. P1 was supposed to be valid until April, 2016.

The third defendant testified as DW4. He said he knew about the auction on the date of auction in the morning during announcements using public address system. He denies to have offered to buy the house at Tshs. 1.4 billion as testified by the plaintiff. However, he agrees there was an attempt to redeem the house through money. But he knew it was not possible as the plaintiff would have paid to the bank if he had money. The 3rd Defendant prays the court to give him possession as the plaintiff is enjoying rent free money.

As it can be appreciated in the record, the conflict centers at the price the property was sold. The plaintiff is complaining that the price was way below the 25% of the value of the property according to the valuation report at the time of securing the loan facility. The valuation report has the market value at Tshs. 921 Million only and the forced sale value at Tshs.736,800,000/= . The property was sold at Tshs. 335,000,000/= . The defence have as their stance that the amount was the best market value secured by the fall of the hammer at the auction. That makes it right that the sale was lawful in the eyes of law; the 3rd defendant should be given possession of the house plus, as testified by the 3rd defendant, rent arrears for the period the plaintiff is staying in the house without paying rent.

However, the plaintiff through his counsel has submitted in the final submission that the basis of the claim is the provisions of **section 133(1) of the Land Act, No. 4 of 1999**. The same provides as follows:

"133.-(1) A mortgagee who exercises a power to sell the mortgaged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the mortgagor, any guarantor of the whole or any part of the sums advanced to the mortgagor, any lender under a subsequent mortgage including a customary mortgage or under a lien to obtain the best price reasonably obtainable at the time of sale."

In the pleadings the plaintiff averred that the 1st defendant has breached that duty of obtaining the best price obtainable at the time of sale since the



price to which his security was sold was 25% or more below the average price at which comparable interests in land of the same character and quality were being sold in the open market at the particular time. Thus, he has applied to the court for an order that the sale be declared void as per provisions of section 133(2) of the Land Act, No. 4 of 1999.

"(2) Where the price at which the mortgaged land is sold is twenty-five per centum or more below the average price at which comparable interests in land of the same character and quality are being sold in the open market, there shall be a rebuttable presumption that the mortgagee is in breach of the duty imposed by subsection (1) and the mortgagor whose mortgaged land is being sold for that price may apply to a court for an order that the sale be declared void, but the fact that a mortgaged land is sold by the mortgagee at an undervalue being less than twenty-five per centum below the market price shall not be taken to mean that the mortgagee has complied with the duty imposed by subsection (1)."

The counsel has suggested that according to the testimony of PW1, the price of Tshs. 335,000,000/= was 25% or more below Tshs. 690,000,000/= if the considered market value of Tshs. 921,000,000/= would have been adopted and it was below Tshs. 552,000,000/= if the considered forced sale value of Tshs. 736,800,000/- would have been adopted as per Exhibit P1. I do agree to the calculations and the statement (25% of 921,000,000/= is Tshs. 230,250,000. If that amount is deducted from Tshs. 921,000,000/ we have



Tshs.690,750,000/= . If we apply the provision it will be "*Where the price at which the mortgaged land is sold is 690,750,000/- or more below....*")

According to PW1, the 1st defendant breached the duty of care for failure to broadly and aggressively advertise the auction which occasioned failure of getting the best price for the property and that there was a foul play in auctioning the property which conveniently enabled the 3rd defendant to purchase the said property at a throwing price. Since the plaintiff has a duty to prove the allegations, the counsel has referred to the evidence of DW1, Mr. Samwel Elia Kiwelu and DW2 Isack Emily Lyimo office of the 2nd defendant; both testified that the advertisement of auction was published only in one Newspaper which was a Swahili Newspaper Habari Leo on the 24th August, 2016 indicating that the auction will take place on 10th September, 2016 at 10:00am. However, proof of publication was not tendered.

On the date of auction DW2 testified that before auction they hired a public address system and announced through it around the city of Arusha. This is confirmed by DW4 who testified that he heard about the auction through the moving car announcing the same. No proof of hiring the Public Address system or motor vehicle.

Then, DW1, DW2 and DW4 testified that the auction took place on the 10th September, 2016 but not at 10:00Am as advertised earlier in the Newspaper but at 2:45Pm. The certificate of sale indicates the auction took place at 10:00AM.

In the testimony of DW3 (Silvester Abel Kwiyege) a registered valuer at the time they conducted valuation the value of the property was Tshs. 921Million. But at the time of auction the property was worthy Tshs.



510,000,000/=. When cross examined further it was his testimony that the property could not be sold below 75% of the said Tshs. 510,000,000/= which by that time was Tshs. 376,750, 000/=. It was his conclusion that selling the property at the said amount of Tshs. 335,000,000/ = was indeed below the 75% (which can easily be interpreted as 25% below the market value).

The counsel has submitted that there are a number of questions to ask. **One**, whether it can be said that the 1st Defendant discharged his duty of getting the best price obtainable in the open market when auctioning plaintiff's security; **two**, whether there was any foul play; **three** and lastly, whether there were no requirements for valuation or indicating the value after consultation with the registered valuer prior to the conduct of sale as testified by DW3.

The law section 133(1) of the Land Act, No. 4 of 1999 ought to be read together with provisions of section 134(1) and (2) of the same Act. Section 134(1) of Land Act, no. 4 of 1999 require that the mortgagee should exercise discretion though having due regard to the duty imposed by subsection (1) of section 133. According to testimony the sale was by *public auction*. Section 134(2) of the Land Act, 1999 provides that:

"(2) Where a sale is to proceed by public auction, it shall be the duty of the mortgagee to ensure that, the sale is publicly advertised in such a manner and form as to bring it to the attention of persons likely to be interested in bidding for the mortgaged land and that the provisions of section 52 (relating to auctions



and tenders for right of occupancy) are, as near as may be, followed in respect of that sale"

According to Regulation 6 of the **Land (Conduct of Auctions and Tenders) Regulations 2001, G. N. 73 of 4/5/2001** it is provided that:

"The agent shall publish in one Swahili and one English daily circulating news paper in the district and one on public boards the date of the auction which shall be not less that twenty-one (21) days before the auction as well as conditions of the auction."

The 1st Defendant through her agent the 2nd Defendant was obliged to publish in Swahili and English daily circulating newspaper in the District and on a public notice boards the date of the auction which shall be not less than twenty on (21) days before the auction. In this case the publication was only in one Swahili newspaper and was for 17days only. Even the time of conducting the public auction was different to that which was indicated in the Swahili Newspaper which was a foul play in hindering other prospective buyers to participate in the auction. Instead of 10:00AM it was conducted at 2:45PM.

The counsel for the plaintiff has submitted that it was not correct that there was no need to have valuation conducted. Because, regulation 7 and 9 of **Land (conduct of Auctions and tenders) Regulation 2001 GN. 73 of 4/5/2001** clearly provides for the need to have a reserved price recommended by a qualified valuer. Such price ought to be disclosed to the auctioneer/broker shortly before the auction on the date of auction. Regulation 9 demand that the bid has to be higher than the reserved price in order for the agent to declare the winner.

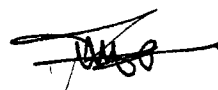


In conclusion the counsel for the plaintiff has submitted that there is no doubt that the 1st defendant as the principal of the 2nd Defendant has failed to discharge his burden of proof in proving that he did exercise a duty of care toward the plaintiff in making sure that he obtains the best price for his house which is located in a prime area within the city of Arusha.

The counsel for the 1st Defendant in his submission has submitted that the price obtained at the Public auction was the best price obtained on the property at the time of sale. That was a result of advertisements which were done by the 1st Defendant through their agent the 2nd Defendant, first, by advertising in the Habari Leo Newspaper on the 24th August, 2016 and then advertisement on the date of auction through public address system. That evidence has not been controverted by the plaintiff. It was further testified by DW1 that consequent to the advertisements carried out, many people appeared in the auction as interested purchasers including the plaintiff himself with friends. That evidence was corroborated with that of Rajan Verma (DW4) who in his testimony told the court that he got information from the Public Address system as the Motor vehicle was moving around advertising in the morning of 10th September, 2016.

According to the counsel for the 1st Defendant, Tshs.335,000,000/= obtained in the auction was the best price the Bank could fetch at the forced sale market. He further submitted that in the force sale of a mortgaged property, the price of the security is determined by the market during an auction.

The counsel for the 1st defendant drew my attention to the provisions of section 133(2) of the Land Act, No.4 of 1999. According to the counsel, the provisions allow a mortgaged property to be sold at any price more than

A handwritten signature in black ink, appearing to be 'J. M. M.', is written over a horizontal line.

25% of the average price at which comparable interests in land in the same character and quality are being sold in the open market. In his submission he has stated that the wisdom behind this provision is the reality that sale of mortgaged property may not fetch the value of the property as per the valuation report at the time of mortgage perfection. It is therefore common for the mortgage property to be sold just below the market price. And that is within the law provided that it is not below 25% of the market value.

At this juncture I think I am compelled to say a way. While following up the submission by the plaintiff, I agreed to the suggestion by the counsel for the plaintiff on the interpretation of the provisions **of section 133(2) of the Land Act, No. 4 of 1999 as amended by Land (Amendment) Act, Act No. 2 of 2004**. I took an example of the 25% of the Tshs. 921,000,000/= . If we use the statement by the counsel for the 1st Defendant and take the market value to be 921,000,000 then the expression "*Where the price at which the mortgaged land is sold is twenty-five per centum or more below the average price which comparable interests in land of the same character and quality are being sold in the open market...*"

Mathematically will be something below $921,000,000 - (921,000,000 \times 25\%)$ which is below 690,750,000; that may also be used to calculate the price if the forced sale value of Tshs. 736,800,000 would be used. It will be $736,800,000 - (736,800,000 \times 25\%)$ which will be Tshs. 552,562,500. Which in essence won't be below 25% as submitted by the counsel for the 1st Defendant, which is 230,250,000. My argument is below 25% the market value is way too low to be equivalent to the requirement of law. In fact, it will be in my view, injustice to the owner of the property.



It is submitted by the counsel for the 1st Defendant, that the value of the suit property is determined at the auction. He has cited **Bank of Africa Limited versus Naif Salum Baihabou, Commercial Case No. 140 of 2016, High court of Tanzania at Dar es salaam.** I could not follow this case because the property's value was not proved neither before or after.

According to the formula based on my understanding above, which is, I believe the correct interpretation of section 133(2) of the Land Act, No. 4 of 1999, the owner is entitled to complain in the court. In my view, due care was required to be taken by the 1st defendant to make sure all other factors are control in order not to presume that a duty of care has not been breached. Since no valuation was done at the time of auction (10th September, 2016) as Exh. P1 had already become obsolete, it was necessary to conduct valuation in order to comply with the provisions of section 133(2) of the Land Act, No. 4 of 1999. As submitted by the counsel for the plaintiff, it is clear that due care was not taken in the whole exercise. It is possible sudden change of time may have acted to be a factor to the property fetching a low price below 75% of the market value if we agree to the suggestion of DW3, Sylvester Abel Kuyega that at the time it was Tshs. 520,000,000/=. I believe, common sense would allow me not to agree that the depreciation if at all is there cannot be steep as to go down below even the 75% of that amount which is Tshs. 376,000,000/-. Even DW3 testified when being led to testify on change of value or prices by Mr. Steven Awesso Advocate that for the houses the price has not been affected much save for tear and wear.

Albeit, on the strength of law and my understanding of the provisions of the law, section 133(2) of the Land Act, Act No. 4 of 1999 I strongly



believe the way the process to conduct a public auction was treated according to the evidence by the defence itself, DW1, DW2 and DW4, was indeed breach of the provisions of section 133(1) of the Land Act, No. 4 of 1999 as amended by Land(Amendment) Act, Act No. 2 of 2004. This is evidenced by not widely advertising in Swahili and English papers, not posting in writing on the boards within the District and also change of time for auction on the same date of auction. I tend to agree with the plaintiff that there was foul play in the exercise hindering other prospective buyers to participate in the said auction leading the 3rd defendant to purchase the property at the price 25% below or more below the average price. The same vitiates the position that the price obtained at the public auction is the best market price.

Thus, the first issue as to whether the sum of Tshs. Three Hundred and thirty-five million (Tshs. 335,000,000/= obtained during the auction of the mortgaged property situate at Plot No. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate of Title No. 12293, Land office No. 165025 was the best price obtainable at the time of sale is answered in the negative.

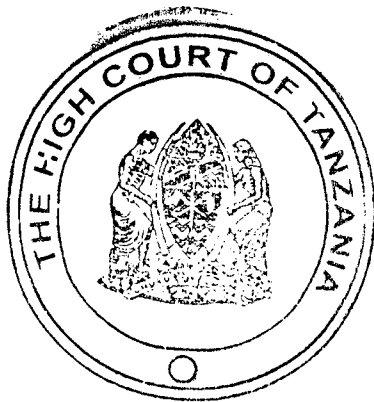
Now what reliefs are the parties entitled to, in the circumstances, I hereby order as follows:

1. The 1st Defendant (mortgagee) is hereby declared to have breached the duty of care toward the Plaintiff (Mortgagor) by failing to obtain the best price obtainable at the time of sale of the Plaintiff's mortgaged property located at Plot no. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate of Title No. 12293, Land Office No. 165025.



2. The price which the mortgaged land is sold is hereby declared to be twenty-five per centum (25%) and more below the average price at which comparable interests in property of the same character and quality are being sold in the open market.
3. That the purported sale of Plaintiffs property located at Plot No. 216, Block 'KK' Olorien, measuring 835 square meters, comprised under the Certificate of Title No. 12293, Land Office No. 165025 by the 1st and 2nd Defendant which took place on the 10th day of September, 2016 is declared to be void.
4. The plaintiff be paid general damages to the tune of Tshs. 50,000,000/-
5. Cost of the suit to follow event.

Dated and Delivered at Arusha this.....^{12th}.....day of November, 2020.




T. M. MWENEMPAZI
JUDGE