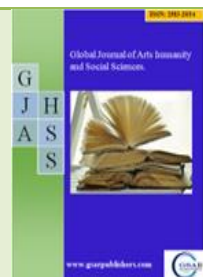


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CHALLENGES FACING THE UNREGISTERED LAND TRANSACTION IN PREVENTING DOUBLE SALE OF LAND AND FRAUD IN TANZANIA: APPRAISAL ON THE LAW AND PRACTICE

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Abstract

The disposition of land under Certificate of Customary Right of Occupancy allocated by the village council is crucial transaction because population is expanding in Tanzania that makes people to buy land under customary tenure. The buying of customary tenure under CCRO has got some challenges since many buyers face double sale of land and fraud in Tanzania the circumstance that make some of fidelity buyers to incur unnecessary losses. Among of the challenges that buyers of land face in CCRO is the lack of uniformity in customary law to regulate the sale of land, the lack of formal registry to search for encumbrances and defect of title under CCRO and the Village Land Act does not provide any guidance about sale of land in customary right of occupancy in Tanzania. This paper addresses these challenges and suggests recommendations thereto.

Keywords; land, sale of land, unregistered land and registered land, granted right of occupancy and customary right of occupancy, double sale of land and fraud

Introduction

Sale of land in Tanzania is prime domain that contributes to the social and economic development. It is the realm that touches direct the human life since land is always used in various activities such as business activities, social activities and political activities. Therefore land transaction should be exhaustively regulated to avoid fraud that may result to the conflict in society and some people may incur loss because of failure to regulate this domain exhaustively.ⁱ

In Tanzania there are two right of occupancy, the Granted Right of Occupancy (GRO) and Customary Right of Occupancy (CRO). CRO is of two realms, the deemed right of occupancy and the CCRO allocated by the village council.ⁱⁱ The CCRO allocated by the village council is the target that this paper deals with. The Unregistered land falls under Customary Right of Occupancy (CRO) and registered land falls under the Granted Right of Occupancy (GRO).ⁱⁱⁱ

There are allegations from society about double sale of land in unregistered customary right of occupancy.^{iv} In unregistered land transaction the law governing is customary law while in Tanzania, it is not certain to be familiar or acquainted with the customary law since there are more than 120 tribes^v and the Village Land Act that governs the administration of customary right of occupancy is silent to provide guidance about the sale of land in CRO while the same law provides guidance about the allocation of CCRO by the village land council.^{vi} In registered land, the process in sale of land is exhaustively regulated; it is not easy for a prudent buyer to be defrauded and falls into the double sale of land snare.^{vii} This paper therefore unveils the challenges facing the unregistered land transaction in preventing double sale of land and fraud in Tanzania and this paper also suggests possible solutions to deal with the problem.

THE NATURE OF SALE OF LAND IN GRANTED RIGHT OF OCCUPANCY



The sale of land is the process that requires a very carefully arrangements since someone may buy a land that is already sold or someone may defraud people that he is selling land that does not belong to him of which is the process that cannot succeed and purchaser may incur loss, hence it is better to hire a lawyer to undertake the buying of land process since lawyers are acquainted with much knowledge concerning land transaction.^{viii} Therefore, the disposition of Granted Right of Occupancy in Tanzania is governed by the *Land Act*^{ix} that provides for the manner in which sale of land can be conducted in a granted right of occupancy together with its regulations and the *Land Registration Act*^x also provides the registration of the disposition over the sale of land and the *Law of Contract Act*^{xi} that provides for the elements of the contract to make the sale of land valid in Tanzania as it was stated in the case of *Abualy Alibhai Aziz Versus Bhatia Brothers Ltd*^{xii}, Nyalali C.J.held to the effect that; “We have asked ourselves if the expression shall not be operative does not entails invalidity what does it mean? Logically, it means at least the contract in question is valid..... And such contract has all the attributes of a valid contract and the principle of sanctity of contract will be considered (emphasis is mine)”.

The process of sale of land in GRO starts in pre-contractual stage between the vendor and vendee meet together to agree the whole processes of sale of land, parties must make sure that they have capacities to enter into a legal contract and principles of legal contract must be observed enshrined under *The Law of Contract Act*^{xiii} such as intention to enter into legal relationship, lawful object and lawful consideration, free consent and *et cetera*.

Moreover, parties must make a search to the patent and latent defects and three notice are confined, the 1ST one is the actual notice provided by section 67(b) (i) of the *Land Act*,^{xiv} this is the information that a person receives personally and basing on the defect of title a vendee may conduct a search via section 34 and section 97 of *Land Registration Act*^{xv} to the Registrar of title paying a fee for that search and he may rely upon the sanctity of Registrar. The second one is the constructive notice whereby the law assumes a prudent person will acquire a reasonable information about the patent and latent defects unless otherwise the principle of *caveat emptor* which means let buyer beware will apply^{xvi} and section 67(b) (i) of the *Land Act* applies, the 3rd and the last notice is imputed notice whereby section 67(b) (ii) of the *Land Act* applies, this is the information acquired and provided by the advocate or agent of a vendee^{xvii}.

The second stage in sale of land is contractual stage provided under section 64 of the *Land Act* that provides that, in order for disposition to be enforceable it shall be in writing and signed by the parties.^{xviii} This provides for the sale agreement between the parties and shall include descriptions such as description of parties, description of subject matter, consideration, the parties consent, signature of parties, date of the contract, witnesses, and commissioner for oath *et cetera*.^{xix}

The third stage is conveyance stage whereby at this stage the transfer of interest is conducted and the commissioner for land is

given notification as provided by section 36(3) of the *Land Act* unless otherwise the disposition will be void.^{xx} The 4th stage is Registration stage and section 41 of the *Land Registration Act* applies for disposition to be effectual.^{xxi} And the 5th stage is completion stage whereby the buyer is given certificate of title and becomes the owner of a right of occupancy.^{xxii}

Furthermore, notwithstanding the procedures provided for the disposition of GRO, when one of the three requirements that does not fall under invalid contract such as the requirement of notification or registration of a disposition, a contract remains to be voidable contract and the parties to the agreement should seek court assistance to enforce such a contract since the sanctity of contract will be considered by the court as provided in the case above, *Abualy Alibhai Aziz Versus Bhatia Brothers Ltd*^{xxiii}, Nyalali C.J.held to the effect that; “We have asked ourselves if the expression shall not be operative does not entails invalidity what does it mean? Logically, it means at least the contract in question is valid..... And such contract has all the attributes of a valid contract and the principle of sanctity of contract will be considered (emphasis is mine)”. It is better to be comprehended and underlined that, all procedures in disposition of land should be observed to avoid conflict or someone to be in a dilemma about his right later after he has been enter into conflict with another buyer in a same plot.

THE NATURE OF SALE OF LAND IN CUSTOMARY RIGHT OF OCCUPANCY

The disposition under customary right of occupancy also, the paper recommends a lawyer to be hired since they are acquainted with skills to complete the land transaction well and someone may not face double sale of land even if the disposition of unregistered land is not regulated exhaustively by Tanzania laws.^{xxiv} The process of sale of land in unregistered land transaction in Tanzania is governed by the customary law as provided by the *land Act* under section 61(3) that provides that, for avoidance of doubt, dispositions of customary rights of occupancy shall be governed by customary law.^{xxv} The *Village Land Act* under section 2 provides the definition of customary law to mean, customary law has the meaning ascribed to it by the Interpretation of Laws Act.^{xxvi} The *Interpretation of Laws Act*^{xxvii} under section 4 provides the definition of customary law to mean any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African Community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 12 of the Judicature and Application of Laws Act, and references to “native law” or to “native law and custom” shall be similarly construed.^{xxviii}

Inter alia, the *Village Land Act* under section 20(1) underscores that, Subject to the provisions of this Act, on any matter concerning the rights and obligations of a person, a group of persons or a non-village organisation occupying land under a customary right of occupancy or of any person in dispute with any persons referred to above or of any person alleging that he or she is

entitled to succeed to or otherwise occupy that land on the death or permanent incapacity of a person occupying land under a customary right of occupancy or on another matter affecting land held under a customary right of occupancy and persons ordinarily resident in the village where the land is situate shall, where that matter is not otherwise provided for under this Act or any other enactment determined in accordance with customary law.^{xxxix}

There is no guidance that is provided by the *Village Land Act* about sale of land in unregistered customary right of occupancy, hence the customary law applies, however, it is uncertain since there are more than 120 tribes in Tanzania as it is provided in the case of *Prisikila Mwainunu v. Magongo Justus*,^{xxx} there is no specific customary law for disposition of customary rights of occupancy in Tanzania because Tanzania has almost 120 tribes, customary law may vary from one tribe to the other. On the same token, in the case of *Kilango Semu Mjema V. Abdalla Mohamed Mnalidi, Ebrahim J.*^{xxxi} underscores that; the village land Act does not provide any guidance about the sale of land under customary right of occupancy and the dearth of guidance requires part to abide with the principles of The Law of Contract and parties shall notify the village land council because village land is under the custody and management of village council.

Therefore, the available procedures are provided by these two cases. Starting with the recent case of *Kilango Semu Mjema V. Abdalla Mohamed Mnalidi*,^{xxxii} the case provides that, the dearth of guidance obliges parties to revert to the principles of the law of contract whenever selling customary rights of occupancy. Section 10 of The Law of Contract Act [CAP. 345 R.E. 2019] provides for the basic elements of a contract. The said section provides that;

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

Furthermore, the case provides that, the major requirements for contracts in disposition of customary rights of occupancy would be governed by the Law of Contract. The contract must be made in writing, it must be signed by the parties to signify consent; the parties must be competent to enter into a contract, there must be lawful consideration and such contract must be for the lawful object. However, customary rights of occupancy being a right over an immovable property just like any other right of occupancy, its transfer must be carefully documented to avoid: further disputes.^{xxxiii}

Moreover, the case underlines that, under the law, the grant and management of customary rights of occupancy is entrusted to the village council. A person wishing to have a customary right of occupancy may apply for it to the village council as per Section 22 of the Village Land Act [CAP. 114 R.E. 2019].^{xxxiv} In my view, despite the fact that a certificate of customary right of occupancy may be applied for in a prescribed form; the village is still not excluded from the management of deemed right of occupancy because customary right of occupancy includes both the one given in a form of certificate and the deemed right of occupancy. In

addition, Section 8 of the Village Land Act [CAP. 114 R.E. 2019],^{xxxv} and Section 147 (1) of the Local Government (District Authorities) Act (Cap. 287 R.E 20021 empowers the village council to manage the affairs and business of a village. As may be gained from the above provisions of the law, the village council has power over the customary right of occupancy including deemed right of occupancy. It is therefore inappropriate and illegal to disregard the approval of the village council whenever selling customary right of occupancy.^{xxxvi}

On the same token, the available procedures are provided in the case of *Prisikila Mwainunu v. Magongo Justus*,^{xxxvii} provides that, On the other hand, the Village Land Act, Cap. 114 RE 2019 does not provide any guidance on sale of customary rights of occupancy. The dearth of guidance obliges parties to revert back to the principles of the law of contract whenever selling customary rights of occupancy. Section 10 of the Law of Contract Act, Cap 345 RE 2019 provides for the basic elements of a contract in Tanzania thus: all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.^{xxxviii}

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In addition, the case underlines that, Section 8(1) of the Village Land Act imposes an obligation of the village council to manage all village land. The section specifically provides that, the village council shall, subject to the provisions of this Act, be responsible for the management of all village land. The power of the village council on disposition of customary right of occupancy is further emphasized by section 34 of the Village Land Act which provides that Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted.^{xlii}

Furthermore, the case provides that, section 147(1) of the Local Government (District Authorities) Act, Cap. 287 RE 2002 empowers the village council to manage the affairs and business of a village. The section provides, a village council is the organ in which is vested all executive power in respect of all the affairs and business of a village. As may be gleaned from the above provisions of the law, the village council has power over the customary right of occupancy including deemed right of occupancy. It is therefore inappropriate and illegal to disregard the approval of the village council whenever selling customary right of occupancy.^{xliii}

Basing on the above two cases, the following procedures should be taken into consideration in disposition of customary right of occupancy while applying the relevant customary law from a certain community.

- The principles of contract underlined under section 10 by the *Law of Contract Act* should be considered that provides for parties must be competent to enter into a contract, there must be lawful consideration and such contract must be for the lawful object.
- The contract must be made in writing to avoid dispute.
- The contract must be signed by the parties to signify consent.
- The approval of the village council should be obtained since they are custody of the customary right of occupancy.

KEY TERMS REGARDING THE SALE OF LAND IN UNREGISTERED LAND TRANSACTION IN PREVENTING DOUBLE SALE OF LAND AND FRAUD IN TANZANIA

The Concept of Land

The *Land Act* defines land to include the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.^{xliiv} The *Village Land Act* defines land to include the surface of the earth and the earth below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.^{xliv} Tenga and Mramba opine definition of land to include surface and sub surface substances, it does not include mineral such as Gold, Diamond, Tanzanite, Copper etc. The reason for this is somehow historical.^{xlvi}

At common law mines and minerals below the surface of the earth moved with the ownership of the soil above except gold and silver which were vested in the Crown by virtue of Royal prerogative. In Tanganyika the colonial masters vested all mines and minerals in the state and that has been the trend to date. Even after attaining her independence this concept was retained and all resources continued to be public property vested in the president including minerals.^{xlvii} With this interpretation however, land includes all that

has permanent attachment to the land. A building for instance cannot be taken in isolation from the land on which it is built and vice versa. For objects other than buildings their degree of attachment determines whether they form part of the land or not. As it has been observed above, the degree of annexation and the purpose of annexation are vital in deducing whether an object forms part of the land or not. Mere resting on the soil is not adequate. Also if the purpose was to improve the quality or was for better enjoyment of the land it can form part of the land.

The Concept of Sale of Land

Sale of land is conveyancing or disposition at the same time. These two concepts may be used interchangeably.^{xlviii} The sale of land as provided by section 2 of the *Village land Act* is one among of the disposition.^{xlix} This is the voluntary transfers of property from one person to another.^l Sale of land is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.^{li} It is a transmutation of property from one man to another in consideration of some price or recompense in value.^{lii} General, sale of land is the transfer of interest of land from one person to another, the transfer of such interest makes the new owner of a right of occupancy over customary right of occupancy and the old owner is replaced accordingly.^{liii}

The Concept of Granted Right of Occupancy

Section 2 of the *Land Act* defines the Granted Right of Occupancy to mean, right of occupancy granted under and in accordance with Part VI.^{liv} Part IV of the Act provides the procedures for application for GRO.^{lv} This is the formal way of individuals to occupy land in Tanzania.^{lvi} A way that a person occupy land issued by the government in Tanzania to a period up to 99 years.^{lvii} Generally, the GRO is the manner to occupy land in Tanzania whereby a person make an application to the competent authority to the government and the government grant such person the land occupation with condition in a definite period of time.

The Concept of Customary Right of Occupancy

The *Land Act* under section 2 provides the definition of customary right of occupancy to include deemed right of occupancy.^{lviii} The *Village Land Act* defines customary right of occupancy to mean right of occupancy created by means of the issuing of a certificate of customary right of occupancy under section 27 and includes deemed right of occupancy.^{lix} Generally, customary right of occupancy means the manner of occupying land in Tanzania that is allocated by the village council under the Village Land Act via Certificate of Customary Right of Occupancy (CCRO) or granted by the native African Tanzania community under customary law via deemed right of occupancy.

The Concept of Registered Land and Unregistered Land

The Land Registration Act defines registered land to mean land in respect of which an estate has been registered and unregistered land means land other than registered land.^{lx} This is the land in which its registration is in the land main registry while unregistered land is the land in which it has some sort like registered land but it is like evidence, its registration is not in a main registered registry

in a certain country.^{lxi} Generally, registered land falls under the GRO while unregistered land falls under CRO.

The Concept of Deemed Right of Occupancy

Section 2 of the Village Land Act defines deemed right of occupancy to mean the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law.^{lxii} It is the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and in accordance with customary law.^{lxiii}

The Concept of Double of Sale of Land and Fraud

Double sale of land is the transfer of the interest of land to more than one buyer in a same plot whereby every buyer is not aware of another buyer as a result such buyers enter into conflict to occupy such a land against anyone in the world.^{lxiv} The meaning of fraud is the illegal act whereby a person does a transaction fraudulently in order to benefit from that transaction.^{lxv} The person aims at deceive someone else in order to obtain money or property.^{lxvi} Generally, double sale of land and fraud is an act of deceiving more than one person to buy one plot in order to obtain money from every buyer.

THE LEGAL FRAMEWORK GOVERNING SALE OF LAND IN CUSTOMARY RIGHT OF OCCUPANCY IN TANZANIA

The Constitution of United Republic of Tanzania

Article 24 of the constitution provides for the right to own property and protection of such property and when the deprivation of property is needed to be conducted for public interest, then there should be the law that provides for that procedure and fair and adequate compensation should be provided by such law.^{lxvii} This is the right that touches direct the right to occupy land in Tanzania since one cannot sale land that does not belong to him under the maxim 'Nemo dat quod non habet' means 'no one can give what they do not have'.^{lxviii}

The Land Act

This is the supreme law in land matters in Tanzania whereby any other principle or subsidiary legislation that will be in conflict with the *Land Act* will be null and void but this Act will prevail.^{lxix} Section 61(3) of the Act provides for the disposition of customary right of occupancy to be governed by the customary law.^{lxx} The same Act under section 2 provides the definition of disposition to include among other things the sale of land.^{lxxi} Hence, through this Act, it is crystal clear that, the sale of land under CRO is governed by the customary law in Tanzania.

The Village Land Act

This Act provides for management and administration of customary right of occupancy in Tanzania.^{lxxii} The Act under section 2 provides the categories of CRO to include the CCRO allocated by the village council under section 27 of the Act and the deemed right of occupancy that is governed by the deemed right of occupancy.^{lxxiii} Inter alia section 20(1) of the Act underlines the application of customary law to regulate any matter in a dispute under customary right of occupancy if this Act is silent.^{lxxiv}

The Interpretation of Laws Act

This law provides among other things the interpretations of various concepts provided by different laws of the land in Tanzania.^{lxxv} Section 4 of the Act provides for the definition of customary law to mean any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African Community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 12 of the Judicature and Application of Laws Act, and references to "native law" or to "native law and custom" shall be similarly construed.^{lxxvi}

The Judicature and Application of Laws Act

This Act provides among other things the application of some laws in Tanzania.^{lxxvii} This Act provides among other things also the application of customary law under section 12 that the customary law should be used in court in cases of civil nature to between members of a community in which rules of customary law relevant to the matter are established and accepted, or between a member of one community and a member of another community if the rules of customary law of both communities make similar provision for the matter.^{lxxviii}

The customary law applies also to the relating to any matter of status of, or succession to, a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted or in any other case in which, by reason of the connection of any relevant issue with any customary right or obligation, it is appropriate that the defendant be treated as a member of the community in which such right or obligation obtains and it is fitting and just that the matter be dealt with in accordance with customary law instead of the law that would otherwise be applicable, except in any case where it is apparent, from the nature of any relevant act or transaction, manner of life or business, that the matter is or was to be regulated otherwise than by customary law.^{lxxix}

However, the customary law should not apply where on account of any act or transaction designed to avoid, for an unjust purpose, the applicability of customary law; and shall not preclude any court from applying the rules of Islamic law in matters of marriage, divorce, guardianship, inheritance, wakf and similar matters in relation to members of a community which follows that law.^{lxxx}

Common Law

The English law is principally the body of law which emanates from the judicial decisions.^{lxxxi} The outcome is said to be determined out of the existing statutes or out of written rules of the law through judicial decision. Common law being a body of law based on the English legal system. The applicability of common law in Tanzania legal system is allowed by the Judicature and Applications of Law Act.^{lxxxii} The court is exercising it is power can apply the common law substance. The Land Act further allows the applicability of common law in land matters. It set forward that the substance of common law shall also be applied by the court in implementing and interpreting the Act as far as determining the



disputes of land arising under the Act.^{lxxxiii} Hence this means that the doctrine of common law applies to sale of land under customary right of occupancy in Tanzania.

THE INSTITUTION FRAMEWORK

The Village Land Council

The Commissioner for land is the principal administrator of all land in the Country. Section 8 of the Village Land Act provides that, the village council shall, subject to the provisions of this Act, be responsible for the management of all village land.^{lxxxiv} The village council shall exercise the functions of management in accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land.^{lxxxv}

The Village Council must have regard to the principles of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land; the need to consult with and take account of the views and, where it is so provided, comply with any decisions or orders of any public officer or public authority having jurisdiction over any matter in the area where the village land is; the need to consult with and take account of the views of others local authorities having jurisdiction in the area where the village land is.^{lxxxvi}

The Judiciary

This institution is established by the *Constitution of United Republic of Tanzania*.^{lxxxvii} Article 107A of the constitution provides that, the judiciary is the final organ in dispensation of justice in the United Republic of Tanzania.^{lxxxviii} Section 62(2) of the Village land Act provides for land dispute; that the following courts are hereby vested with exclusive jurisdiction, subject to the provisions of Part XIII of the Land Act, to hear and determine all matters of disputes, actions and proceedings concerning land, that is to say; the Court of Appeal, the High Court, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Council.^{lxxxix}

CHALLENGES FACING SALE OF LAND IN CUSTOMARY RIGHT OF OCCUPANCY IN TANZANIA

The Limitation Clause Imposed by the Land Act under section 61(3) that Provides for Disposition of CRO to be governed by the Customary Law

The Land Act is supreme law that govern land matters in Tanzania and in case another law that will contradict the land Act will be null and void and the Land Act will prevail.^{xc} The Act under section 61(3) provides for the disposition of customary right of occupancy to be governed by the customary law.^{xci} This is demonstrated in the case of *Prisikila Mwainunu v. Magongo Justus*,^{xcii} the court underlines that, Land management in Tanzania is governed by several laws including the Land Act, Cap. 113, RE

2019 and the Village Land Act, Cap. 114 RE 2019. Section 61 to 166 of the Land Act, Cap. 113 RE 2019 provides for formalised procedures on disposition of registered land. In fact, failure to follow the procedures in disposing the right of occupancy renders such disposition ineffectual. However, there are no such procedures on disposition of customary rights of occupancy. Precisely, section 61(3) of the Land Act, Cap.113 RE 2019 expressly provides that: For avoidance of doubt, dispositions of customary rights of occupancy shall be governed by customary law.^{xciii} This means that, if another law provides on the contrary about disposition of land, it will be null and void. Hence, this cause difficulties for other laws to provide on the contrary and revert to the customary law which is characterized with lack of uniformity in disposition of customary right of occupancy in Tanzania.

The Silence of the Village Land Act to provide for sale of Land in Customary Right of Occupancy Specifically CCRO allocated by the Village Council

The *Village Land Act* provides the manner for application for a person to secure a certificate of customary right of occupancy allocated by the village council under section 27 of the Act.^{xciv} However, the Act does not provide any guidance about the sale of land that allocates itself via the management of the village council. This is demonstrated in the case of *Prisikila Mwainunu v. Magongo Justus*,^{xcv} provides that, on the other hand, the Village Land Act, Cap. 114 RE 2019 does not provide any guidance on sale of customary rights of occupancy. The lack of guidance leaves the customary law to apply in disposition of customary right of occupancy of which is the challenge because of the nature of customary law to lack uniformity in disposition of customary right of occupancy in Tanzania.

The lack of Uniformity to the Customary Law

There is no uniformity in customary laws in Tanzania since there are almost 120 tribes in Tanzania that have their norms and traditions and languages. This is demonstrated in the case of *Prisikila Mwainunu v. Magongo Justus*,^{xcvi} there is no specific customary law for disposition of customary rights of occupancy in Tanzania because Tanzania has almost 120 tribes, and customary law may vary from one tribe to the other. Also James and Fimbo^{xcvii} show that in Tanzania there are different tribes and their rules in sale of land are not uniform, however, some rules are similar, for example the contract may be oral or in writing and party in a contract may recover his property if another party defaults to fulfil his duty in a contract. The lack of uniformity among customary laws in Tanzania brings uncertainty and difficulties in disposition of customary right of occupancy and exacerbates the problem.

The Lack of Formal Land Registry in Customary Right of Occupancy

In Granted Right of Occupancy there is proper, formal and effective land registry that operates under the Registrar of the Land in Tanzania established by the *Land Registration Act*.^{xcviii} The *Land Registration Act* also provides for the sanctity of the Land Registrar and the person who conduct search through the Registrar office may rely on the information provided by the said office as



the evidence before the competent court in case a dispute will rise in a future.^{xcix} This is different to the customary right of occupancy whereby there is no land registry like that of GRO, the *Village Land Act* just provides the Village Council to be the custody of the Village Land and the law is silent about the manner to conduct search in order to examine any encumbrances available in a certain land held under CRO.^c Therefore this brings difficulty in sale of land that result sometimes in double sale of land and fraud in Tanzania under CRO.

CONCLUSSION AND RECOMMENDATION

The paper on its target to focus on sale of land under CCRO allocated by the village council since it is difficulty to focus on deemed right of occupancy because of many tribes available in Tanzania that will require the paper to examine every customary law of every tribe in Tanzania of which is challenging and it needs a lot of time to succeed, the paper suggests the following things to be done in respect to the CCRO allocated by the village council in order to prevent double sale of land and fraud.

- The Land Act to be amended specifically section 61(3) of the Act that provides for disposition of customary law to be governed by the customary law, the new amendment to provide for demarcation, that the disposition under the deemed right of occupancy to be governed by the customary law and the disposition under the CCRO allocated by the village council to be governed by the Village land Act Chapter 114.
- The Village Land Act to be amended and provides new part that provides for disposition of CCRO allocated by the Village council including but not limited to the sale of land. It is better to be taken into consideration that, the Act regulates the occupation of CCRO; therefore it is possible for the same Act to regulate the sale of land under CCRO as well.
- The Village Land Act to be amended and provides new part that establishes the formal land registry office under CCRO, the manner of registration, and the manner to conduct search to the land under CCRO. The part should also provide for registrar of title under CCRO, the sanctity of the registrar of title and the information provided from the registrar office to be used as the evidence before the competent court. This will help to search for patent and latent defect in CCRO allocated by the village council.

ⁱ Priskila Mwainunu v. Magongo Justus, High Court in Bukoba, Land Case Appeal No. 9 of 2020 p. 15

ⁱⁱ Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania

ⁱⁱⁱ Ibid, see pg.

^{iv} <http://theafricanvestor.com/blogs/news/tanzania-property-pitfalls> accessed on 26th April, 2025.

^v Loc cit, see Priskila Mwainunus' case above, pge 16

^{vi} Ibid

^{vii} Loc cit, endnote (ii)

^{viii} Loc cit, see endnote (i)

^{ix} CAP, 113, [R.E. 2023]

^x CAP, 334, [R.E. 2023]

^{xi} CAP 345, [R.E. 2023]

^{xii} In the Court of Appeal of Tanzania, at Dar es Salaam, Misc. Civil Appeal No.1 of 1999, pg. 16

^{xiii} See section 10 of CAP 345 above

^{xiv} See CAP 113 above

^{xv} Loc cit, CAP 334

^{xvi} Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania,pg.

^{xvii} Loc cit, CAP 113

^{xviii} Loc cit, CAP 113

^{xix} See Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania, pg.

^{xx} Loc cit, CAP 113

^{xxi} Loc cit, CAP 113

^{xxii} Loc cit, see Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania, pg.

^{xxiii} In the Court of Appeal of Tanzania, at Dar es Salaam, Misc. Civil Appeal No.1 of 1999, pg. 16

^{xxiv} Loc cit, See Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania, pp.

^{xxv} Loc cit, see CAP 113

^{xxvi} Loc cit, see CAP 114

^{xxvii} CAP 1, [R.E 2023]

^{xxviii} Ibid

^{xxix} Loc cit, see CAP 114

^{xxx} In the High Court of Tanzania, in Bukoba sub registry , Land Case Appeal No. 9 of 2020 pg. 16-17

^{xxxi} In the High Court of Tanzania, in Mwanza sub registry, Land Appeal No. 8 of 2023 p. 11-13

^{xxxii} In the High Court of Tanzania, in Mwanza sub registry, Land Appeal No. 8 of 2023 p. 11-13

^{xxxiii} Ibid

^{xxxiv} Ibid

^{xxxv} Ibid

^{xxxvi} Ibid

^{xxxvii} In the High Court of Tanzania, in Bukoba sub registry , Land Case Appeal No. 9 of 2020 pg. 16-17

^{xxxviii} Ibid

^{xxxix} Ibid

^{xl} Ibid

^{xli} Ibid

^{xlii} Ibid

^{xliii} Ibid

^{xliv} Loc cit, see CAP 113

^{xlvi} Loc cit, see CAP 114

^{xlv} Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania, pg. 23

^{xlvii} Ibid

^{xlviii} Loc cit, see Tenga r.w. & Mramba S. J.(2008), Manual on land law and conveyancing in Tanzania,pg.

^{xlix} Loc cit, see CAP 114

¹ PARVATHY, S. (2023), *Concept of Sale under Transfer of Property Act*, *Tijer - International Research Journal*, Volume 10, Issue 5, pp. 667

^{li} Ibid

^{lii} Dr.S.R.Myneni, *Law of Property* 300(2nd ed, Asia Law House).

^{liii} Ibid

^{liv} Loc cit, see CAP 113

^{lv} Loc cit, see CAP 113

^{lvi} https://mrishoconsult.co.tz/land-ownership-rights/#1_Granted_Right_of_Occupancy accessed on 25th September 2025

^{lvii} <https://velmalaw.co.tz/practice-areas/land-law/> accessed on 25th September 2025

^{lviii} Supra

^{lix} Supra

^{lx} See section 2, CAP 334, [R.E. 2023]

^{lxi} <https://www.lexisnexis.co.uk/legal/glossary/registered-land> accessed on 26th September 2025

^{lxii} supra

^{lxiii} <https://www.lawinsider.com/dictionary/deemed-right-of-occupancy> accessed on 26th September 2025

^{lxiv} <https://www.respicio.ph/dear-attorney/double-sale-of-land-case-rights-and-remedies#:~:text=A%20double%20sale%20occurs%20when%20the%20same%20piece,the%20legal%20framework%20for%20resolving%20double%20sale%20disputes%3A>

^{lxv} <https://dictionary.cambridge.org/dictionary/english/fraud>

^{lxvi} Ibid

^{lxvii} The Constitution of United Republic of Tanzania, 1977 as amended time to time

^{lxviii} <https://www.gotocourt.com.au/civil-law/vic/the-nemo-dat-rule/>

^{lxix} See section 181 of the Act, CAP 113 supra

^{lxx} Loc cit, CAP 113

^{lxxi} Loc cit, CAP 113

^{lxxii} CAP 114, [R.E. 2023]

^{lxxiii} Ibid

^{lxxiv} Ibid

^{lxxv} CAP 1, [R.E. 2023]

^{lxxvi} Ibid

^{lxxvii} CAP 358, [R.E. 2023]

^{lxxviii} Ibid

^{lxxix} Ibid

^{lxxx} Ibid

^{lxxxi} Black's Law Dictionary at page 830.

^{lxxxii} CAP 358, [R.E. 2023]

^{lxxxiii} Ibid

^{lxxxiv} CAP 114, [R.E. 2023]

^{lxxxv} Ibid

^{lxxxvi} Ibid

^{lxxxvii} CAP 2, 1977 as amended time to time

^{lxxxviii} Ibid

^{lxxxix} Ibid

^{xc} Op cit, See section 181 of the Act.

^{xcii} Op cit, CAP 114, [R.E. 2023]

^{xciii} In the High Court of Tanzania, in Bukoba sub registry, Land Case Appeal No. 9 of 2020 pg. 15-17

^{xciv} Ibid

^{xcv} CAP 114, [R.E. 2023]

^{xcvi} In the High Court of Tanzania, in Bukoba sub registry, Land Case Appeal No. 9 of 2020 pg. 16-17

^{xcvii} In the High Court of Tanzania, in Bukoba sub registry, Land Case Appeal No. 9 of 2020 pg. 16-17

^{xcviii} WILLIAM, James & GAMALIEL, Fimbo (1973), *Customary Land Law of Tanzania*. A Source Book, East African Literature Bureau, Nairobi:pg. 95-102

^{xcix} CAP 334, [R.E. 2023]

^c Ibid, See section 98(2)

^c See section 8 of the Village Land Act, CAP 114, [R.E. 2023]