

# **KAMPALA INTERNATIONAL UNIVERSITY**

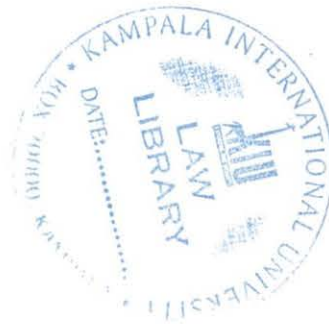
## **ANALYSIS OF THE ROLE AND OBLIGATION OF JOINT BANK ACCOUNT HOLDERS. THE LAW AND PRACTICE.**

**CASE STUDY: TANZANIA**

**BY**

**NAME: NCHEYE P.REVINA**

**REGISTRATION NUMBER: LLB/14126/62/DF**



**A RESEARCH PAPER SUBMITTED TO THE FACULTY OF LAW IN PARTIAL  
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF  
BACHELOR OF LAWS DEGREE OF KAMPALA  
INTERNATIONAL UNIVERSITY**

**2010**

## DECLARATION

**NCHEYE P.REVINA** I, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other University for a similar or any other degree award.

Signature.....*P.Revina*.....

Date.....*10th Dec 2010*.....

## CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by the Kampala international university a dissertation entitled: *The analysis of the Rights and Obligations of Joint Account holders: Law and Practices*, in partial fulfillment of the requirements for the degree of Bachelor of Laws of Kampala international university.



**JOSEPH KYAZZE**  
(Supervisor)

Date: .....*10th Dec 2010*.....

## **COPYRIGHT**

This Dissertation is a copyright material protected under the Berne Convention, the Copyright and Neighboring Rights Act, 1999 and other international and national enactments, in that behalf, on intellectual property. It may not be reproduced by any means, in full or in part, except for short extracts in fair dealing, for research or private study, critical scholarly review or discourse with an acknowledgment, without written permission of the of both the author or Kampala International University

## ACKNOWLEDGEMENTS

This work has benefited immensely from contributions of many people and institutions in word and deed. But since I cannot mention all of them, I would request them to accept my heartfelt gratitude for their invaluable assistance.

However, special and heartfelt thanks must be extended to our Almighty God, my supervisor, Joseph kyazze. Of Faculty of Law, Kampala international university for devoting his valuable time to supervise me from the beginning of my study. His scholarly guidance and help in finding materials; comments and valuable criticism have enabled me to come up with this work. To him I am highly indebted.

Special thanks must also be extended to Mr. Ssewaya of the dean Faculty of Law, Kampala international universty for devoting his valuable time and going through my work. His valuable criticisms and comments have contributed a great deal in shaping this work. Also special thanks must be extended to my family especially my parents Mr. & Mrs. Pastory Ncheye for support, and mostly for providing me with transport during my fieldwork. My grandparents Mr. and Mrs. Ngayabushu Also thanks to my brothers Philemon, Philip, Justine, Aaron Jamal Muta and Mussa. I say Asante, my sisters Jane, Salome, Leah Tumpale and Agatha for their support and encouragement.

I thank all the respondents who agreed to take their valuable time to answer my questions and eventually gave me useful information as it features in this work. To them I am highly indebted. I remain responsible for any mistakes and shortcomings that may be found in this work.

## DEDICATION

This work is dedicated to my parents, Mr. Pastory Ncheye and Scolastica  
Greygory Ncheye

## **ABSTRACT**

This work the rights and obligation of joint account holder's law and practice is organized in four chapters as follows. Chapter one is on introductory remarks and comprises background to the research problem, statement of the problem, literature review, the hypothesis, and research methodology. Chapter two deals with the historical development of joint account holders and comprises the basic concept and mechanism, the meaning of joint account from various sources, the types of joint accounts, the historical development of joint account internationally, and the introduction of joint accounts in Tanzania. Chapter three addresses the position in Tanzania by looking at the legislative and judicial intervention, the doctrine of survivorship, joint and several liabilities, it also contain the position of India in relation to joint accounts. Chapter four contains conclusion and recommendations.

## TABLE OF CONTENTS

|                                |         |
|--------------------------------|---------|
| Certification.....             | i       |
| Declaration and Copyright..... | ii      |
| Acknowledgement.....           | iii     |
| Dedication.....                | v       |
| Abstract.....                  | vi      |
| Table of content.....          | vii-vii |
| Abbreviation.....              | ix      |
| List of statutes.....          | x       |
| List of cases.....             | xi      |

### CHAPTER ONE: INTRODUCTION

|                                    |        |
|------------------------------------|--------|
| 1.1Background Information.....     | 1.2    |
| 1.2Statement of the Problem.....   | 1.2.   |
| 1.3 Objectives of the Study .....  | 1.3.2  |
| 1.4 Significance of the study..... | 1. 4.3 |
| 1.5 Scope of the research .....    | 1.5.4  |
| 1.6 Study Hypotheses.....          | 1.6.5  |
| 1.7 Literature Review.....         | 1.7.6  |
| 1.8 Research Methodologies.....    | 1.8.7  |

### CHAPTER TWO: HISTORICAL DEVELOPMENT OF JOINT ACCOUNTS.....7

|   |       |
|---|-------|
| 2.1 The basic concepts and mechanisms.....                            | 7-11  |
| 2.2 Types of joint accounts.....                                      | 11-16 |
| 2.3 The historical development of joint accounts internationally..... | 16-19 |
| 2.4 Introduction of joint accounts in Tanzania.....                   | 19-20 |

## **CHAPTER THREE: THE LEGAL IMPLICATIONS OF JOINT ACCOUNTS IN TANZANIA**

|   |       |
|---|-------|
| 3.1 The position in Tanzania.....                                 | 21    |
| 3.1.1 Legislative intervention and practices.....                 | 21    |
| 3.1.2 The Doctrine of survivorship.....                           | 21-23 |
| 3.1.3 Joint and several liabilities.....                          | 23-26 |
| 3.2 Judicial Intervention.....                                    | 26-30 |
| 3.3 Position in India.....  | 30-31 |
| 3.3.1 Rights and responsibilities of joint accounts in India..... | 31-34 |

## **CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS**

|                        |       |
|------------------------|-------|
| 4.1 Conclusion.....    | 35-36 |
| 4.2 Recomendatins..... | 37    |



## ABBREVIATION

|         |                                   |
|---------|-----------------------------------|
| A.I.R   | All India Report                  |
| ALL E.R | All England Reports               |
| BOT     | Bank of Tanzania                  |
| C.A     | Court of Appeal                   |
| E.A.C.B | East African Currency Board       |
| Etc.    | et cetera                         |
| i.e.    | that is to say                    |
| Cap     | Chapter of the Laws of Tanganyika |
| C.A.T   | Court of Appeal of Tanzania       |
| H.C     | High Court                        |
| NMB     | National Microfinance Bank        |
| No      | Number                            |
| Pg      | Page                              |
| T.L.R   | Tanzania Law Reports              |
| TSH     | Tanzania shillings                |
| V       | Versus                            |

## **LIST OF STATUTES**

The Banking and Financial Institutions Act, No 6 of 2006

The Bills of Exchange Act, Cap 212 R.E 2002

The Bank of Tanzania Act, No.5 of 2006

The Evidence Act, Cap 6. R.E.2002

The Financial Laws (Miscellaneous Amendments) Act, 2003

## **STATUTE FROM OTHER JURISDICTION**

The Indian Contract Act, Act No.9 of 1872

## LIST OF CASES

1. *Brewer v. National Westminster Bank* [1952] 2 ALLER 650
2. *Catlin v. Cyprus Finance Corporation* [1983] QB 759, [1983] 1 ALLER 809
3. *Case of Lynch* (2006) W.S.F.L 2897
4. *Dodo Ubwa Mamboya v. Khamis Machano Keis* Civ. Case No. 40 Of 1940
5. *Foley v. Foley* (1911)
6. *Jones v. Maynard* [1951] ch. 572
7. *Madsen Estate v. Saylor* 2007 SCC 18, J.E. 2007.873, [2007] W.S.F.L.1839
8. *Marshall v. Crutwell* (1875), L.R.20 Eq 328
9. *McLear Estate case* (2000) 33 ETR 272,[2000] OJ No. 2570 (Ont. sc)
10. *Nanchand Gangaram Shetji v. Mallappa Sadalge and others* [1976] AIR 835, 1976 SCR (3) 281
11. *Pecore v Pecore* [2007] SCC 17, J.E
12. *Re figgis, dec'd* [1969] 1 ch 123

## CHAPTER ONE:

### Introduction

#### 1.1 Background to the Research Problem

This study discusses the law and practice relating to rights and obligations of joint account holders in the law of banking particularly in Tanzania. Questions have often times been raised as to the implications of operating joint accounts especially where there is a dispute between the said account holders, or where one dies or becomes incapacitated or for some reason the account holders cease any joint business.

A joint account is an account where the customer is more than one person.<sup>1</sup> The account is best for married couples, relatives, friends, peoples with partners or anybody who wishes to combine his/ her bank account with another person.<sup>2</sup>

In Tanzania, laws governing the question in issue are the common law principles, the Bank of Tanzania Act,<sup>3</sup> the Banking and Financial Institutions Act,<sup>4</sup> the Bills of Exchange Act,<sup>5</sup> and the Financial Laws (Miscellaneous Amendments) Act, 2003.

---

<sup>1</sup> Sheldon et al *Practice and Law of Banking* (Eleventh Edition) Mackdonald and Evans Ltd 1982 P.69

<sup>2</sup> [http:// www.moneypage . Com/Bank –Accounts/Joint \\_Bank\\_ Account . html](http://www.moneypage.Com/Bank-Accounts/Joint_Bank_Account.html) retrieved on 18<sup>th</sup> 07 2009

<sup>3</sup> Act No.5 of 2006

<sup>4</sup> Act No.6 of 2006

<sup>5</sup> Cap 212 R.E 2002

These pieces of legislation are very general that they have discussed these rights and obligations without making specialization as to which type of customer (account holder) will exercise certain obligation or right and which one will not.

Also upon the exercise of rights and obligations of these joint account holders, banks mostly use practices rather than law itself because our law is not clear. By so doing, some of individual's rights are violated and this is a problem. Therefore, this study will help the legislature to make some amendments where there are unjust laws and then legislate new laws which will protect the rights of joint account holders.

## **1.2 Statement of the Problem.**

While the legal framework regulating the relationship between joint account holders may be clear, the practical problems that result from the use and operation of joint accounts are quite many. Such problems may range from include issues of forgery of the signature by the other party, joint and several liabilities that every account holder may be subjected to and the consequences of death, incapacity or bankruptcy of one of the parties.<sup>6</sup> The key problem meriting extensive consideration in this research is the efficacy of the existing legislative and policy framework in the regulation of the rights and interests of parties in the aforementioned eventualities. The research focuses on the effectiveness of the available legal mechanism to ensure the provision of maximum protection to an innocent party to a joint account where any of the aforementioned events occur.

---

<sup>6</sup> Undermill .A. *Principles of the Law of Partnership*(Seventh Edition) Butterworth &Co. Ltd 1958 p.71 Butterworth &Co. Ltd 1958 p.71

### **1.3 Objectives of the Study**

The study generally intends to look on the analysis of joint account holders in Tanzania and examines their legal roles and obligations.

### **1.4 Significance of the study**

**1.4.1** This study will give rise to understanding and make clear to the society, government and other administrative authorities on the importance and justification of law and practice of bank joint account holders.

**1.4.2** Also this study will come up with tentative recommendations on both existing self imposed and statutory law on joint account.

**1.4.3** This study will be an important input to the court of law when reviewing existence of the law governing joint account holders.

**1.4.4** The successful completion of this research shall serve to the researcher a partial fulfilment of academic requirement for the award of Bachelor of Law (LL. B) at Kampala international university

### **1.5 Scope of the research**

The research will mainly focus on analysis of the role and obligations of joint account holders in Tanzania. The research will particularly be conducted in the Tanzania mainland. The research will involve institutions in Tanzania mainland where relevant materials will be found.

## 1.6 Study Hypotheses

This study is based on the following hypotheses

**1.6.1.** That in Tanzania, there is no specific law dealing with the doctrine of survivorship and the principal of joint and several liabilities.

**1.6.2.** In addition, there is a need to know the law governing joint account holders because the parties to this are conducted mostly by the bank and not court.

## 1.7 Literature Review

The rights and obligations of the banker and the customer are the same, whether an account is owned jointly or individually. Where an account is a joint one, however it is necessary for a banker to know the position with regard to the mandate and the liability of each of the parties to the account.<sup>7</sup> The problem arises where the bank pays a cheque without authorization of the mandate (written mandate) signed by all joint account owners or any authorized person. The consequence of this can be forgery of cheques, un consented instruction to the bank, and the issue of honoring a cheque by the bank to the party who is already undergone bankruptcy.

On the issue of forgery, the case of *Catlin v. Cyprus Finance Corporation*<sup>8</sup> since 1983 this case is used to govern joint accounts up to now. According to this case, husband and wife opened the joint account and the mandate clearly specified both to sign. The bank negligently allowed the husband to transfer funds from the joint

---

<sup>7</sup> Sheldon et al *Practice and Law of Banking* (Eleventh edition) Mackdonald and Evans Ltd 1982 P.69

<sup>8</sup> [1983] QB 759,[1983]1ALL ER 809

account to an account in his personal name without the wife signing the withdrawal instruction. Thereupon the wife proceeded against the bank for breach of mandate instructions and for restoration of funds in the joint account. The bank argued that the contract with the bank relating to the joint account was mandate

## **1.8 Research Methodologies**

### **1.8.1 Documentary review**

In conducting research, the researcher took notes and made a content analysis. Data was collected through visiting various libraries. Among those libraries includes the University of Dar-es-Salaam main library and Ruaha University College library. Likewise, the researcher visited the Bank of Tanzania main library to get relevant materials for the research.

In addition, the focus was set to the use of internets to retrieve more materials relating to the topic as to enable the researcher to make a sound comparison with other countries on the protection of rights and obligations of joint account holders.

### **1.8.2 Field Research**

During the field research, interview and observation methods were employed in collection of primary data. Through interview method, the reliability of the information gathered was very high and gave the in-depth information about particular interesting cases to the researcher. This method-involved presentation of oral verbal stimuli and reply in terms of oral verbal response, questions and

---

Sheldon et al *Practice and Law of Banking* (Eleventh Edition) Mackdonald



Answers were done at the same time and involved two types of interview, which were direct personal interview and indirect personal interview. Moreover, observation methods were used by the researcher where the information collected was relating to what is real happening as practice in various banks. Also through this method, the researcher collected information, which involved habitual routines where people were almost not aware

The researcher visited various financial institutions like the BOT in Dar-es-Salaam, section of Directorate of Banking supervision, CRDB Bank Limited, C.B.A, N.M.B Limited, and Bank of Baroda Tanzania Limited. The researcher also visited courts of law like the High Court of Tanzania in Dar-es-Salaam.

### **Synopsis of the Study**

Chapter one of this study discusses the background of the study, statement of the problem, objectives of the study, significance of the study, scope of the study, study hypothesis and literature review.

Chapter two will address the historical development of joint accounts and incidental legal and practical matters.

Chapter three addresses the legal implications of joint accounts in Tanzania

While chapter four discusses the conclusions and recommendations of the research.

## CHAPTER TWO:

### **The Historical Development of Joint Accounts and incidental Legal and Practical Matters.**

#### **2.1 The Basic Concepts and Mechanisms**

A bank account this is a deposit or credit account with a bank, such as demand, time, and savings or passbook account. These can be done by a single person or by more than one person. That was the principal in *Bryn, A.G.*<sup>9</sup>. A joint account is a bank or brokerage account opened by two or more people, by which each party has a present right to withdraw all funds in the account, and upon the death of one party, the survivor become the owners of the account, with no right of the deceased party's heirs or devisees to share in it. Typically, the account holders are designated as "joint tenants with right of survivorship" or "joint- and- survivors account holders". In some jurisdiction, they must be so designed to establish a right of survivorship (also termed as joint-and survivorship account

a joint account is opened when two or more people request the bank to open an account in their names. When the joint account is opened, apart from the usual inquiries being made, a joint account mandate must be signed. The joint account mandate will always contain the following clauses first, a statement that it is a joint mandate. Secondly, an authority to the bank authorizing the bank to honor all cheques and other orders or instructions authorizing payment, provided that they are signed by either/anyone or two both or all account holders, whether the

---

<sup>9</sup>.Bryan, A.G. *Black's Law Dictionary* (Eighth Edition)Volume One p.18-19

account is in credit or overdrawn. That was stipulated in *P. Cowdell and J. Cowdell*,<sup>10</sup> Thirdly, an agreement that any liability incurred by the account holders will be their joint and several responsibilities. The mandate may have also additional clauses such as instructions regarding the giving up of items held in safe custody, and the effect of upon the account

A joint account occurs when two or more customers have one account that was the argument in *Lord Chorley and Milnes Holden*<sup>11</sup>. The parties in joint account are considered in law as if they were one person, and therefore, prima-facie, all of them must join in taking any action with regard to the account, as when drawing cheques. A common type of joint account is that opened by a firm or partnership. Each partner however becomes the agent of his firm to conduct transactions within the scope of the business, and this gives him the right to open a banking account in the firm's name, to operate it by means of his own individual signature on cheques and indeed to close it.<sup>12</sup>

If a bank account is held in joint names, then prima-facie any money in the account belongs to both parties as beneficial joint<sup>13</sup> tenants of the whole fund, unless there is a contrary intention, e.g. that the account was put into joint names for the sake of convenience may be held to be regarded as a true joint account after a period of time that was suggested in *Re Figgis, dec'd*.<sup>14</sup>

---

<sup>10</sup> .P. Cowdell & J. Cowdell Associateship Examinations *Law relating to Banking Services* (2<sup>nd</sup> Edition) Bankers Workbook Series, Sheffield Hallam University, 1994 p.53

<sup>11</sup> .Lord Chorley, *Law of Banking* (5<sup>th</sup> Edition) London SIR Isaac Pitman and Sons LTD P.159

<sup>12</sup> .*Ibid* at p.161

<sup>14</sup> [1969] 1 ch 123

As a rule, any property bought with funds from a bank account belongs to the purchaser. Thus, for example, if a husband draws money from a joint bank account with his wife to purchase shares in his name, then prima-facie belongs to him. However, where the parties have pooled their resources, the court may adopt the approach. In *Jones v. Mynard*<sup>15</sup> where Vaisey J. treated the joint account as a 'common pool' and held that investments purchased by the husband with money from an account held jointly with his wife belonged to them both in equal shares, even if the husband has made larger contributions to the joint account than his wife.

When a joint account is opened, it is highly advisable for all parties concerned to state in writing what signatures are necessary for account operation. Unless this is done, the banker is not safe in honoring any cheques unless signed by all parties stated in *Drover.C. & Bosley .R.*<sup>16</sup>. This is an exception to the rule that a man may pay a debt to one person with whom he has contracted jointly.

The exception is due to the particular kind of contract that exists between the banker and his customer. For instance, if an account is opened by one party in the joint names of himself and another without the authority of another, the latter must, nevertheless, join in signing before the banker can safely permit any withdrawal. If the parties wish a few to have access to or to be able to withdraw securities or articles left for safe custody in their joint names, then all such matters should be included in instructions signed by all. Death, bankruptcy or mental

---

<sup>15</sup> .[1951] ch 572

<sup>16</sup> .Drover C.B & Bosley.R.W, *Sheldon's Practice and Law of Banking* (Tenth Edition) p.233-234

incapacity automatically revokes all mandates and similar authorities. It is desirable that full title of the account should appear on each cheque, as shown in the bank's books.

While opening an account in the joint names of two or more persons, the banker have to get written instructions signed by all the account holders regarding the names of the persons authorized to operate on the account and the extent of their authority that was the principal in *Shekhar K.C.*<sup>17</sup>. In the absence of such instructions, the banker should honour only those cheques that are signed by all joint account holders.

The authority to operate on the account may be given to an outsider. It may, however, be noted here that one of the joint account holders authorized to operate on the account does not have the power to delegate his power to an outsider. Any joint account holder may revoke the authority given to any person to operate on the account. When the banker is given notice for such revocation, he is required to act accordingly. Death, bankruptcy or insanity of the person authorized to operate on the account automatically revokes the authority. Similarly, the authority is revoked by the death, bankruptcy or insanity of the person giving the authority.

Moreover, a joint account is essentially an arrangement made between the bank on one side and two or more customers on the opening and operation of a bank account the names of joint account holders. The most common example is the use of a single account by husband and a wife to make their income available for

---

<sup>17</sup>.Shekhar K.C and Shekhar .L., *Banking Theory and Practice* (Nineteenth Edition)

common domestic purposes. In opening the account, the bank provides a printed form of mandate for joint account to cover various contingencies likely to arise.

Each operative part of the mandate provides for authority to be given by both or either of the account holders. Of course, they may opt for a mixed authorization some transactions such as drawing cheques require only one signature but others such as re-delivery of property deposited for safekeeping require the signature of both joint account holders. The forms of mandate used by different banks vary in their detail, for a simple matrimonial joint account, much of the detail of an elaborate mandate may be bewildering rather than helpful and relevant to the spouses. The bank is mandated to act on the signature of one or both joint account holders as the case may be in such matters as payment of cheques drawn on the account, countermand of payment, credit of moneys received in the account, advances, delivery of document, property etc. in the safe keeping of the bank. Disposal of any credit balance by the survivor following the death of either any joint account holder may revoke the mandate.

## **2.2 Types of Joint Accounts**

Different types of joint accounts exist in order to fit the needs of various relationships in joint accounts in different jurisdictions like UK, Canada, etc. these includes the following types:

### **Joint Tenants with Rights of Survivorship (JTWROS)<sup>18</sup>**

---

<sup>18</sup>.[http:// www.fineweb. Com/banking-credit/joint\\_bank\\_accoun-facts-toconsider-before-opening-one. Html](http://www.fineweb.Com/banking-credit/joint_bank_accoun-facts-toconsider-before-opening-one.Html)

This is the most common joint bank account, in which all assets are passed to the surviving party in the events of an account holder's death with a JTWROS, all shareholders have equal rights to account assets and can conduct transactions without the approval of the other accountholders.

**b. Tenancy in Common<sup>19</sup>**

This is the popular joint account among partners, with a tenancy in common account, any account assets of a deceased holder belong to whomever he or she named in their will. With this type of joint bank account, owners may have unequal shares and therefore proportionate interest rates.

**c. Tenancy by the Entirety**

This is the more regulated joint bank account that requires all shareholders to sign for or approve any account transactions.<sup>20</sup>

**d. Convenience Account**

One person is the real owner of the funds, while the other person's name is on the account so that they can pay bills or make withdrawals for the owner of the funds. This type of account is often used for elderly or incapacitated<sup>21</sup> persons.

**e. POD Account**

One person owns the funds in the account, and the other person will own the funds after the first person's death.<sup>22</sup>

---

<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

The *case of Lynch*<sup>23</sup> clarifies the situation where two account holders, aunt and a niece, opened joint deposit account. Both parties signed the relevant documentations to open the account, and the bank was instructed to pay the funds to the aunt only or to the survivor. Evidence produced to the court was that the aunt intended to control the account during her lifetime, but for the benefit her niece on her death therefore, she assumed that she had disposed of the funds in the account.

However, her successor claimed that the funds in the joint deposit account belonged to her estate. The Supreme Court ruled that the funds in the joint deposit account were vested absolutely to the niece on the aunt's death. This was in accordance with the contract i.e. the account opening documentation between the account holders and the bank, and reflected the aunt's intention.

The issue of intention of parties is considered mostly, but unfortunately, there is no clear provisions of law in Tanzania that gives a room for this as a result many rights of individuals are violated.

The question of intention of parties is regarded differently depending on various laws governing a particular jurisdiction. For instance in Canada, Courts normally look on the evidence whenever the issue of joints accounts arise, when there is a clear documented intention of the deceased that the joint holder of the accounts should get the money upon his death then the decision is an easy one. But when the evidence is not so clear, the courts have traditionally relied on certain

---

<sup>22</sup> *Ibid*

<sup>23</sup> Fitzgerald & Co., Solicitors Friar St. Thurley.co. Tipperray. Ireland



presumptions and use them as guides when insufficient evidence exists to definitively ascertain the deceased's intention.

Historically, the presumption of a resulting trust and the presumption of advancement are two competing presumptions that come into play when money held in a joint account is being fought over<sup>24</sup>.

The presumption of a resulting trust stems from the idea that people make bargains; they do not make gifts. Based on this presumption, unless the evidence proves otherwise, the courts starting point is that if 'A' deposits all the money into the bank account held jointly with 'B' then the court assumes that 'B' would not keep the money when 'A' dies. The court presumes that 'A' intended that money to be held in trust for 'A's estate.

The presumption of Advancement stems from the idea that people give gifts to their children, so that when 'A' deposits money into joint account the court presumes that it was with the intention that A's child should receive that money when A dies. This presumption is based on the idea that parents recognize on obligation to support children and advance monies to them. Based on the presumption some courts have held that, unless evidence proves otherwise, if dad deposit all the monies in the bank account held jointly with his child then the court would presume that he intended that money to belong to that child when the farther died.

---

<sup>24</sup>Charles B. Wagner & Associates- [http:// www.joint asset .com /index. Html](http://www.jointasset.com/index.Html) retrieved on 18<sup>th</sup> 07 2009

In *McLear Estate case*,<sup>25</sup> in this case an Ontario judge rejected the presumption of advancement and accepted the resumption of resulting trust when an adult child and an elderly parent hold assets together in joint tenancy. Justice Heeney stated 'the presumption that accords with this social reality is, that the child is holding the property in trust for the ageing parents, to facilitate the free and efficient management of that parents affairs. The presumption that accords with this social reality is in other words the presumption of resulting trust. In contrast, there is a line of case law prior to the *McLear Estate* decision that suggests the presumption of advancement applies to adult children as well because parents gives gifts to their children out of affection.<sup>26</sup>

Two court cases came before the supreme court of Canada recently that clarified the matter. *Pecore v. Pecore*<sup>27</sup> and *Madsen Estate v. Saylor*<sup>28</sup> received and elucidated the law regarding these presumptions. Both cases involved bank accounts, which an elderly parent made joint with one of their children. Dispute arose whether the surviving joint account holder was entitled to all the money in the bank account. The supreme court of Canada explained that;

First, intention of the deceased is the determining factor. Presumptions are only guides. If the deceased really wanted her child to receive the money in the bank account after his/her demise then the courts will give effects to that intention. When evidence is unclear as to the deceased's intention then the courts uses

---

<sup>25</sup> (2000) 33 ETR 272, [2000] OJ No. 2570 (Ont. sc).

<sup>26</sup> In *Pecore v. Pecore* the court referred to these cases that support the view that the presumption of advancement applies to adults, *Madsen Estate*, at para .21 Dagle, *Christmas Estate v. Tuck* (1995), 1 E.T.R (2'd) 204 (ont.S.C.J)

<sup>27</sup> 2007 scc 17, J.E

<sup>28</sup> 2007 SCC 18, J.E. 2007-873, [2007] W.D.F.L.1839

presumptions as working guides as to that intent. The presumptions are rebuttable if evidence can demonstrate them to be wrong.

Second, presumption of advancement only applies to minor children. The court opined that the presumption of advancement (i.e. that parents give gifts to their children) was based on the idea that minor children needed support from their parents. Accordingly, adult children who normally do not need support cannot rely on the presumption of advancement. The supreme court adopted the reasoning of the *McLear* case and stated that... 'am therefore of the opinion that the rebuttable presumption of advancement concerning gratuitous transfers from parent to child should be preserved but be limited in application to transfers by mothers and fathers to minor children.'

Third, Presumption of Resulting Trust was accepted in the estate context. The Supreme Court adopted justice Heeney's view in the *McLear* case & stated it is common now days for ageing parents to transfer their assets into joint accounts with their adult children in order to have that child assist them in managing their financial affairs. There should therefore be a rebuttable presumption that the adult child is holding property in trust for the aging parent to facilitate the free and efficient management of that parent's affairs.

### **2.3 The Historical Development of Joint Account Internationally**

Although banking system has its roots from the seventeen century, many of its features can be traced back up to the ancient times. Before the introduction of the monetary system, transactions involved credit in primitive communities. Early Pacific civilization used strings of beads as a means of recording debts, even

before they were a means of exchange. The Chinese dynasties are full of instances of note issues recorded back as far as 14 BC under the Emperor WuTO, who used a form of paper money made from stag skin. In Greece, Babylon and the Roman Empire an extensive international trade demanded Banking facilities, such as the lending of money, its exchange in foreign trade and travel, and the safekeeping of deposits. Egypt adopted the Greek system, which also influenced the Roman Empire. The breakup of the Roman Empire led to the decline in banking. However, banking did not cease completely as the Lombard merchants developed banking in Venice and Genoa in the 12<sup>th</sup> century.<sup>29</sup>

Carter & Partington<sup>30</sup> argues that the seventeenth century was by no means a period of unrelenting prosperity; it was nonetheless a time when financial developments were both propitious and beneficial. We can identify the main participants in these developments as the London goldsmiths. They extended their services to gentry and aristocracy as the Royal Mint was no longer considered as a safe place to keep gold. The goldsmith-bankers were not only of benefit to the private customer, but were also an integral part of Government finance, since they either loaned funds to the government or discounted such claims on the government which were held by individuals. In 1694 the bank of England was established, this also intended to do no more than the kind of Goldsmiths were doing already. It was a bank of issue, printing their own notes and lending money of their own creation. In 1708, the Bank of England became the Government's bank and the banker's bank, due to the convenience of depositing their surplus

---

<sup>29</sup> .[http : // www.banking-history.co.uk/](http://www.banking-history.co.uk/) retrieved on 20<sup>th</sup> 07 2009

<sup>30</sup> Carter & Partington, *Applied Economics in Banking and Finance* (3<sup>rd</sup> Edition) p.116

balances. During the 18<sup>th</sup> century as private banks developed, the Bank of England continued to dominate the scene, although not knowing it would become the central bank, as we know it today.

Although the modern primary banks appear to be very different from their seventeenth century forbears, an examination of the functions and the services of the modern bank would reveal many similarities. These banks not only have responsibilities to customers, but also have profit objectives of their own. Since provision of safekeeping of customer's money and valuables was an attractive feature of the goldsmith bankers, modern bank also performs, although in a slight different way. Banks accept cash or deposits from customers, which then represent the liability of a bank in the form of a sight deposit (current account) together with a cheque facility for the customer, or a time deposit (deposit account) which bears interest. These two types of account present the customer a convenient and virtually risk-free from withholding wealth as well as a safe and useful means of settling debts by means of the cheque.<sup>31</sup>

Therefore, it shows that even during the period of goldsmith bankers, accounts opened by customers were either current or deposit account which can be done either by single person or jointly. Therefore, it shows that even the modern banks in 18<sup>th</sup> century upon provision of services to customers as one of their functions, joint accounts that were opened by customers resulted to present-day joint accounts.

---

<sup>31</sup> *Ibid at p.119*

## 2.4 Introduction of joint accounts in Tanzania

Establishment of banks in Africa was resulted by exportation of capital. The exportation of capital had the effect of transforming the hither to predominant natural economy into commodity production. The nature of the economy imposed necessitated the imposition of the institutions to save such economy.<sup>32</sup> Automatically, the colonization of the East African countries brought with it not only importation of capital but also strategic institutions to service it, including financial institutions. Banks were imposed on the African colonized communities, including Tanganyika. These banks were-imposed to service the capital that was imported .to the African communities. One of the condition for operation of a bank was the imposition of bank branches of mother commercial banks abroad, for instance during British colonialism, the operations of the financial system were tied to the London Financial Market rather than to the needs of the economy.<sup>33</sup> These branches issue neither currency nor control.

The commercial banks operating in Tanganyika before 1953 were Barclays Bank Ltd (DCO), which had its branches in Arusha, Moshi, Mwanza, Dar-es-salaam, Lindi, Bukoba, Iringa and Dodoma. Others included the Standard Bank of South Africa (five branches), National Bank of India and the Congo Bank.<sup>34</sup> Since banks accepted cash or deposits from customers which then represented a liability of the bank in the form of sight deposit (current account) together with a cheque facility for the customer, or a time deposit(deposit account) which were bearing interest. This shows that customers opened joint accounts because it is one of the services

---

<sup>32</sup> Carter & Partington, *Applied Economics in Banking and Finance* (3<sup>rd</sup> Edition) p.10

<sup>33</sup> Kimei .C. S, *Tanzania's Financia Experience in the Post-war Period*. Almquist & Wiksell International Stockholm, Sweden 1987 57

<sup>34</sup> .NDITI *Ibid* at p.16-17

provided by the commercial banks. Currently in Tanzania, there is a list of licensed banks, licensed financial institutions and community banks, which deal with joint accounts.

Into Conclusion joint account is a bank or brokerage account opened by two or more people, The parties in joint account are considered in law as if they were one person, and therefore, prima-facie, all of them must join in taking any action with regard to the account, as when drawing cheques.

## **CHAPTER THREE:**

### **The Legal Implications of Joint Accounts in Tanzania**

#### **3.1 Position in Tanzania**

Various laws, rules and regulations, which give out the legal position to the issue of joint accounts, govern banking matters in Tanzania. Though we have some laws, still there are some gaps, which need to be filled.

##### **3.1.1 Legislative Intervention and Practices in Tanzania**

The main Acts in Tanzania dealing with banking matters are the Bank of Tanzania Act, The Banking and Financial Institutions Act, the Bills of Exchange Act, the Evidence Act (in matters relating to evidence), the Contract Act etc

The BOT Act<sup>35</sup> under s.41 and 41(2) states that the bank may provide some additional services to the banks and financial institutions. Also, part IV of the BFIA<sup>36</sup> deals with supervision, regulation, co-ordination and control. This shows that the BOT has great role over commercial banks and financial institutions. As the matter of practice, the BOT under its regulations is empowered to provide the minimum standards to these banks under which must be followed, since most of these banks have their mother branches in their countries they are allowed to add some of their conditions upon their operations but not below the minimum standards provided.

---

<sup>35</sup>( Act No. 5 of 2006)

<sup>36</sup> Ss. 17-22 of Act No.6 of 2006



**S.48 (1) of the Bank of Tanzania Act** gives the BOT control over banks and financial institutions provides that;

*... The bank shall be entitled to access to computers, books, minutes, accounts, cash, securities, documents...in the possession or custody or under the control of the banks and financial institutions, which relates to the business of banks and financial institutions”.*

Through that provision of law, the BOT tries to make sure that there is clear supervision of the banks and financial institutions whenever they conduct their business. The BOT extends its supervisory power to accounts opened in these banks in their daily activities. Since banks need the deposits for doing business, they makes much efforts to accumulate more and more funds from the public by offering attractive terms i.e. different types of account are to be opened, such as current accounts, saving accounts, time deposit accounts etc<sup>37</sup> which can be opened jointly or individually.

Drover C.B<sup>38</sup> provides that a banker should not open an account with a person unknown to him without first obtaining references (duly authenticated) from responsible parties as to the proposed customer's integrity and responsibility. Omission to do so may have unpleasant consequences, not only to the banker concerned, but also to other bankers and the public. In this way, S. 22(1) of BEA<sup>39</sup> on the capacity of parties provides that capacity to incur liability, as a party to a bill is co- extensive with capacity to contract.

---

<sup>37</sup> NDITI, NNN *Law of Banking: Learning materials*. Pg.57

<sup>38</sup> Drover C.B & Bosley.R.W, *Sheldon's Practice and Law of Banking* (Tenth Edition) Pg.218

<sup>39</sup> [R.L. Cap 215]

This provision of law suggests normal rules of contract to be applicable for the establishment of party liability when dealing with any bill.

### **3.1.2 The Doctrine of Survivorship**

Joint ownership carries with it a presumption at common law that the property will pass to the survivor following the death of one party. The property here is the balance on the joint banking account. While both parties are alive, they together make up the ownership. Unless the evidence is brought to show that one party provided the money; then the question of how much of the balance belongs to one and another does not arise. There is no question of 'shares' because they are joint owners.

The death of one joint account holder bring into effect two important principles that was the provision by *Jane Cowdell*<sup>40</sup> first, survivorship principle that on the death of a joint owner of the property, legal ownership is shifted to the surviving joint account owner(s). If the deceased joint account owner was beneficially entitled to any portion of the property, his estate has a personal claim against the survivors who are trustees of the property for themselves and for the deceased. Second, the death of a joint account holder automatically revokes any mandate given by him, jointly with others, to the bank.

---

<sup>40</sup> CIB, *Branch Banking-Law and Practice* (4<sup>th</sup> Edn.) BPP Publishing Limited Aldine House, Aldine Place London W12 8AW P.179



The practical procedure to be adopted is that after C's death certificate has been produced to the bank as evidence of his death, A and B have to join in signing a cheque payable to themselves so as to withdraw the entire balance on the account. A and B should then pay a cheque into a new account in the joint names of A and B and give the bank a new mandate to honour cheques signed by either of them.

In order to avoid these formalities, the usual form of mandate provides that, on the death of a joint account holder, the bank has to hold any credit balance on the account and any property deposited in its care to the survivor(s) under the continuing terms of the mandate as regards to the signatures.

The presumption of survivorship may be upset if the husband dies first, his personal representatives may challenge the right of the surviving widow to the balance on the account. Then it is necessary for the court to hear evidence as to who paid the money into the account and, if possible, to know what was the intention of the parties.<sup>41</sup>

A problem arises in joint account where a bank honors a cheque drawn by the joint account holder while the other side has gone bankrupt together with the issue of survivorship. Under this situation the problem arises where the trustee in bankruptcy or the deceased's estates grow to be interested in the account, hence fail to exercise their rights.

---

<sup>41</sup>.Perry F.E, *Law and Practice Relating to Banking* (5<sup>th</sup> Edn.) Methuen & Co. Ltd Pg 83

In case of both the wife and the husband, and neither of them has any separate rights, the wife could not sue by herself. This argument was not accepted; the decision of this case favored the innocent party whenever any breach of the mandate by the bank occurs.

Although this case is governing joint accounts, whenever forgery arises where the bank breaches its duty, still the practices reveal that the rights of innocent parties are infringed as most of banks deal with only practices rather than provisions of law. In the case of *Silayo v. CRDB (1996), Ltd*<sup>42</sup> the Court of Appeal of Tanzania considered that it is the bank's duty to detect fraud in forged cheques. Still banks do not do so; most banks make efforts to shift the burden of their liability to the innocent party so that the court's decision would not favor the innocent party. All these are achieved by incorporating the clause of joint and several liabilities in their specimen or application form. In practice, this clause gives the right to the bank to sue jointly or severally (one after another) since it creates problems to joint account holders, changes must be made on this clause.

In exercising the rights and obligations of joint account holders, there is a doctrine of survivorship, which is a presumption under common law. This doctrine carries with it a presumption that on the death of one of the parties, the property be passed to the survivor(s), which is in ordinary cases entitled to the whole amount, either under the law of devolution between joint owners or by custom of bankers or by express or implied agreement, the banker obtains a good

---

<sup>42</sup> [2002]1 E.A 288

discharge by paying the survivor(s).<sup>43</sup> Upon the death of one part, the personal representatives of the deceased can rebut this presumption, where they can prove that first, it was the deceased who paid in the money to make the joint account and, second it was not the intention of the deceased that the property should devolve to the survivors. In addition, this doctrine causes problem where there is no clear terms, which show the evidence rebating the presumption. In this way, obvious the rights of the personal representatives of the deceased party under the joint account infringed.

In Tanzania, there is no specific provision of law dealing with the doctrine of survivorship in relation to joint accounts. Therefore, there is a need of enacting specific provision of law dealing with this.

In case of bankruptcy, the position of the law is that as soon as the banker learns of a bankruptcy petition against any of the parties, he should not permit further drawings from the joint accounts.<sup>44</sup> Therefore, it happens that the notice of bankruptcy has not yet been given to the bank and the other party has drawn the entire amount from the account and it happens that the account was a trust one where the beneficiary is interested on the money. This creates problems because the beneficiary will fail to get his rights in relation to the joint accounts.

---

<sup>43</sup>HapgoodMark Q.C. *PAGET'S Law of Banking* (12<sup>th</sup> Edition) Reed Elsevier UK Ltd 2003 p.179

<sup>44</sup> Sheldon and Fidler's *Practice and Law of Banking* (Eleventh Edition) Macdnald &Evans LTD 1982 P.69

The principles governing the relationship between joint account holders have been considered in a number of cases. In *Foley v. Foley*<sup>45</sup> the husband expressly stated, when he opened the joint account, it had to provide for his wife, should he predecease her. This in fact happened and the widow was held entitled to the balance.

On the other hand, in *Marshall v. Crutwell*<sup>46</sup> the husband transferred the balance from his sole account to a joint account in the names of his wife and himself, as he wanted her to make payment of the household accounts and other expenses. After his death, it was held that the transfer to the joint account was not the provision for the wife. It was for his greater convenience. Therefore, it was held that the widow should not be entitled to the balance, and the presumption of survivorship was upset.

It has so far been assumed that, in cases where there is no express provision in the mandate dealing with death of an account holder, the family squabbles can easily arise and the wise banker may wish to avoid being implicated in them. It is common then to find in the joint account application form a provision that the survivor is entitled to the balance. The banker may rest safely on his instruction signed by both joint accountholders, then if there is an action, let it be directed against the survivor having the balance, and not against the bank. Without this express provision, the banker might find himself caught between the personal representative of a deceased joint account holder and the survivor, both claiming

---

<sup>45</sup> (1911)

<sup>46</sup> (1875), L.R.20 Eq. 328

the balance. In addition, the banker uncertain as to which party he should pay it over.<sup>47</sup>

Citing some few examples of the mandates in various banks in Tanzania, for instance **clause 7** of the general terms and conditions for operating with CRDB Bank Limited, which deals with joint account, provides that:

*a) Individuals owning joint accounts authorize and empower each other to deposit with the Bank all cheques, notes or other instruments for the payment of money payable and purporting to belong to either or all of them and should any such instruments be received by the Bank without having been so endorsed the Bank is authorized to endorse any such instrument on behalf of the Customer and to credit the same to the account.*

*b) In the event of death of any of the individuals owning the joint accounts, the surviving individuals shall be entitled to dispose of any credit balance, security or property available to the account and remaining unencumbered, freely without limitation.*

**Clause 8** of the general terms and conditions (account opening form SB1) of the Exim Bank (T) Limited provides that in the event of two or more customers holding a joint account the following additional provisional applies.

---

<sup>47</sup> Perry F.E Ibid at pg.82

a) The holders of a joint account authorize the bank to pay or deliver to, or to the order of, survivors or survivor or the executors or administrators of such survivor any moneys standing to the credit of their joint account.

However, there are other banks like the NMB on its mandate provides only the clause dealing with the joint account but does not provide the presumption of survivorship. Therefore, as a matter of practices in cases where there is no express provision in the mandate dealing with the death of an accountholder, the bank becomes unaware of any differences in the entitlement of the joint accountholders but treats them as joint owners.<sup>48</sup> This brings about some difficulties to parties in exercising their rights for instances those who have contributed and those who have not. The clause provides that

*Where an account is to be opened or operated in the name of more than one person, the rights and obligations of each joint account holder and other matters with respect to the operation of the account shall be as agreed in writing by each of them with the Bank from time to time. References to "Customer" in these General Terms and Conditions shall include each joint account holder.'*

### **3.1.3 Joint and Several Liabilities**

At Common law the liability of husband and wife, or any other joint account-holders, was until 1978, joint, but under the civil liability (contributions) Act of that year, it is possible to sue one party and then the other separately<sup>49</sup>

---

<sup>48</sup>. CIB, *Branch Banking-Law and Practice* (4<sup>th</sup> Edition) BPP Publishing Limited Aldine House, Aldine Place London W12 8AW Pg 178

<sup>49</sup>Ferry *Ibid* at Pg 81



By the terms of the mandate, the joint account holders agree to be jointly and be severally liable to the bank for any liability to the bank, which they may incur to the bank. The simple and obvious case is liability to repay a loan or overdrawn current account. The bank can claim repayment from both holders together or from one or other of them. If the claim against one does not succeed, the bank may then claim successively against the others until the debt is paid.

Until recent times, it was considered that an innocent joint account holder has no remedy against a bank for breach of mandate instructions originated from forgery of another joint account holder. The law-governing joint account was given in the decision of McNair J, in the case of *Brewer v. National Westminster Bank*<sup>50</sup> In this case, the co- holder of a joint account had forged the plaintiff's signature. It was held that both parties to the joint account had to be parties to the proceedings. The actual plaintiff would thereby be affected by the misconduct of the deemed co-plaintiff and by the rule that the party could not rely on his own misconduct.

The legal effects of joint liability<sup>51</sup> is that any liability will be jointly and not joint and several as a result first, if one or some of the joint account holders is or are sued by the bank for the joint debt, the other cannot be sued afterwards. Second, the bank cannot set off credit balances, if any, on the separate accounts against the joint debt, and third, unless the account holders are partners, the death of one of them will discharge his estate from liability.

---

<sup>50</sup> [1952] 2 ALLER 650

<sup>51</sup>Nditi NNN, *Law of Banking, Learning Materials* p.g

The position now, however, appears to be different in view of the decision in *Catlin v. Cyprus Finance Corporation (London) Ltd.*<sup>52</sup>. According to this case, husband and wife opened the joint account and the mandate was clearly specified 'both to sign.' The bank negligently allowed the husband to transfer funds from the joint account to an account in his personal name without the wife signing the withdrawal instruction. Thereupon the wife proceeded against the bank for breach of mandate instructions and for restoration of funds in the joint account. The bank argued that the contract with the bank relating to the joint account was with both the wife and the husband, that neither of them had any separate rights and the wife could not sue by herself. This argument was not accepted, it was held that the bank did not only have an obligation to the account holders jointly, but also had an independent obligation to each of them that it would not honour withdrawal instructions unless signed by both joint account holders.

In Tanzanian laws, S.24 of BEA<sup>53</sup> provides that

*Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge or to enforce payment against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:*

---

<sup>52</sup> [1983] 1 ALLER 809  
47.[Cap 212 R.E 2002]

*Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.*

The mandate must contain the names and addresses of joint account holders and their specimen signature. In addition, the bank must abide by the instruction given in the mandate. Otherwise, it could debit items to the account without authority. This could result in the bank being liable for the damages to the injured joint account party.

**S.69 of TEA<sup>54</sup>** provides for the proof of signature of a person alleged to have signed it, this tries to protect the rights of both parties. As far as the issue of joint account is concerned, the law gives a room to both, so that the one who alleges forgery must prove it. The law provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.<sup>55</sup>

Since the bankruptcy of the individual partners has unlimited personal liability for the debts of the firm, it is a well established practice of banks to require partners to accept joint and several liability for the firm's indebtedness to the bank. This procedure enables the bank to claim against a partner's personal debts, without several liabilities, the bank could not do so<sup>56</sup>. Also since the effects on a bank if a joint and several liability clause has not been included in the mandate (which is

---

<sup>54</sup> [Cap 6. R.E 2002]

<sup>55</sup> This section shall be read together with s.78 and 79 of the Act

<sup>56</sup> CIB, *Branch Banking-Law and Practice* (4<sup>th</sup> Edition) BPP Publishing Limited Aldine House, Aldine Place London W12 8AW Pg.178

highly unlikely), or if the bank has failed to take the mandate at all, then the liability of the parties to the account will simply be joint.<sup>57</sup> Since this clause creates problems to joint account, holders when exercising their rights there must be some amendments on it.

The clause of joint and several liabilities in some few banks specimen has been provided as for example under clause 7 of the CRDB general terms and conditions provides that

c) Any overdraft or other obligations incurred on the account or otherwise shall be the joint and several liability of each individual owning the Joint Account.

Clause 8 Of the general terms and conditions (account opening form SB1) of the Exim Bank (T) Limited provides that

*b)All liability on a joint account is joint and several.*

The NMB also in its mandate provides the same that

*If there is no agreement to the contrary pursuant to Clause 6.1, the account holders shall have joint and several liabilities and each joint account holder shall be deemed to have full authority to operate the account, and to make withdrawals and transfers from the joint account without the consent of the other joint account holders.*

---

<sup>57</sup> Cowdess *Ibid* at P.55

*References to "Customer" in these General Terms and Conditions shall include each joint account holder.'*

It follows from the foregoing that the rights of joint account holders as stipulated in the foregoing provisions impose joint obligations and contain serious consequences to either of the joint account holders.

### **3.2 Judicial Intervention**

Judiciary is the main part in the administration of justice; therefore, the role of the judiciary in the interpretation of the law on joint accounts is very important when it appears that there is a need for courts interference then the matter will be brought to the court.

In the case of *Dodo Ubwa Mamboya v. Khamis Machano Keis*<sup>58</sup> a man and wife after living together for a certain period, there was separation between them and they divorced. Dourado J. in the high court of Zanzibar at Vuga upon satisfactions of the evidence adduced ordered Khamis to pay Dodo among other things 45.000/=withdrawn by him from a joint bank account with the People's Bank of Zanzibar.

Courts have been given power by the law for instance under s.81 and 82 respectively of the TEA<sup>59</sup>, which provides that

*On the application of any party to legal proceedings a court may order that such party be at liberty to inspect and take copies of any entries in a*

---

<sup>58</sup> Civil case No.40 of 1999

<sup>59</sup> [Cap 215 R.E 202]

*banker's book for any of the purposes of such proceedings and order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed unless the court otherwise directs.*

The costs, under this Part, of any application to a court and the costs of anything done or to be done under an order of a court shall be in the discretion of the court which may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank and an order against a bank may be enforced as if the bank was a party to the proceedings.

The provisions above show how courts have been given a wide power for proper protection of individual's rights. In Tanzania, most of joint account cases are dealt by banks themselves upon any emergence of misunderstandings between the parties. Banks take a great role in mitigating the conflicting parties if those parties have not sent the issues to the courts. As a matter of practice, this is normally done by banks in order to avoid the courts to decide on favor of the parties where the issue arises between a party and a bank. This can be seen as a weakness. Thus, there should be amendment of the law and replace the provision that insists all issues in relating to joint account be brought before the courts of law for appropriate individual's rights protection.

### 3.3 Comparative Analysis of the Legal and Practical Position in India.

#### 3.3.1 Rights and Responsibilities of Joint Accounts in India

Legal position in India on joint account is the same as in any commonwealth countries because India is also governed by common law principles in relation to issues of forgeries, bankruptcy, the doctrine of survivorship, etc. All joint account holders sign the account opening form. The Joint Account is governed under **Section 45 of Indian Contract Act<sup>60</sup>** together with other laws, **s.45** provides that

*Devolution of joint rights.-When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with the during their joint lives, and, after the death of any of them, with the representative of such deceased person. Jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.*

In the absence of instructions to the contrary, all joint account holders jointly authorize operations in the joint account. To overcome this practical difficulty, specific instructions as to the operation of the account in case of Savings Bank and Current accounts, can be furnished in the Account Opening Form under the column, "Account to be operated by". Similarly, the repayment clause for Savings Bank, Current and Term Deposit accounts can be indicated in the column, "Balance repayable to". The operations in the account and repayment at the time of closing the account / maturity of deposit in case of Term deposit must strictly be in accordance with the mandate given at the time of opening of the account. If a

---

<sup>60</sup>.Act No. 9 of 1872.

cheque drawn by one of the joint account holders is altered, the same signatory and not others must confirm the alteration. The authority to open and operate the joint account does not confer right to borrow, overdraw or discount bills of exchange by the joint account holder/s, for which there should be a special agreement between all joint account holders and the bank respectively.

In the event of any dispute notified to the bank by any one of the joint account holders, the mandate stands revoked automatically and in such cases, the account has to be operated jointly by all until a fresh mandate, duly signed by all joint account holders is furnished. Any one of the joint account holders can revoke the mandate irrespective of the mode of operation. Another joint account holder who is or is not authorized to operate the account can countermand a cheque drawn by an authorized signatory / mandate holder. Such cheque can only be paid with the consent of all joint accountholders. Cheques and other negotiable instruments favoring/payable to one/more of the joint account holders can be credited to the joint account provided such cheques and other negotiable instruments are credited with the signature/consent of the payee/s of the said cheque/instrument. However, cheques/negotiable instruments payable to the accountholders jointly cannot be credited to the individual account.

Joint account holders can avail the nomination facility as per the extant guidelines. At present, the account holders may nominate one person as nominee. On the death of any one of the joint account holders, the surviving account holders can make a fresh nomination if no nomination has been made in respect of the deposit account. The right of the nominee in the case of joint account arises



only when all the joint account holders die. On receipt of notice of death, insolvency or insanity of any one of the joint account holder, the operations in the account is stopped. In the event of death of one of the joint account holders and in the absence of Nomination or repayment clause, the balance amount in the joint account will be paid to the surviving account holders along with the legal heirs of the deceased account holder.<sup>61</sup>

### **Joint Hindu Family**

While opening an account in the name of a joint Hindu family, an addition to the relevant accounts, the banker should remember that the debt incurred by the head of the family is binding on the estate of the family only if the loan has been taken for purposes beneficial to the family. Furthermore, if the banker wants to proceed against the joint family estate, the onus of proof that he is satisfied about the genuineness of the purpose for which the loan was taken, lies with the banker<sup>62</sup>.

In connection, the banker should remember that an acknowledgement by the Karta of a joint Hindu family would not, even in the absence of a public notice to the creditors in general or particular notice to any creditor be binding on all the erstwhile member of the joint Hindu family. This was the decision of the case of *Nanchand Gangaram Shetji v. Mallapa Mahalingappa Sadalge and others*<sup>63</sup> where the question brought for consideration was whether an acknowledgement of liability by the Karta of a joint Hindu family after its severance would extend

---

<sup>61</sup> <http://www.legalsmatch.com/law-library/article/joint-bank-accounts.html> retrieved on

<sup>62</sup> Shekhar, K C. *Banking theory and practice* (19<sup>th</sup> Edition) Vikas Publishing House PVT LTD 2005 p.508

<sup>63</sup> 1976 AIR 835, 1976 SCR(3) 281

the period of limitation, particularly when given without notice about the disruption of the family was given to outside creditors.

### **Comment on the comparison with Tanzania**

This law has no great difference with the law in Tanzania concerning bank joint account holders in both countries common law principals is being practiced to regulate the role of joint account owners. the difference come in India the joint names of two minor who have completed the age of 10 years to be operated by them jointly. The joint names of two or more minors to be operated upon by a person who is the natural guardian of both or all the minors.

## **CHAPTER FOUR:**

### **Conclusion and Recommendations**

#### **4:1 Conclusion**

There are several benefits associated with joint bank accounts that can not be found with other regular savings or checking accounts. As long as there is good communication and trust between joint bank account holders, family finances can be managed more easily. Be sure of what the money is for – utility bills, school fees, rent or mortgage, car loans, etc and agree to stick to that. Since these accounts may not actually go to the survivor, individuals opening such accounts may be distributing their property in a way that was not intended; and the deceased account holder would never know that his or her wishes were not carried out. In addition, there can be abuse of authority where a person whose name is placed on an account simply for bill paying and convenience purposes may abuse this power, and withdraw funds for their own means.

#### **4:2 Recommendations**

A part from making sure that Tanzania banks get the entire standard of banking products or services on joint account to suit customers, the legislature or any authorized body should consider to enact new provisions under the banking laws dealing with joint accounts in order to meet the needs of customers as far as rights and obligations of joint account holders are concerned.

Under common law principles, different types of joint accounts exist in order to fit the needs of various relationships in joint accounts. These types should be provided expressly in the Tanzanian provisions of Law, or to be incorporated in

the bank's specimen before a person decides to open a joint account. This will help a customer to know the type of joint account is going to open and what consequences will follow.

The issue of intention of parties is considered mostly, but unfortunately, there is no clear provisions of law in Tanzania that gives a room for this as a result many rights of individuals are violated; we do not have the presumptions of resulting trust and that of advancement they are not in practice either. It is recommended for these types to be applied by courts whenever uncertainty of cases arise i.e. where no clear evidence to prove the intention of the deceased party.

## APPENDIX



The above banks, deals with joint accounts in Tanzania

## BIBLIOGRAPHY

### A) Books

Carter & Partington, *Applied Economics in Banking and Finance* (3<sup>rd</sup> Edition)

Drover C.B & Bosley.R.W, *Sheldon's Practice and Law of Banking* (Tenth Edition)

HapgoodMark Q.C. *PAGET'S Law of Banking* (12<sup>th</sup> Edition) Reed Elsevier UK Ltd 2003

Kimei .C. S, *Tanzania's Financial Experience in the Post-war Period*. Almquist & Wiksell International Stockholm, Sweden 1987

Lord Chorley, *Law of Banking* (5<sup>th</sup> Edition) London SIR Isaac Pitman and Sons LTD

Nditi, NNN *Law of Banking, Learning materials*

P. Cowdell & J.Cowdess Assciateship Examinatins *Law relating to Banking Services* (2<sup>nd</sup> Edition) Bankers Workbook Series, Sheffield Hollam University, 1994

Reeday, T.G *The law relating to banking* (2<sup>nd</sup> Edtn). Lndon Butterworths 1972

Sheldon et al *Practice and Law of Banking* (Eleventh Edition) Mackdonald and Evans Ltd 1982

Shekhar K.C and Shekhar .L, *Banking Theory and Practice* (Nineteenth Edition)  
Undermill .A. *Principles of the Law of Partnership* (Seventh Edition) Butterworth  
&Co. Ltd 1958

**(b) Report**

The Bank of Tanzania, *The Second Generation Financial Sector Reforms. Vol.1*  
*Main Report.* June 2007

**(c) Electronic sources**

[http:// www.fineweb. Com/banking-credit/joint\\_bank\\_accoun-facts-toconsider-  
before-opening-one. Html](http://www.fineweb.Com/banking-credit/joint_bank_accoun-facts-toconsider-before-opening-one.Html)

[http : // www.banking-history.co.uk/](http://www.banking-history.co.uk/)

[http: // www.joint asset .com /index. Html](http://www.jointasset.com/index.Html)

[http: // www.moneypage . com/Bank –Accounts/Joint \\_Bank\\_ Account. html](http://www.moneypage.com/Bank-Accounts/Joint_Bank_Account.html)

