



One Saturday morning last November, I remember it so well, as I woke up lazily in bed after a long week of a pile of legal work, to a welcome of a smell of warm chapatti in the kitchen, and a smell of a strong coffee that somehow made its way to the bedroom. I switched on a TV and the remote was having issues but after a few plays with the batteries, I got the better of it, *“lucky me “and CNN was on. There were those mini-headlines passing below-across the TV as the news anchor was talking and I saw,” A Phoenix real-estate guru and celebrity broker is facing more than 12 years in prison and \$500,000 in fines after a federal jury convicted her on money-laundering charges”* and this got me thinking, does this happen in Tanzania?

Even though there is no direct evidence to link money laundering with real estate in Tanzania, *“the clouds do have moisture enough to produce rain”* so to speak. As it then become apparent to me, elsewhere in the world people have been using real estate development to do money laundering taking the example of Singapore and the USA.

According to the Tanzania’s Anti Money Laundering Act 2012, Money Laundering means engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequence of such action and includes offences referred in section 12. Well you see, according to one US journalist, which I came to learn of his interesting story, which is for some other day, real estate has always been attractive to criminals. It has become an appealing way to hide and invest ill-gotten gains. This is because property is: (1) a big value investment - large sums of money can be ‘cleaned’ in a single transaction (2) a speculative market with ‘real’ values difficult to assess - with latitude to ‘match’ available criminal funds with suitable properties;(3) capable of generating additional ‘clean’ profits - such as rental income and capital gain; and (4) relatively easy investment in which to hide real ownership - using lawyers and other intermediaries, trusts, companies and offshore entities.

Real estate has proven so attractive to criminals that money laundering can even distort markets. For example in the American state of Florida, property transactions linked to nearby South American drug cartels are considered a major factor in an overheated local property market with price rises out of proportion to the rest of the country.

The Financial Crimes Enforcement Network (FinCEN) a few years ago conducted a study of Suspicious Activity Reports (SARs) filed with FinCEN over a 10-year period that involved suspected money laundering and related illicit financial activity in the commercial real estate sector. A random sampling of Suspicious Activity Reports describing commercial real



estate transactions revealed that property management, real estate investment, realty, and real estate development companies were the most commonly reported entities associated with money laundering and related illicit activity. For example in 2006 a U.S. bank reported that a property management company received sequences of money orders for deposit. The company also issued numerous checks, in the \$3,000 to \$9,000 range to a single individual, which were cashed out over a year-long period. According to the filer, the principal of the company made large loans to others, which were often quickly repaid. The principal maintained a joint personal checking account with a relative, who has since left for the Middle East. The principal made cash deposits below the currency transaction reporting threshold and subsequently sent wire transfers to one account in a Middle Eastern country.

Alvaro Lopez Tardon ,a leader of Spain's Los Miami drug gang, is another example. He was thought to have laundered \$26.4 million in illegal drug proceeds via the purchasing of 14 condo units from 2001 to 2006 through a number of limited liability companies (LLCs), almost all of the properties being bought directly from developers with cashier's checks .He was charged and convicted.

It can be suggested that real estate agents do commit an offence where there is reasonable grounds to suspect money laundering which they failed to report to the authorities. It doesn't matter that agents are temporarily exempt from the more extensive rules that now apply to banks; the touchstone for "reasonable grounds" is agents' current legal obligations. In the circumstances prescribed by the legislation (The Anti Money Laundering Act, 2012, S.12,13 and 16), like any other citizen, the real estate agents are required by law to identify and report suspicious transactions. Not knowing that the obligations exist, or what they are, and not knowing what to look for, or not looking, is no defense. The Anti Money Laundering Act under S.12(a) denotes that "*a person who- engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence commits an offence of money laundering*"

Further to that, If it was a Real estate company or an Agency company, the act stipulates that, "*Where an offence under the provisions of section 12 is committed by a body corporate or an association of persons, every person who was at the time of the commission of the offence, was a director, manager, controller or partner; or concerned in the management of its affairs, may be convicted of that offence and shall be liable to a penalty specified in section 13 unless that person proves that, the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to the circumstances pertaining to commission of the offence.*"



The Real Estate companies and Agencies should have “red flags” indicator designed to identify money laundering such as noticing the use of cash, or disproportionate amounts of cash, prices that don’t reflect market value and trends, Purchasers unusually willing to pay the asking price or apparent lack of concern about price, Multiple transactions where properties are re-sold in quick succession, sometimes with significant change in value in short timeframes, doubts about the real (‘beneficial’) ownership of funds or assets and many more.

It is hard however to identify money laundering in Real Estate in any country, much less Tanzania. Notwithstanding the recent trend in property flipping addressed in the mortgage loan fraud assessment, real estate has historically been a relatively illiquid asset. Under normal market conditions, it generally takes several months to sell residential or commercial properties. Consequently, these conditions generally have not favored the money launderer seeking to layer his funds quickly, moving them from one account or investment to another. It is probable that real estate has been most useful to money launderers in the integration stage where it may serve as both an investment and vehicle to store the value of laundered funds. The establishment of institution such as the Tanzania Real Estate Regulatory Authority in Tanzania could help work hand in hand with the Financial Intelligence Unit of the Ministry of Finance and the National Multi Disciplinary Committee on Anti Money Laundering Committee so as to regulate the real estate industry and to prevent money laundering, if it does exist, mind you I said if it does exist!

The author is an Associate with ABC ATTORNEYS of IT Plaza 8th Floor, Dar-es-Salaam, Tanzania and an Arbitrator with the Tanzania Institute of Arbitration and Young International Arbitrators (YIAG)-London. For more articles please visit www.abcattorneys.co.tz or email the author at info@abcattorneys.co.tz or **0713055195**