

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA -ABUJA
ON THE 16TH DECEMBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO. FCT/HC/CV/2572/2020

BETWEEN:

ACCESS BANK PLC

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PLAINTIFF

AND

1. F.N GODWIN INVESTMENT LIMITED

2. MRS FRANCISCA NGOZI U. GODWIN

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DEFENDANTS

APPEARANCES:

PARTIES ABSENT

TUNDE OGUNDAINI ESQ WITH OLATUNBSUN OJOKOLO ESQ FOR THE CLAIMANT.

DEFENDANTS UNREPRESENTED.

JUDGMENT

By an originating summons filed on 8th September 2020 the Claimant seeks a determination of the following questions and reliefs:-

- “1. WHETHER from all the documentary evidence before this Honourable Court, the Claimant is entitled to the sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (₦10,317,960.13k) representing the Judgment Debt against the 1st Defendant and Mortgage Debt secured by the 2nd Defendant.***
- 2. WHETHER having regards to the following:***
 - (i) Unpaid Judgment sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (₦10,317,960.13k)***

- (ii) Deed of Mortgage dated 2nd February, 2019 executed by the 2nd Defendant.**
- (iii) Deposit of Original Letter of Allocation of a Housing Unit at Lugbe Estate, Abuja for House No. 75, Road 43 Federal Housing Estate, Lugbe Abuja by 2nd Defendant**
- (iv) Letter to the Chief Registrar, High Court of the Federal Capital Territory, Abuja dated the 13th March. 2019 releasing attached chattels of 1st Defendant;**

an equitable mortgage has been created in favour of the Claimant by the Defendants.

- 1. WHETHER the Claimant is entitled to an order foreclosing the equitable right to redemption of the Defendants in respect of the property described and situate at House No. 75, Road 43 Federal Housing Estate, Lugbe Abuja used as collateral by the Defendants in favour of the Claimant to secure the payment of the Judgment sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (₦10,317,960.13k).***
- 2. WHETHER the Claimant to an order of judicial sale in respect of the property described as and situate at House No. 75, Road 43 Federal Housing Estate, Lugbe Abuja used as collateral by the Defendants in favour of the Claimant to secure the payment of the judgment sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (₦10,317,960.13k)***

And if the questions are answered in the affirmative by the Honourable court, the Claimant seeks the following reliefs:-

- 1. AN ORDER foreclosing the equitable right of redemption of the Defendants in respect of the property described as and situate at House No. 75, Road 43 Federal Housing Estate, Lugbe Abuja used as collateral by the Defendants in favour of the Claimant to secure the payment of the Judgment sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (₦10,317,960.13k)***

2. AN ORDER of judicial sale of the property described as and situate at House No. 75, Road 43, Federal Housing Estate, Lugbe Abuja used as collateral by the Defendants in favour of the Claimant to secure the payment of the judgment sum of Ten Million, Three Hundred and Seventeen Thousand, Nine Hundred and Sixty Naira, Thirteen Kobo (N10,317,960.13k)

3. AND FOR such further or other orders as the court may deem fit to make in the circumstances of this case.”

The originating summons was supported by a 15 paragraph affidavit of Denis Ajibade, a staff of the Claimant in its Debt Recovery Department.

Therein it was deposed inter alia that the 1st Defendant was a customer of the Claimant, Diamond (now Access) Bank Plc while the 2nd Defendant is one of the Directors and alter ego of the 1st Defendant, and also owner of the property situate at House No. 75, Road 43, Federal Housing Estate Lugbe, Abuja.

That on 3rd November 2015 the Claimant obtained judgment against the 1st Defendant in the sum of N10,317,960,13k.

See Judgment and Certificate of Judgement – Exhibits AA1 and AA2 attached.

That when the 1st Defendant could not pay the judgment debt, the Claimant applied and levied execution on the goods of the 1st Defendant in September 2018. See Exhibit AA3, the Inventory and Notice of Sale dated 19th September 2018.

That in February 2019 the 2nd Defendant mortgaged her property situate at House 75, Road 43 Federal Housing Estate, Lugbe Abuja, to secure the payment of the judgment debt by executing a Deed of Mortgage dated 2nd February 2019 in favour of the Claimant and deposited the original copy of her title document which is the Letter of Allocation in respect of her above mentioned property, dated 27th November 2003. See Exhibits AA4 and AA5 respectively.

That the Deed of Mortgage provided that the Claimant shall apply to the Chief Registrar of Federal Capital Territory High Court to release all the goods of the Defendants to them upon execution of the mortgage.

That the Claimant thus applied to the Chief Registrar of the FCT High Court for the release of the goods of the Defendants and same have been released to them. See Exhibit AA6 – Claimant’s Solicitor’s Letter dated 13th March, 2019.

That since the said release however, the Defendants have wilfully refused to comply with the Deed of Mortgage by refusing to pay any of the instalments agreed at ₦300,000 monthly from 14th May 2019 till date.

The Claimant thus wrote to the Defendant’s counsel, Uchenna & Co, demanding payment. See Exhibit AA7 dated February 12, 2020.

That the Claimant and the then Diamond Bank Plc merged sometime in 2019 to form Access Bank Plc.

That notwithstanding the demand letter the Defendants have wilfully refused to comply with the Deed of Mortgage and pay the monthly instalments which necessitated this action.

In his written address, learned counsel for the Claimant urged the court to find that there exists an equitable mortgage between the Claimant and Defendants and that the time fixed for the payment of the debt has elapsed without any payment from the Defendants. Therefore the right of foreclosure of the Claimant mortgagee over the property has since arisen.

The court was thus urged to foreclose the Defendants and order a sale of the Defendant’s property in satisfaction of the judgment debt.

Several authorities were relied upon including **YARO V AREWA CONSTRUCTION LTD (2007) 17 NWLR (PT 1063) 333 AT 338 RATIO 1; GWARZO V MOHAMMED (2013) 12 NWLR (PART 1369) 576 AT 582 RATIO 8; A.I.B LTD V I.D.S LTD (2012) 12 NWLR (PT 1328) 1 AT PG 8 RATIO 6; NDABA (NIG) LTD V U.B.N PLC (2007) 9 NWLR (PT 1640) 439.**

The Defendants were duly served the originating court processes and hearing notices on 22nd February 2021 and 29th June 2021 respectively.

They were also served hearing notice for today but did not file a counter affidavit, nor enter appearance at all in the proceedings. Thus they left the averments of the Claimant unchallenged.

The law is trite that all averments in the affidavit are therefore deemed admitted and the court can act on them.

See UGO & ORS V MAHA & ORS (2015) LPELR-25930 (CA) PAGE 9 PARAS A-E, per Bada JCA; ADEBAYO V OLAJOGUN (2016) LPELR -41390 (CA) PAGES 21-24 per Tsammani JCA.

However, even where facts are unchallenged they must be cogent and sufficient to support the reliefs sought by the Claimant to warrant a grant of the reliefs sought.

See PROCTER GAMBLE NIGERIA LTD V NWANNA TRADING STORES LIMITED (2011) LPELR-4880 (CA) PAGES 28-29 PARAS A-B Per GARBA JCA; INEGBEDION V SELO-OJEMEN (2013) LPELR -19769 (SC) PAGE 33 PARAGRAPHS A-D Per Ariwoola JSC; NABORE PROPERTIES LTD V PEACE COVER NIGERIA LTD (2014) LPELR -22585 (CA) PAGES 38-39 PARAGRAPH E-A Per Iyizoba JCA.

I have considered the unchallenged facts deposed to in the affidavit in support of the originating summons and the Exhibits attached thereto.

I am satisfied that there is a judgment debt of N10,317,960.13 in favour of the Claimant against the 1st Defendant for which the 2nd Defendant mortgaged her property, House No 75, Road 43 Federal Housing Estate, Lugbe Abuja to the Claimant to secure payment of the said debt by depositing her title documents to the Claimant.

I am satisfied that the mortgage is an equitable mortgage and that the Defendants have refused to abide by the terms of the mortgage they entered into with the Claimant.

The Claimant is therefore entitled to an order foreclosing the equitable right of redemption of the Defendants in respect of the property described as House 75, Road 43, Federal Housing Estate, Lugbe Abuja used as collateral by the Defendants in favour of the Claimant to secure the payment of the judgment debt of ₦10,317,960.13k, and I so hold.

The Claimant is accordingly entitled to an order of judicial sale in respect of the said property described as House 75, Road 43, Federal Housing Estate Lugbe Abuja, and I so hold.

I therefore answer the 4 questions posed by the Claimant for determination in the affirmative in favour of the Claimant and grant all the reliefs of the Claimant.

Hon. Judge