

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT JABI ABUJA**

DATE: 13<sup>TH</sup> DAY JULY, 2021  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 6  
SUIT NO: CV/2103/2020

**BETWEEN:**

STALLION MICRO FINANCE BANK LIMITED ----- CLAIMANT

**AND**

OFFODILE PHYL ----- DEFENDANT

**JUDGMENT**

The Claimant commenced this suit by way of Originating Summons dated and filed on the 8<sup>th</sup> July, 2020. The Claimant is praying this Court for the following reliefs:

- a. An order of foreclosure of the Mortgage property (2 bedroom apartment known as flat 27B, kings Court Estate, Mbora District Abuja) on account of failure to pay the mortgage loan and expiration of tenure of mortgage repayment.

- b. An order directing the Defendant to deliver possession of the 2 bedroom apartment known as flat 27B, Kings Court Estate, Mbora District Abuja to the Claimant.
- c. N4, Million damages at N1, Million yearly being the annual rental payment of the property for the period 2016 – 2020.

Further, the Applicant sought for the determination of the following questions:

1. Whether the Claimant is not entitled to an order of foreclosure of the mortgage property (2 bedroom apartment known as flat 27B, kings Court Estate, Mbora District Abuja) on account of the Defendant's failure to pay the mortgage loan and expiration of tenor of mortgage.
2. If the answer to question one is in the affirmative, whether the Claimant is not entitled to an order

directing the Defendant to surrender vacant possession of the property forthwith.

3. Whether the Claimant is not entitled to damages in sum of N4, Million at N1, Million yearly being the annual rental payment of the property for the period 2016 – 2020.

The application is supported by a 27 paragraphs affidavit sworn to by one, Martins Iyare, a manager in the Abuja branch office of the Claimant. Also, attached to the Application are four annexures marked as STA1, STA2, STA3 and STA4 respectively. Mr. Adekola Mustapha Esq. Counsel for the Claimant also filed a written address in support of the Originating Summons. The three issues raised by the Claimant's Counsel are similar with the questions Counsel sought for determination before this Court.

Vide an order for substituted service granted on the 9/11/2020, the defendant was served with the Originating Summons together with hearing notice but he did not file any process in opposition to the instant Application. On the 30<sup>th</sup> March, 2021, when the matter came up for hearing, the Claimants Counsel moved the application and urged the Court to grant all the reliefs claimed.

As stated earlier, the issues raised by the Claimant's Counsel are similar with the questions he sought for determination before this Court. I will therefore proceed to determine this Application based on the said issues. The issues are:

1. Whether the Claimant is not entitled to an order of foreclosure of the mortgaged property (2 bedroom apartment) on account of failure of the defendant to pay the mortgage loan and expiration of the tenure of mortgage repayment.

2. If the answer to question one is in the affirmative, whether the Claimant is not entitled to an order directing the Defendant to give vacant possession of the property forthwith.
3. Whether the Claimant is not entitled to damages in sum of N4,000,000.00 (Four Million Naira) at N1,000,000.00 (One Million Naira) yearly being the annual rental payment of the property for the period of 2016 –2020.

On the first two issues, learned counsel for the claimant submitted that it is not in dispute or doubt that the property in issue was purchased with mortgage loan obtained from the claimant by the defendant vide exhibit STA 2. Counsel submitted further that the attached statement of account to the affidavit in support of the Originating Summons exhibits STA 3 and STA 4 showed that the Defendant had a total outstanding balance of

(Three Million, Four Hundred and Sixty Five Thousand, Nine Hundred and Ninety Five Naira Seventy One Kobo) as at March 2018 as a result of deliberate non repayment of monthly dues and accumulated interest charges.

Counsel submitted that parties are bound by the terms of their contract. Accordingly, when a Court is determining the right, duties and obligations of the parties to the contract, the Court must respect the sanctity of the contract.

Counsel went on to submit that in the instant case, the contract of monthly repayment of the mortgage loan has been woefully violated by the Defendant who soon after the property was handed over to him in 2002 has refused to pay the mortgage loan as covenanted which is a clear contravention of the mortgage terms in exhibit STA 2.

Counsel finally submitted that the Claimant is entitled to foreclose the mortgage and recover possession of the

property which is the security for the mortgage and upon default by the Defendant. Counsel cited and referred to the following cases:

1. Idufueko vs. Pfizer Products Ltd. (2004)12 NWLR (Part 1420) 96.
2. U.B.N. Ltd. vs. B.U. Umeh & Sons Ltd. (1996)1 NWLR (Part 426) 565.
3. Yaro vs. Arewa Construction Ltd. (2007)17 (Part 1063) 333 at 370 – 371.
4. Osemwenjie vs. J.S.C. Edo State (2015)5 NWLR (Part 1453) 508 at 533.

Briefly, the facts of the Claimant's case according to its supporting affidavit is that sometimes in 2002, the Defendant applied to the Claimant for National Housing Fund (NHF) loan of N2,500,000.00 (Two Million, Five Hundred Thousand Naira) to enable him purchase a 2 bedroom Apartment at Kings Court Estate, Abuja. With the

NHF application form obtained from the Claimant by the Defendant, the Claimant processed the application and subsequently approved the facility. The Claimant issued to the Defendant a letter dated 3<sup>rd</sup> May, 2002 offering him a National Housing Fund (NHF) loan of N2,500,000.00. The terms and conditions of the facility are as contained in the said offer letter annexed by the Claimant as exhibit STA 2.

By the agreement concluded between the Claimant and the Defendant, the Defendant is obligated to repay the facility within a tenor of 14 years by a monthly payment of N26,611.65. (Twenty Six Thousand, Six Hundred and Eleven, Sixty Five Kobo) for a period of 14 years. In other words, the Defendant is expected to liquidate all outstanding indebtedness on the property by 2016.

However, the tenor of 14 years has since elapsed in 2016 and the Defendant has failed and neglected to pay the



outstanding balance of the mortgage loan. This is the reason why the Claimant approached this Court for redress.

The Defendant as stated earlier did not file any process in opposition to the Claimant's application. This notwithstanding, the Claimant must succeed on the strength of his case and not on the weakness of the defence. See: Egbuche vs. Egbuche (2013) LPELR - 22512 (CA).

The law is settled that once an agreement exist between the parties, and the instrument signed by the parties which is described as a legal mortgage, provided it is under seal, a deed of legal mortgage is created between the parties. See: Afri Bank vs. Alade (2000) LPELR - 10722 (CA).

In Atiba Iyalamu Savings & Loans Ltd. vs. Suberu & Anor (2018) LPELR - 44069 (SC), the apex Court gave a

concise exposition of the nature of a legal mortgage when it held as follows:

*"The nature of a legal mortgage and its legal consequences was correctly stated by the Court of Appeal in: Bank of the North vs. Bello (2000)7 NWLR (Part 664)244 at 257 D, Where it was held that: "A mortgage is defined as the creation of an interest in a property defeasible (i.e. annullable) upon performing the condition of paying a given sum of money with interest at a certain time. The legal consequence of the above definition is that the owner of the mortgaged property becomes divested of the right to dispose of it until he has secured a release of the property from the mortgagee."*

Thus, in a legal mortgage, title to the property is transferred to the mortgagee subject to the proviso that the

mortgaged property would be reconvened by the mortgagor to the mortgagee upon the performance of the conditions stipulated in the mortgage deed and upon payment of the debt at the time stipulated, otherwise the mortgaged property is foreclosed. See: Adetono & anor vs. Zenith Int'l Bank Plc (2011) LPELR - 8297 (SC).

In the instant case, the Claimant and the Defendant signed exhibit STA 2, which created a legal mortgage over flat 27B, Kings Court State, Mboru District Abuja, the subject matter of this suit. By exhibit STA 2, the Defendant undertook to repay the loan within 14 years by monthly repayment of N26,611.65. (Twenty Six Thousand, Six Hundred and Eleven, Sixty Five Kobo) promptly. The Claimant averred in the supporting affidavit that the tenor of 14 years has since elapsed in 2016 and the Defendant has failed and neglected to pay the outstanding balance of the mortgage loan.

The law is settled that parties are strictly bound by the terms and conditions or stipulations in the contract or agreement freely entered into by the parties to the contract or agreement. The Court is duty bound to find out the intention of the parties as encapsulated in the contract or agreement entered into in good faith and declare the intention and effect of the contractual document or agreement. See: Abaa vs. Eke & Anor (2015) LPELR - 24370 (CA), A.G. Rivers State vs. A.G. Akwa Ibom State (2011)8 NWLR (Part 1248)31 at 83.

In this instance, the averments of the Claimant remained unchallenged and uncontroverted by the Defendant who refused to file any process before this Court. The law has long been settled that where depositions in an affidavit are not denied by way of a counter affidavit, they are generally deemed admitted and

the Court is to act thereon. See: Micah & Ors. vs. Hon. Minister of FCT & Anor (2018) LPELR - 44917 (CA).

Thus, I must stress here and it is also the position of the law that if parties enter into an agreement, they are bound by its terms. The Defendant in this instance having failed to settle the outstanding amount owed the Claimant, clearly contravened the conditions contained in their agreement i.e. exhibit STA 2. The mortgagor is liable to repay the loan as stipulated and having not paid, the mortgaged property is hereby foreclosed. In Adetono & anor vs. Zenith Int'l Bank Plc (supra) the Court held:

*“It is settled that by a legal mortgage, the mortgagee becomes the legal owner of the property although the mortgagor may be left in actual possession/occupation of the mortgaged property but because the mortgagee’s entitled to enter into possession immediately upon the execution of the*

*mortgage, he has a right to immediate possession. In this position the mortgagee wields enormous rights over the mortgaged property.”*

Being mindful of the above, the questions submitted for determination are hereby answered in the affirmative. And consequently reliefs (a) and (b) are accordingly granted as prayed.

For relief (c), the Claimant seeks damages of N4,000,000.00 (Four Million Naira) per annum being the rental value of the property for 2016 – 2020. Though there is no defence on record, the claimant was also obligated to prove this claim which seems to me for special damages strictly by credible evidence. This claim is unmeritorious and it is hereby refused and dismissed.

- Consequently, I make an order for foreclosure of the mortgaged property, 2 bedroom apartment known as Flat 27B Kings Court Estate, Mbora District Abuja on

account of failure to pay the mortgage loan and expiration of the tenor of repayment.

- The defendant shall deliver vacant possession of the property to the claimant forthwith.

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**Hon. Justice M.A. Nasir**

**Appearances:**

A. Ayopemi Esq - for the claimant

Defendant absent and not represented