A HOLISTIC ANALYSIS OF MORTGAGE TRANSACTIONS IN NIGERIA [1]

Abstract

Easy access to land is fundamental to housing adequacy and housing affordability which are among the major parameters for the measurement of a nation's per capita, standard of living and poverty index. Housing is the second most basic need of man, and an inalienable human right alongside food, clothing and medical care, as recognized under Article 25 of The Universal Declaration of Human Rights (UDHR).[2] *The provision of adequate housing is the gap which mortgage transactions intends to fill. In Nigeria, the mortgage industry has witnessed significant growth, driven by increased urbanization and rising demand for homeownership. However, challenges such as high interest rates, limited access to mortgage finance, land tenure issues, etc. have hindered its broader development. This analysis explores the key aspects of the Nigerian mortgage market, highlighting the key challenges bedeviling the sector and key recommendations were made. The research methodology employed in this research is doctrinal. Primary and secondary sources were evaluated and these include the Constitution, Federal and State Legislations, textbooks, Journals, decided court cases and internet sources.*

Key Words: Mortgage, Loan, Debt, Housing, Foreclosure, Redemption.

1. Introduction

The Supreme Court in Bank of the North V. Bello[3] defined mortgage 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 consequences of the 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.[4]

2.0 Types of Mortgages

There are mainly two types of mortgages, and they are:

(a) Legal Mortgage and

(b) Equitable Mortgage

It is to be noted that both provides security for a loan, but have different legal implications and enforceability.

(a)Legal Mortgage: This type of mortgage arises only where there is a formal agreement by deed under seal, executed by the borrower and lender, embodying the terms of the loan, and specifying the landed property as the charged security.[5] In the case of *Adetono & Anor V. Zenith Int'l Bank Plc*[6] Christopher Mitchell Chukwuma-Ener (JSC) stated "that in a proper mortgage, the title to the property must have transferred to the mortgagee, subject to the proviso of the mortgage property being reconveyed upon

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[2] United Nations, *Universal Declaration of Human Rights 1948*, available at <**https://www.un.org/en/universal-declaration-human-rights/**> accessed September 14, 2024

[3] (2000) 7 NWLR (Pt. 664) 224, A. A. Akinyemi: Land Litigation in Nigeria (Practice and Procedure), Lagos: Renaissance Law Publishers Limited (2022) 1st Edition, P. 478.

[4] Adetono & Anor V. Zenith International Bank Plc (2011) LPELR-8237 (SC).

[5] Afri Bank Nigeria Plc V. Alade (2000) 13 NWLR (Pt. 685) 591 @ 601; A.A. Akinyemi: Land Litigation in Nigeria (Practice and Procedure) (Supra) P. 478.

[6] (Supra) Pp. 21-21, paras A-D

payment of the debt at the time so stipulated in the Deed of Mortgage. The Mortgagor is liable to repay the loan as stipulated otherwise the mortgaged property is foreclosed.

It is instructive to note that the method of creating legal mortgages in Nigeria depends on where the property is located whether in states covered by the Conveyancing Act, Property and Conveyancing Law or Mortgage and Property Law, Lagos State.[7]

Mortgage creation for states under the conveyancing Act, which the South Eastern States are part of can be created in the following ways:

(i) Assignment of the Mortgagor's unexpired interest in the land with a covenant for reassignment or re-conveyance once the mortgage is redeemed.

(ii) Sub-lease or Sub-Demise at least one day shorter than the term of the original lease with a proviso for re-conveyance on redemption of the mortgage. Under the sub-demise or sub-lease there is neither privity of contract nor privity of estate between the headlessor (e.g. the Governor of a state as a grantor of Right of Occupancy) and the mortgagee.[8] This means that the mortgagee cannot sell the reversionary interest of the mortgagor if the mortgage defaults. This is why in practice, Assignment is preferred.

(b) Equitable Mortgage: This kind of mortgage is created where without the execution of a formal deed, a borrower deposits his title document with a lender as security for a loan, whether accompanied by a written memorandum or not, an equitable mortgage is created in favour of the lender on the landed property, subject of the document deposited.[9] Black's Law Dictionary[10] defines equitable mortgage as "a specific lien or charge upon a real property to secure the payment of money or the performance of some other obligations which a court will recognize and enforce but which lacks the essential features of a legal mortgage because it grows out of a transaction of the parties without any deed."

A.A. Akinyemi[11] categorized equitable mortgage into 3 (three) for a better understanding and appreciation and they are:

(i) One created by mere deposit of title deed, with a clear understanding that it should serve as security for the loan.

(ii) One created by the making of an agreement to create a legal mortgage coupled with the deposit of the title deed or

(iii) One created by the making of an agreement to create a legal mortgage coupled with the deposit of the title deed.[12]

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[7] Y.Y.Dadem, Property Law Practice in Nigeria, Jos: Jos University Press Limited (2018), 4th Edition, p. 156

[8] Y.Y. Dadem (Supra) P. 156, Tobi, N; Cases and Materials on Nigerian Land Law, Lagos: Mabrochi Books, 1992, P. 129.

[9] Usenfowokan V. Idowu (1975) LPELR-3426 (SC), Yaro V. Arewa Construction Ltd (2007) 4 FWLR (Pt. 399) 285, 17 NWLR (Pt. 1063) 333, A.A. Akinyemi: Land Litigation in Nigeria (Practice and Procedure) (Supra) P. 479;

[10] 6th Edn at Page 1010

[11] A.A. Akinyemi Supra, P. 479, Ogundiani V. Araba (1978) 6-7 SC 55 at 119

[12] Kadiri V. Olusoga (1956) 1 FSC 59, (1956) SCNLR 150.

2.1 Characteristics of A Mortgage

(a) It can only be created over an immovable property such as land and things permanently affixed to it. Movable items on land does not form part of a mortgage.

(b) It transfers interest in land from the owner to the lender

(c) The transferred interest acts as a collateral security for the loan to ensure performance of the contractual obligation.

(e) The mortgaged property must be specifically identifiable and properly described.

(f) The mortgagor retains the physical possession of the mortgaged property during the life time of the mortgage.

(e) The right of the mortgagor to reconvey the mortgaged property upon redemption of the loan, must be recognized and respected.

(g) Upon default by the mortgagor, the mortgagee has the right to recover the loan by selling the mortgaged property.

2.2 Differences Between Mortgages from Other Transactions

It is necessary to make this distinction because there are some similarities between other land transactions and mortgage. However, there are some marked out differences. The transactions to be considered in conjunction with their differences with Mortgages are:

(1) **Pledge:** This is a deposit of some personal property to a creditor as a security for some debt or engagement or the performance of some act. The pledgor only has the right to possession over the property until the debt is satisfied while in mortgages, the mortgagee acquires ownership (i.e. interest is conveyed) and the borrower usually retains possession.[13] According to A. A. Akinyemi[14] in making a distinction between mortgage and pledge stated as follows:- "In a mortgage, the title in the property is transferred from the borrower (mortgagor) to the lender (mortgagee), while the borrower (Mortgagor) retains possession. On the other hand, in a pledge, the borrower (pledgor) retains the title and only parts with possession, to the lender (pledge).[15]

In *Polo V. Ojor*,[16] the Court of Appeal described customary pledge as an indigenous mortgage by which the owner-occupier of land in order to secure an advantage of money gives possession and use of his land to the pledgee creditor until redemption, that is when possession is re-exchanged for a full discharge of the debt. In mortgage the title is transferred, by a pledge, possession is transferred.[17] One radical feature/characteristics of a pledge which distinguished it from mortgage is that the customary pledge is perpetually redeemable by the pledgor or his successors in title. There is nothing like foreclosure or power of sale enuring in favour of the Pledgee (Lender).

2. **Lien:** This is a right to retain one's property until a debt is paid.[18] Therefore, the major difference between a lien and a mortgage is that a lien is a means of coercing the debtor to pay the money loaned to

[13] Y. Y. Dadem (Supra) P. 143.

[14] A.A. Akinyemi (Supra) P. 482

[15] Adetona V. Zenith International Bank Plc (Supra, P. 1023), Chukwu V. Chukwu (2018) LPELR-45482 (CA).

[16] (2003) 3 NWLR (Pt. 807) 344

[17] Adetona V. Zenith International Bank Plc (2012) All FWLR, (Pt. 611) P. 1443.

[18] Afro Tech Services Ltd V. Mia & Sons Ltd (2001) FWLR, (Pt. 35), P. 643

him and not as security against payment not being made.[19] More so, a lien must not necessarily be on a real property unlike a mortgage which applies only to real property.

3. **Sale:** Under sale, one's total interest in land is absolutely alienated while in mortgage, there is a right of redemption which enures in favour of the mortgagor. Thus, there is no absolute alienation of one's interest except where the mortgage right of redemption effluxes with time.

4. **Charge:** This is also a mortgage in all ramifications. However, its difference with mortgage is that in mortgage, there is conveyance of the interest while in charges nothing is conveyed, but the chargee only

has some rights over the property which serves as security for the money advanced by him. He can sell the property to recover his principal and interest.[20]

2.3 Mortgage Institutions In Nigeria

Mortgage transactions are necessary in order to have a thriving economy. Thus, to drive the need for economic development, the Federal Government enacted Mortgage Institutions Act, Cap.M19 Laws of Federation of Nigeria, 2010. The object of the Act is to provide for the establishment and licensing of mortgage institutions to grant loans to individuals and organizations. The Act requires that before a company can begin the business of offering mortgage services, that company must be incorporated under the Companies and Allied Matters Act for the purpose of offering of mortgage services and the Minister will have to grant a license to her.

However, the above requirement does not apply to Federal Mortgage Bank or any bank licensed under the Banks and other Financial Institutions Act, 2020 which is carrying on mortgage business as part of its operation.

Some of these Mortgage Institutions are:

(a) Federal Mortgage Bank of Nigeria, established pursuant to Federal Mortgage Bank of Nigeria Act, Cap. F16 LFN 2010. The primary purpose/functions of this bank is to provide long term credit facilities to mortgage institutions, encourage the emergence and promote the growth of viable primary and secondary mortgage institutions to service the need of housing delivery in all parts of Nigeria, and mobilizing domestic and offshore funds into the housing sector.[21]

(b) Mortgage Bankers: These are banks established to provide Nigerians with loan facilities to own their homes.

(c) Commercial Banks: Commercial banks becomes a mortgage institution when they require a real property as security for loan advanced to an individual or organization.

Other financial institutions include Housing Schemes, Insurance Companies, Mortgage Corporations of States, Lagos State Mortgage Board etc.

It is pertinent to point out that the type of mortgage determines also the vestige of right conferred therein. Thus, we will consider the various rights accruing to parties in a mortgage transaction.

3.0 The Rights of an Equitable Mortgagee: An equitable mortgagee has the right to sue the mortgagor personally for recovery of the debt, under the covenant to repay. He does not have the right to enter into

[19] Y.Y. Dadem (Supra)P. 143
[20] Y.Y. Dadem (Supra) p. 144
[21] https://www-fmbn.gov.ng accessed on the 5/9/2024.

the mortgaged property, unless the right to do so has been expressly reserved or granted by the court.[22]The above is because equitable mortgagee has only an equitable interest over the mortgaged property. Likewise, an equitable mortgagee by charge, has no estate in the land or property so charged, save an equitable interest, which is enforceable upon a court ordered sale. He does not have an automatic right of foreclosure. The equitable mortgage guarantees him the right to be repaid from the charged property.[23]

Likewise as in equitable mortgage, an equitable mortgagee by charge has no automatic power of sale or foreclosure. For an equitable mortgagee by charge to sell the mortgaged property to realize his security, it must be by an order of the court.[24] Chukwu-nweike Idigbe (JSC) as he then was in *Ogundiani V. Araba & Anor*[25] stated as follows:

> "In considering the scope of the rights of an equitable mortgagee (not by way of charge) it should be borne in mind that the general rule is that foreclosure (and not sale) is the proper remedy of an equitable mortgagee and when an equitable mortgagee by deposit of title deeds and agreement to give a legal mortgage if called upon to do so take foreclosure proceedings to enforce his security, the court usually decrees that the deposit operates as a mortgage and that in default of payments due under the mortgage, the mortgagor is trustee of the legal estate for the mortgagee and that he must convey that estate to him. The right to foreclosure is a very powerful remedy in the hands of the equitable mortgagee and a purchaser who takes a legal estate with notice of an equitable mortgage and therefore subject to this class of equitable interest should bear this in mind since, in certain circumstances, he may find in the end that he has bought a worthless legal estate."[26]

The import of the above is that in addition to an equitable mortgagee having a right of foreclosure, he also has a right to approach the Court to compel the execution of the legal mortgage, as agreed by the parties. Once the equitable mortgage is converted into legal mortgage by an order of the court, the equitable mortgagor can proceed to exercise all other remedies available to a legal mortgagee.

3.1 The Rights of the Legal Mortgagee: Legal Mortgagee by way of a legal mortgage becomes vested with the legal estate or title in the mortgaged property, until redemption by the mortgagor. Where the mortgagor fails to fulfil his obligation under the mortgage, the mortgagee has a right to foreclosure and enter into possession of the mortgaged property. The most important power or right of the mortgagor is the power of sale, which he can exercise without recourse to court. This power of sale is a right which the law has given to the mortgagor and the court cannot restrain this right in any form either by injunction or a restraining order[27] except in exceptional grounds like a manifest evidence that the debt has been paid, that no debt was due at all, or cogent proof of readiness to pay. Due to the importance of right to sale for a legal Mortgagee, it is important at this point to examine the Mortgagee's power of sale in mortgage transactions. Before a Mortgagee can pass a good title to a purchaser free from the equity of redemption- the right to exercise the power of sale under a mortgage must have arisen, the mortgage debt must have fallen due. Any purchaser who bought a property sold by a legal mortgagee in exercise of his power of sale under a mortgage upon a default in repayment of a loan by the mortgagor is not a trespasser. Hence,

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[22] Awojugbagbe Light Industries Ltd V. Chinukwe (1995) 4 NWLR (Pt. 390) 379; UBN Plc V. Jase Motors (Nig) Ltd (1997) 7 NWLR (Pt. 513) 387.
[23] A.A. Akinyemi (Supra)p.484.
[24] Ogundiani V. Araba & Anor. (1978) LPELR-2330 (SC) Pp. 24-24, Paras C-G
[25] *Ibid*
[26] Marshall V. Shrewsbury (1875) 10Ch. App. 250 at 254; James Vs James (1873) LR. 16 E.153, Pryce V. Bury at 154.
[27] Backlays Bank of Nigeria Ltd V. Ashiru (1978) 6-7 SC 99

once the pre-condition of notice of sale is given to the mortgagor by the mortgagee or his agent, preceded by a notice of demand of repayment of money lent to the mortgagor and the mortgagee proceeds to sell in good faith, subsequent purchaser in good faith gets a good title and a court will not intervene in the sale only because the sale did not meet with the satisfaction of the mortgagor.[28] Legal Mortgage requires registration with the land registry and it takes priority over unregistered interests.

3.2 Examination of Power of Sale In Mortgage

This is a right accruable to a mortgagee where the mortgage is made by deed, the mortgage debt is due, is where the legal date of redemption has passed and where there is no contrary intention in the mortgage deed.[29] These three conditions are conjunctive and not disjunctive.[30] This right of power of sale in favour of the mortgagee can only be employed if the power of sale has arisen and become exercisable.[31]This right arises where once the debt secured by a Deed of Legal Mortgage becomes due and payable and the mortgagor defaults in paying, the mortgagee is entitled to exercise his power of sale over the mortgaged property.[32] It is said that the crystallization of the right of the Mortgagee to foreclose the right of redemption simply means that the mortgagee's right to realize the mortgage has arisen.[33] Once this right has crystallized, the mortgagee cannot be stopped from exercising this right unless the amount owed is fully repaid.[34]

The power of sale becomes exercisable under Conveyancing Act and Property and Conveyancing Law only if any of these three conditions are met and they are:[35]

(1) Notice requiring payment of the mortgage money has been served on the mortgagor or on several mortgagors and there is default of payment for three months after such service, or

(2) Some interest under the mortgage is in arrears and unpaid for two months after becoming due; or

(3) There has been breach of some provisions contained in the mortgage deed or under the provisions of the conveyancing Act or the Property and Conveyancing Law.[36]

In *B.O.N. V. Aliyu*[37] the Court interpreted these requirements on the exercise of power of sale and held that compliance with them are mandatory and that any sale of any mortgage property without the requisite notice is invalid ab initio and cannot convey any title to a subsequent purchaser.[38] However, any of the above conditions can be excluded entirely or be varied by agreement of parties.[39]

[28] Babatunde & Anor V. Bank of the North Ltd & Ors (2011) LPELR-8249 (SC) Pp. 47-47, Paras A-D.
[29] Kasai V. Tropical Commercial Bank Plc (1997) NWLR (Pt. 526) 694, Section 19(1) of CA, Section 123 (1) of PCL.
[30] Y.Y. Dadem (supra)p. 176
[31] Nig. Advertising Services Ltd V. UBA Plc (1999) 8 NWLR (Pt. 616) 546.
[32] Nigerian Housing Development Society Ltd V. Mumuni (1977) 2 SC 57; Ogiorio V. Igbinovia (1998) 13 NWLR (Pt. 582) 426.
[33] Salami V. Wema Bank (Nig.) Plc (2010) 6 NWLR (Pt. 1190) 341.
[34] Ihekwoaba V. African Continental Bank Plc (1998) 10 NWLR (Pt. 571) 590.
[35] S. 20 CA & S.125PCL
[36] Section 20 CA 1881, S. 125 PCL, S.O.N. Okafor & Sons Ltd v. Nigeria Housing Development Society (1972) 1 All NLR P. 362;
[37] (1999) 7 NWLR (Pt. 612) P. 622 at P. 634
[38] Y.Y.Dadem (Supra) p. 176.
[39] S. 19(2) CA & S. 123 (2) of PCL, WEMA Bank Plc V. Abiodun (2006) ALL FWLR (Pt. 317) P. 430, Bank of the North V. Babatunde (2002) FWLR (Pt. 119) 1452 at P. 1473.

The power of sale cannot be limited because the amount due is in dispute or because the mortgagor objects to the manner in which the sale is being arranged or because the mortgagor has commenced a redemption action in court.[40]

It is the onus of the Mortgagee that in the exercise of his power of sale of the mortgaged property to act in good faith. Although, the facts and circumstances of each case determines whether the right was exercised in good faith or not. In *West African Breweries Ltd V. Savannah Ventures Ltd*,[41] it was held that where the mortgagee colluded with the purchaser of the mortgaged property amounts to absence of good faith.

Also, the Mortgagee has a duty not to carry out the sale fraudulently or at a gross under value.[42] It is also not mandatory for the Mortgagee in the exercise of his power of sale, to obtain the highest or best price, he is required to sell at a proper price.[43]

Other rights exercisable by the Mortgagee are:-

(i) Right to Take Possession: A legal mortgage has a right to take possession of the mortgaged property and this right is immediate, not contingent upon the default of payment of the Mortgaged amount.[44] This right extend to the mortgagee in possession to cut and sell timber, other trees ripe for cutting and rent same out but the mortgagee who take possession is bound to give account strictly to the mortgagor for his actions while in possession. This is the reason why conventionally, mortgagees take possession only when the mortgagor defaults.[45]

(ii) Appointment of a Receiver: A Legal Mortgagee has the power to appoint a receiver where the mortgagor defaults in payment.[46] Where the mortgage is an equitable mortgage created by deed, the deed should provide for the power to appoint a receiver.[47]

(iii) Action in Court: This arises where the mortgage instrument does not confer on the mortgagee the power of sale on the mortgagee. See *Ezomo V. N.N.B. Plc*[48]

(iv) Foreclosure: This is an order of court by which the equity of redemption of the mortgagor and all persons claiming through him inclusive of subsequent encumbrances are extinguished so as to vest the mortgaged property absolutely in the mortgagee.[49] The implication of an order of foreclosure is that it extinguishes the mortgagor's equity of redemption and renders the equitable right to redeem ineffectual.[50]

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[40] Housing Development Society Ltd V. Mumuni (1977) 2 SC 57, Okonkwo V. Cooperative & Commerce Bank (Nig.) Ltd. (1997) 6 NWLR (Pt. 507) 48.

[41] (2002) 10 NWLR (Pt. 775) 401

[42] ACB V. Ihekwoaba (2003) 16 NWLR (pt. 846) 249 @ 269 para. G-H, Mohammed V. Abdulkadir (2008) 4 NWLR (Pt. 1076) 111.

[43] Maduka V. Nwosu (2013) LPELR-20679 (CA), Babatunde & Anor. V. Bank of the North Ltd & Ors (2011) LPELR-8249 (SC) Pp. 46-46, paras C.G

[44] S. 19(i) (iii) CA and S. 123 PCL.

[45] Odua's Investment Co. Ltd V. Obadeyi (2016) AFWLR, (Pt. 855) P. 90.

[46] S. 19(1) CA, S. 123 PCL, Awojugbabe V. Chinukwu Supra.

[47] Y.Y.Dadem (Supra) p. 174.

[48] (2007) All FWLR (Pt. 368) 1032.

[49] Y.Y. Dadem (Supra) p.175.

[50] A.A. Akinyemi (supra)p. 503

4.0 Rights of a Mortgagor

4.1 Right to Redeem: A mortgagor has legal right to redeem a mortgaged property which is not yet liable to an auctioneer's most unfriendly hammer, and the mortgagee has a corresponding duty to open his doors for the mortgagor to redeem the property. A mortgagee has no legal right to block the passage of redemption of a mortgaged property before auction.[51] Therefore, any clause or clog in a mortgage against redemption is void.[52] The Mortgagor also has the equity of redemption which is an estate in land that could be sold, disposed of, or even mortgaged. It is this equity of redemption that is destroyed or extinguished by a sale, foreclosure or release of money.[53] The Mortgagor is entitled to be issued a Deed of Release by the Mortgagee which declares that the debt due has been redeemed and

that the Mortgagor has become free of any obligation to the Mortgagee under the mortgage agreement.[54]

4.2 Setting Aside of Mortgagee's Power of Sale

The Court will also be wary to set aside an auction sale where the scenario indicates that the undermentioned facts are shown to the satisfaction of the court and they are:[55]

1. That the Mortgagor did mortgage the property in dispute to the mortgagee
2. The loan or any installment has become payable
3. There has been a notice of demand of repayment of loan from the mortgagee to the mortgagor
4. The power of sale under the mortgage agreement has arisen
5. Pre-condition of notice of sale is given to the mortgagor by the mortgagee or his agent.[56]
6. The power of sale was exercised and the title in the property passed to the purchaser.

In the light of the above, the court will not set aside a sale of Mortgaged property where the above conditions are met. However, the court will set aside a sale where the Mortgagee in the exercise of his power of sale went beyond the mortgaged property to other properties that are not subject of the legal Mortgage, or that had been deposited with him by the Mortgagor for purposes outside the legal mortgage.[57]

4.3 Mortgage under the Land Use Act, 1978

Section 22 of the Land Use Act, 1978 LFN 2004 provides that "It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained."

Notwithstanding the above, any mortgage executed without first obtaining the Governor's consent does not make the transaction illegal but inchoate until the governor's consent is obtained.[58]

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[51] Okonkwo V. Cooperative & Commerce Bank (Nig) PLC & Ors (2003) LPELR-2484 (SC).

[52] Yaro V. Arewa Construction Ltd (2008) AFWLR (Pt. 400) 603 @ P. 634.

[53] Nigeria Advertising Services Ltd V. UBA PLC (1999) 8 NWLR (Pt. 616) 546, NHDS Ltd & Anor. V. Mumuni (1997) LPELR-2019 (SC), Y.Y. Dadem (supra) p. 182

[54] A.A. Akinyemi (supra) p. 505

[55] Agboola V. UBA Plc & Ors (2011) LPELR-9353 (SC), Akande V. F.B.N. (2004) 8 NWLR (Pt. 875) 318

[56] Adebayo V. Wema Bank Plc & Ors (2017) LPELR-42426 (CA).

[57] Akinselure V. Ayeni (2018) LPELR-43481 (CA), A.A Akinyemi (cite him Pp. 495)

[58] Awojugbagbe Light Industries Ltd V. Chinukwe (supra) 379.

4.4 Distinction between Equity of Redemption and Equitable Right of Redemption

Equity of Redemption is the Mortgagor's legal right to redeem the mortgaged property by paying the principal sum and interest within the contractual term.[59] However, after the expiration of the contractual duration, the Mortgagor has a right called "equitable right of redemption" which arises from the date of the Mortgagor's default in paying the mortgage sum. So, if the Mortgagor desires to exercise this right, he has to institute an action in court for redemption, if not the mortgaged property will be foreclosed or sold by the mortgagee and once the mortgagee exercises his right of sale or foreclosure of the mortgaged property, the mortgagor's equitable right of redemption becomes extinguished.[60]

4.5 Covenants in Mortgage Agreement

Covenants in mortgages are agreements specifically contained in a mortgage agreement by the parties to regulate their mortgage relationships. There are many of these covenants and some of them are:

(a) Covenant to repay the mortgage sum and interest on the mortgage property at a stated time.
(b) Covenant to insure the property to be effected by the mortgagee.[61]
(c) Covenant to repair the parts of the mortgage property that have become damaged in order for the mortgaged property not to reduce in value.
(d) Covenant on leases and sub-lease on the property. However, the operation depends on whether the lease was created prior or after the mortgage. If the lease was created before the mortgage, the mortgagor is bound by the lease and he is entitled to pay rent, but if the lease came after the mortgage has been created, the party in possession of the property is bound by the lease.[62]
(e) Covenant to consolidate is where a mortgagor uses different properties to secure a monetary advancement. These mortgages are consolidated in the sense that the mortgagor will not be allowed to redeem any of the properties without also redeeming the other securities.[63]
(f) Covenants to observe and perform any condition in the head lease. Certain conditions are inputted in the grant of a lease or sublease such as covenant on use, to pay rents, not to sublet premises and repairs. The mortgagor is liable to observe these covenants and conditions.[64]

4.6 The Role of Mortgage In the Development of the Housing Sector In Nigeria

Housing is globally acknowledged as one of the fundamentally important requirements for existence and survival of human race, as well as a critical component of a country's economy.[65] Housing is one of the three necessities of man and is most essential for physical survival in addition to food and clothing. Thus, one of the distinguished marks of a developed economy is the availability of decent and affordable housing facilitated through mortgage.[66]Nigerian Housing Sector has witnessed some level of development consequent upon the operation of mortgage in Nigeria. Some of the notable achievements of mortgage in the Nigerian Housing sector are as under listed and they are:

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[59] Usenfowokan V. Idowu (Supra) Ekpo V. Ishie Microfinance Bank Ltd (2017) LPELR-43524 (CA).
[60] Federal Administrator-General V. Cardoso (1973) 11 SC 45, Mohammed V. Abdulkadir (2008) 4 NWLR (Pt. 1076) 111.
[61] Section 123 (1) (ii) PCL; Section 19(1) (ii) CA
[62] S. 18(1) CA, S. 121 (1) PCL.
[63] Y.Y.Dadem (supra) p. 171
[64] Ibid. 172.
[65] Anidiolu, Okolie & Ugwuanyi; Effect of Mortgage Finance on Housing Delivery in Nigeria: The Primary Mortgage Institution (PM1) Perspective, Journal on Banking Financial Services & Insurance Research Vol. 8, Issue 2, February, 2018, p.1
[66] *Ibid*

1. Facilitation of homeownership by increasing accessibility to finance which makes housing more accessible to a broader segment of the population.
2. Facilitation of affordable housing as more Nigerians can afford to buy homes, contributing to the development of affordable housing projects. Mortgage finance is a credit facility given for erecting living accommodations and other housing needs.[67]
3. Stimulating economic growth through construction of real estate as this in turn, creates jobs and stimulates economic growth.
4. Mortgage Transactions Improves the Local Economies**:** This is achieved by supporting home purchases of building materials and other home effects, thereby contributing to the local economy through increased spending on home-related goods and services.
5. Attraction of more real estate.
6. It has helped to increase the economic fortune of real estate developers.
7. Development of financial markets as more mortgage institutions are already coming onboard.
8. Mortgage facilitates systematic and planned developments in new and evolving urban areas. An example is the Government Reserve Areas and the Federal Housing Estate Scheme.
9. Mortgage has helped in the provision and improvement of critical infrastructure such as provision of roads, water resources, and diverse public utilities and public services which benefits the entire communities.
10. Mortgage has helped in addressing housing shortages **by** ensuring that demand meets supply.

4.7 Key Challenges and Constraints of Mortgage Operations in Nigeria

Many initiatives have been put in place by both the government and the organized private sector to provide affordable shelter for the Nigerian populace. However, the development and impact of the Nigerian mortgage industry have not been without some constraints which include:

1. Low level of awareness of mortgage provisions.[68]
2. High interest rates are charged by domestic mortgage institutions
3. Lack of enough financial capacity by mortgage institutions and mortgagors to finance or support home ownership in Nigeria. As a result, property sales in Nigeria are usually on a "cash and carry" basis.[69]
4. Difficulty in obtaining, perfecting and transferring title documents.[70] This is caused by bureaucratic bottlenecks (arising from delays from the time of submission of an application and when it is approved) and corruption evidenced in the form of private financial charges imposed by staff of land registries on people trying to perfect their title documents when applying for Governor's consent.
5. Land Use Act of 1978: It is trite that certain provisions in the Land Use Act[71] constitute the greatest challenge facing housing development, home ownership and the development of the mortgage

[67] Anidiolu, Okolie and Ugwuanyi (supra)
[68] Yakubu et al, Mortgage Financing in Nigeria, Central Bank of Nigeria Occasional Paper No. 50
[69] *Ibid*
[70] *Ibid*
[71] LFN, 2004

industry in Nigeria. The process of granting a mortgage loan is limited by the provisions of the Land Use Act (1978). Section 22 provides that no Mortgage there cannot be a valid mortgage transaction without the governor's consent first sought and obtained. Section 26 of the Act invalidates any transaction that is not in accordance with Section 22. The above provisions make it difficult in having a seamless land acquisition or for a Mortgagee to accept title documents as collateral security for a mortgage facility and to exercise his rights and power of sale in the event of a default, thereby constraining the willingness to engage in mortgage lending. This is aggravated by intermittent revocations of land allocations that are often announced with ministerial changes.

6. Delay in Litigation: The lengthy Court processes in the Country discourage the practice of Mortgage transactions as disputes amongst parties are not settled on time.
7. Lack of Skilled Personnel: There is shortage of qualified and technically skilled personnel in the mortgage industry and this challenge has led to reliance on unqualified persons for various aspects of the mortgage transactions.[72]
8. Low saving culture of Nigerians also constitute a bottleneck in having a thriving mortgage sector in Nigeria.

5.0 Conclusion and Recommendations

Due to the important role mortgage transactions plays in our economy, it becomes necessary that the above mentioned challenges are addressed immediately and aligned with the best practice in the facilitation of Mortgage transactions. This research recommends the following:

1. National Housing Fund loan scheme should be made accessible to all classes of Nigerians.
2. There should be an increased publicity of mortgage facilities for Nigerians.
3. There should be quick dispensation of justice in mortgage transactions.
4. Let there be a continuous increase in the minimum wage of Nigerian workers by the government.
5. It is important that the Land Use Act is amended as its provisions are inherently antagonistic to the smooth operations of the mortgage in Nigeria.
6. There should be a restructuring of the nation's national housing policies to make loans accessible to low income households in Nigeria.
7. The delay in processing of loan applications and disbursements of approved ones by the Federal Mortgage Bank of Nigeria (FMBN) should be addressed.
8. Further strengthening of the mortgage sub-sector through long-term funding and introduction of industry-friendly regulations geared towards the protection of investors.
9. The government should engage all the critical players in the housing sector to draw up a plan for creating an efficient mortgage system for the people.

[72] Udoka & Kpataene: Mortgage Financing And Housing Development In Nigeria; International Journal of Research – Granthaalayah – A Knowledge Repository Vol.5 (Iss.5): May, 2017.