

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE NYANYA JUDICIAL DIVISION**  
**HOLDEN AT NYANYA ON THE 28<sup>TH</sup> DAY OF JANUARY, 2019**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
  
**SUIT NO.FCT/HC/CV/3164/17**

**COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.**

**BETWEEN:**

**FIRST BANK OF NIGERIA PLC.....PLAINTIFF**

**AND**

**1. RISSUN NIGERIA LIMITED**  
**2. CHIEF ERIC OGUOMA**  
**3. AZUIKE UCHENNA** } .....DEFENDANTS

**JUDGMENT**

The Claimant's Originating Summons dated 12<sup>th</sup> October 2017 raised one question for determination. It is whether the Plaintiff having regard to the specific provisions of Clause 1, 4, 8, 12, 17 of the tripartite legal mortgage dated 30<sup>th</sup> day of June 2014 between the Plaintiff and the Defendant is entitled to an Order for sale of the property mortgaged by the Defendants Debtors/Mortgagors to secure the Credit facility granted them (plus accruing interest) having defaulted in the repayment or having failed to liquidate their outstanding indebtedness to the Plaintiff their secured creditor and the mortgagee of the mortgaged property herein?

And if the answer to the above question is in the affirmative that the Plaintiff as a secured Creditor – Mortgagee is entitled to an order of sale of the herein said mortgaged property, Then the Plaintiff claims against the Defendants as follows:

1. A declaration that First Bank of Nigeria Plc by virtue of Clauses 1, 4, 8, 12 and 17 of the Tripartite Legal Mortgage dated the 30<sup>th</sup> day of June, 2014 and registered with the Lands Registry Owerri, Imo State Survey No. 22 in page 22 Vol. 1104 on the 23<sup>rd</sup> July, 2014 is entitled to exercise all its rights, powers and perform all his duties as contained in the said Tripartite Legal Mortgage in accordance with the provisions of the said Mortgage Deed without any interference, obstruction and/or hindrance in any manner whatsoever by the Defendants or any person(s) acting under its authority or any person whether the Directors or shareholders, officers or employees of the Defendant.
2. A declaration that the Defendants, a debtor and mortgagor, HAS DEFAULTED in the repayment or liquidation of the credit facility from its account CAM 2052044808 in the total sum of N102,390,149 (One Hundred and Two Million, Three Hundred and Ninety Thousand, One Hundred and Forty Nine Naira) as at 28<sup>th</sup> October, 2015 which arose from credit facility availed by the Abuja branch of First Bank to the Defendants in the sum comprising to wit: commercial mortgage facility arising from overdraft the Defendant took from the Plaintiff, a secured Creditor and Mortgagee of the Defendants mortgaged property securing the said banking facility (Plus all accrued interest).
3. An ORDER granting leave to FIRST BANK OF NIGERIA PLC, a secured Creditor and Mortgagee, by the combined effect of and by virtue of Clauses 1, 4, 8, 12 and 17 of the Tripartite Legal Mortgage dated 30<sup>th</sup> day of June, 2014 and registered with the Lands Registry Owerri, Imo State Survey No. 22 in Page 22 Vol. 1104 on the 23<sup>rd</sup> July, 2014 executed by the Defendants in favour of the Plaintiff TO PERFORM ALL ITS RIGHTS THEREIN (which includes but not limited to taking possession of, getting in,

selling, concurring in lease and dealing with assets) specified in the Tripartite Legal Mortgage to sell the Mortgaged properties by private treaty or public auction and convey a legal right to any third party or buyer over to wit:

(a) All that piece of land situated at Plot 158, Housing Area B, New Owerri Imo State covering an approximate area of 1,074.969 square meters, more particularly delineated in Plan NO IMLD P/2 and marked and bounded by Survey beacons Number W6952, W6591, W6614, W6612 and W6613 together with the buildings or building thereon covered by Statutory Certificate of Occupancy No. 29 Page 29 Volume II..

4. AN ORDER OF INJUNCTION restraining the Defendants, its Directors, Shareholders, Privies, Agents and Servants howsoever described from interfering with, obstructing, disturbing and/or frustrating FIRST BANK OF NIGERIA PLC the Plaintiff herein from exercising the powers vested in him or performing his duties as Receiver/Manager of the Assets of the Defendants.
5. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendants, Its Directors, Shareholders, Privies, Agents and Servants howsoever described from having access to any sum standing to the credit of the Defendants within the Nigerian banking system to wit: First Bank of Nigeria Plc, Guaranty Trust Bank Plc, Heritage Bank Plc, Access Bank Plc, United Bank for Africa Plc, Zenith Bank Plc, Eco Bank Plc, Diamond Bank Plc, Fidelity Bank Plc, City Bank Plc, Standard Chartered Bank Limited, Stanbic IBTC Bank Plc, Sterling Bank until the total sum of N102,390,149 (One Hundred and Two Million, Three Hundred and Ninety Thousand, One Hundred and Forty Nine Naira) as at 28<sup>th</sup> October, 2015 plus all accruing interest being owed by the Defendants to the Plaintiff is fully liquidated and whether so held in their names on record or in the names of any other legal entity.

6. AND FOR SUCH FURTHER or other reliefs as this Honourable Court may deem fit to make in the circumstances of this case.

The Originating Processes were served on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on the 16/01/18, 24/01/18 and 16<sup>th</sup> January 2018 respectively.

The Defendants neglected, failed and or refused to enter appearance nor filed a Defence. The Defendants were further served with Hearing Notice on the 30<sup>th</sup> day of November 2018. In support of the Originating Summons is an Affidavit of 18 paragraphs sworn to by Unigwe O. Juliet. Learned Counsel to the Plaintiff rely on same. In the said Affidavit, she deposed essentially that the 1<sup>st</sup> Defendant who is the Plaintiff 's customer initially applied for and was granted a Credit facility in the sum of N45,939,646.44 and deposited the title document to Plot 158 Housing Area B New Owerri, Imo State with the Plaintiff's Bank.

That Defendants executed a Tripartite Deed of Legal Mortgage dated 30/06/14 over the aforesaid property in favour of the Plaintiffs. The property is described as covering an approximate area of 1,074,969 square metres. TRIPARTITE LEGAL MORTGAGE. It was registered as No. 22 in Page 22 Volume 1104 in Imo State Land Registry to secure the credit facility. The tripartite legal mortgage is Exhibit FBN 1. That the Defendants deposited the title of the 3<sup>rd</sup> Defendant's property with the Plaintiff to secure the credit facility. The Certificate of Occupancy of the said mortgage property is Exhibit FBN 2. That Exhibit FBN 1 was to secure the said credit facility granted the Defendants by the Plaintiff. The Defendants mortgaged and/or charged to the Plaintiff all its properties, assets, and undertaken contained in the tripartite legal mortgage between the Defendants and the Plaintiff.

The Defendant further secured the Credit facility by depositing the title documents for the property as collateral or security for the credit facility. That a condition to the drawdown of the facility was a valuation report of the above subject property which the Defendants provided the Plaintiff bank and which enabled the bank to allow the Defendants access the totality of the credit facility. That the Defendants upon draw down and utilization of the said credit facility neglected, failed and refused to service and or pay down on the credit facility and or accrued interest thereon and or comply with the terms and conditions of grant of the credit facility as agreed between the Plaintiff and the Defendants despite repeated demands and notwithstanding the Defendants promise to service and or pay down on the credit facility and or accrued interest thereon and or comply with the terms and conditions of grant of the credit facility.

That upon persistent neglect, failure and/or blatant refusal of the Defendants to service and or pay down on the said Credit facility as agreed despite the Defendants promises, the Plaintiff called in the said credit facility and demanded immediate payment/liquidation of the said credit facility. The letters are Exhibit FBN3 and FBN4. That the Defendant upon receipt of the demand from the Plaintiff pleaded passionately for extension of time within which to repay/liquidate the credit facility which Plaintiff magnanimously granted for an extension of time.

That 3<sup>rd</sup> Defendant on 17/06/14 implored the bank to magnanimously allow him a further one month extension to pay off the debt but failed to exercise his right of redemption by making the payments or liquidating the indebtedness of the 1<sup>st</sup> Defendant as surety. The letter is Exhibit FBN 5. That Defendants have failed to liquidate their indebtedness to the Plaintiff till date. That Defendants are in breach of the terms and conditions of the grant of the credit

facility and other foundational documents between the Defendants and Plaintiff therefore Plaintiff is entitled to exercise its right and or power as a secured creditor to appoint a receiver/manager or sell the said mortgaged and or charged properties of the Defendant/debtor mortgagor.

That as at 28 October 2015, the Defendants total outstanding indebtedness to Plaintiff stood at N102,390,149 on its two accounts with the Plaintiff and the total sum continues to accrue interest at the prevailing rates till the total liquidation of the debt. That the Plaintiff as a secured Creditor/Mortgagee is interested in exercising its rights and powers under the Tripartite Legal Mortgage aimed at reducing or liquidating the Defendants Mortgaged and or Charged Properties so as to reduce the debt of the Defendants to the Plaintiff.

That it is in the interest of justice to grant the reliefs sought as the Defendant will not be prejudiced as Plaintiff does not want to lose depositors money loaned to the Defendants. That Defendants have began to operate banking activities with other banks to the detriment of the Plaintiffs bank and have ceased to operate or fund their accounts with the Plaintiff. That Defendants have not denied the debt neither did they deny the default in the settlement of same.

The Plaintiff's Counsel also adopted his Written Address dated 13/10/17 filed along with the application. He raised only one issue for determination which had earlier been reproduced. He argued that by the principle of commercial freedom both parties and Court are bound by the terms of their agreement or contract. That the legal principles guiding equitable mortgage and the exercise of power/right of sale of an equitable mortgage to wit: the creation, the realisation of an equitable mortgage and the exercise of power/right of sale of an equitable

mortgage by order of Court are well settled. Learned Counsel rely on the case of ***OGUNDIANI VS. ARABA (1978) ANLR 165.***

That this case is an equitable mortgage created in favour of the Applicant on the property the subject matter of this suit. That from facts disclosed from Paragraph 3(a) to 18 and Exhibits FBN 1 to 5, there is no dispute, That Plaintiff granted credit facility amounting to N102,390,149. That the original title documents for the said mortgage property was deposited with the Plaintiff to secure the credit facility in the sum stated.

Also refers to ***YARO VS. AREWA CONSTRUCTION LTD (2008) AFWLR PT. 400 Page 603 at 634.***

Learned Counsel further submit that a legal mortgage was also created between the parties over the mortgaged property. There are no dispute to the fact that the Defendants failed to repay, settle or liquidate the credit sum despite repeated demands and repayment promises from the Defendants. That once a mortgagor defaults in the settlement, liquidation and or repayment of the debt secured by a mortgaged property, the secured creditor mortgagee (Plaintiff) is entitled to the exercise of its powers/right of sale of the mortgaged property.

The mortgage is an equitable mortgage in this case and an order for sale of the mortgaged property is needed. Learned Counsel urges the Court to resolve the sole issue for determination in favour of the Plaintiff.

As I have earlier stated in this judgment, the Defendants failed, refused and or neglected to react to the Originating Summons. I have read the Affidavit evidence and the Exhibits

attached thereon. I have also considered the Written Addresses of Counsel. Exhibit FBN 1 is the Tripartite Legal Mortgage dated 30/06/14 entered into between 1<sup>st</sup> Defendant on one part, 3<sup>rd</sup> Defendant on the 2<sup>nd</sup> part and the Plaintiff. Exhibit FBN 2 is a copy of the Certificate of Occupancy. Exhibit FBN 3 is an acknowledged copy of a letter from Plaintiff dated November 11, 2013 stating that the outstanding indebtedness to the Bank as at 26<sup>th</sup> September 2013 stood at N43,939,646.44 and that it would continue to attract monthly interest at commercial rate as long as it remained unpaid. It also demands immediate payment.

Exhibit FBN 4 is another letter from the staff Solicitors of the Plaintiff dated November 13, 2013. It is also a letter of demand for the repayment of the facility. Exhibit FBN 5 is a letter from the 3<sup>rd</sup> Defendant dated 17/06/14 to the Plaintiff. It reads:

***“I write on behalf of RISSUN NIGERIA LIMITED your customers; Chief Eric Ogoma, the Managing Directors of Rissun Nigeria Limited used the title documents covering my property at Owerri to secure the above borrowing with my consents.***

***On my own. I have been making efforts to get the borrower to pay off the indebtedness in order to have my title documents released to me. However this has lingered for some time and the interest on the borrowing has been accumulating...”.***

I have perused Clauses 1, 4, 8, 12 and 17 of the Tripartite. For purpose of clarity, I shall reproduce the said clauses:

***“1. The Borrower and the Surety hereby jointly and severally covenant with the Bank that the Borrower and the surety or any one of them will on demand or without demand on the date upon which the monies hereby secured shall become payable in accordance with the provisions hereafter contained pay to the Bank all sums which now are or at any time or***



*times hereafter may become due or owing or may be accruing or becoming due to the bank by the Borrower either alone or jointly with any person or persons, company or companies or any account or in respect of any liability whatsoever including all moneys and liabilities whether certain or contingent now or hereafter owing or incurred to the bank by any person or company in respect of which moneys or liabilities the borrower may be immediately or contingently liable to the Bank as surety or guarantor AND ALSO all commission and other charges and interest as hereafter mentioned”.*

*“4. If the Borrower or the surety shall pay to the Bank all moneys hereby covenant to be paid or for the time being secured by this mortgage , the Bank will at the request and cost of the surety duly surrender the mortgaged premises but it is hereby expressly agreed that the fact that the said account shall at any time or from time to time be in credit not automatically discharge this security which can be discharged only by an instrument of surrender duly executed by or on behalf of the Bank”.*

*“8. At any time after the money hereby secured become payable the bank may (by an instrument in writing under the hand of any Director or Manager of the Bank in Lagos) appoint any person or persons including any Manager or other official of the Bank (to be a Receiver OR Receivers. Any receiver or receivers so appointed shall be deemed to be the agent or agents of the surety and the surety shall be solely responsible for his or their acts or default and for his or their remuneration and such receiver or receivers so appointed shall have power*

*(a) To take possession of collect and get in the properties hereby mortgaged or any part thereof and for that purpose to take any proceedings in the name of the surety or otherwise.*

*(b) Forthwith and without any restriction imposed by Section 20 of the conveyancing & law of Property Act 1881 to sell (by public auction or private contract) lease let or.... Selling leasing or letting any of the properties hereby mortgaged or any part thereof and to carry any such sale, leasing or letting any of the properties hereby mortgaged or any part thereof and to carry any such sale, leasing or letting into effect in the name and or behalf of the surety or otherwise.*

*(c) To make and effect all repairs and insurances and do all other acts which the surety might do in the ordinary conduct of his business as well for the protection as for the improvement of the properties hereby mortgaged.*

*“12. This security shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or any part of any sum or sums of moneys owing as aforesaid but shall be a continuing security and shall extend to cover any sum or sum of moneys which shall for the time being constitute the balance due from the Borrower to the Bank.*

*“17. If this security is given in respect of liabilities of a firm it shall apply to all moneys borrowed or liabilities insured until receipt by the Bank of actual notice of dissolution of the firm but if there shall be any other charge in the constitution of the firm, this security shall continue and in addition to securing debts and liabilities of the firm as constituted before the change shall apply to the debts and liabilities of the firm as constituted after such change.*

From the uncontroverted Affidavit evidence, it is clear that the 1<sup>st</sup> Defendant was granted credit facility in the sum of N45,939,649.44 and deposited the title documents to Plot 158 Housing Area B New Owerri, Imo State with the Plaintiff.

The Defendant deposited the title of the 3<sup>rd</sup> Defendant's (who is the surety) property with the Applicant to secure the credit facility. The Defendants executed a Tripartite Deed of Mortgage dated 30/06/14 over the said property which provisions I have reproduced above. The Defendants utilized the said facility but failed and or refused to repay the said loan despite repeated demands. That as at 28/10/15, the Defendants total outstanding indebtedness to Plaintiff stood at N102,390,149 in its two accounts which continue to accrue interest. It is the case that the security given is not in the form of a legal mortgage that is to say by deed, transferring the legal estate to the Plaintiff but the deposit of title deeds as security for a loan as in this case is an equitable mortgage.

In the instant case, the Defendant went further to execute a Tripartite Legal Mortgage.

See *KADIRI VS. OLUSOGA (1956) 1 SC*

*UNSENFOWOKAN VS. IDOWU & ANO (1975) LPELR – 3426 SC.*

I believe and accept the uncontroverted evidence of the Plaintiff.

Relief 5 contained in the Originating Summons is outside the Tripartite Legal Mortgage Agreement. It is not proved. It is therefore refused.

Plaintiff has by Affidavit proved his entitlement to the reliefs 1, 2, 3 & 4. The sole issue raised for determination is hereby resolved in favour of the Plaintiff against the Defendants.

Judgment is therefore entered in favour of the Plaintiff against the Defendants as follows:

1. It is declared that First Bank of Nigeria Plc by virtue of Clauses 1, 4, 8, 12 and 17 of the Tripartite Legal Mortgage dated 30<sup>th</sup> Day of June 2014 and registered with the Lands Registry, Owerri, Imo State Survey No. 22 in Page 22 Volume 1104 on the 23<sup>rd</sup> July 2014 is entitled to exercise all its rights, powers and perform all its duties as contained in the said Tripartite Legal Mortgage in accordance with the provisions of the said Mortgage Deed without any interference obstruction and or hindrance in any manner whatsoever by the Defendants or any persons acting under its authority or any person whether the Directors or Shareholders, Officers or Employers of the Defendants.
2. It is further declared that the Defendants, a Debtor and Mortgagor defaulted in the repayment or liquidation of the credit facility from its account 2052044808 in the total sum of N102,390,149 as at 28<sup>th</sup> October 2015 which arose from credit facility availed by the Abuja Branch of the First Bank to the Defendants in the sum of comprising to wit: Commercial mortgage facility arising from overdraft the Defendant took from the Plaintiff a secured Creditor and Mortgagee of the Defendants mortgaged property securing the said banking facility with all accrued interest.
3. Leave is hereby granted to the Plaintiff, being a secured creditor and mortgagee to perform all its right therein (which includes but not limited to taking possession of, getting in, selling, concurring in lease and dealing with assets) specified in the Tripartite Legal Mortgage to sell the Mortgaged Properties by private treaty or public auction and convey a legal right to any third party or buyer over it.
4. The Defendants agents, privies and servants however described are hereby restrained from interfering, obstructing or frustrating Plaintiff from exercising its powers as receiver/manager.

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**HON. JUSTICE U.P. KEKEMEKE**  
**(HOH. JUDGE)**  
**22/01/19**