

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**ORIGINATING SUMMONS NO. 14 OF 2014**

**HOUSING FINANCE BANK**

**LTD:.....APPLICANT**

**VERSUS**

**MUGISHA**

**CHARLES**

**LWANGA:.....RESPONDENT**

***BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO***

***RULING***

By this application brought under 0.37 rule 4 of the Civil Procedure Rules and sections 7 and 8 of the Mortgage Act, the Applicant Bank, the legal mortgagee applied to this court for

determination of the questions set out in paragraph 6 (i) - (iii) in the summons.

The summons show that the Applicant advanced to the Respondent credit facilities amounting to Shs. 175,000,000/- to purchase LRV 627 Folio 1 Plot 173 and the Respondent was to repay through monthly installments of Shs. 2,434,698/-

The Respondent defaulted in repayment of the principal and interest secured under the mortgage.

The Applicant took out these summonses seeking court to determine:

Whether the Defendant/Respondent should be foreclosed of his right to redeem the mortgaged property on account of having failed to settle his indebtedness to the Plaintiff/Applicant which stands at Shs 193,017,571/- which includes principle loan, accrued interest and accumulated arrears

- (i) Whether the Plaintiff should be permitted to sell the mortgaged property upon foreclosure in accordance with the law

(ii) Whether the Plaintiff should be granted costs of the suit

The Respondent did not file an affidavit in reply. This summonses proceeded ex parte with counsel for the Applicant making submissions in this respect after referring this honourable court to the respective enabling provisions of the law under which this application is brought. I did hear and I have carefully considered the submissions in this respect. I have also taken into account the urgency in this matter in that the lease in respect of the said property is said to be expiring during November, 2014. I have also considered the averments in respect of this matter.

I note that this action is brought under O. 37 r 4 of the Civil Procedure rules which provides thus;

**“Any mortgage or mortgagor, whether legal or equitable, or any person entitled to have property subject to a legal or equitable charge, or any person having the right to foreclosure or redeem any mortgage whether legal or equitable may take out as of course an originating summons, returnable to a Judge in chambers, for such a relief or the nature or kind following as may be by the**

**summons special and as the circumstances of the case may require, that is to say, sale, foreclosure delivery of possession by the mortgagee.”**

From the pleadings in this matter, it is evident that the Defendant is in possession of the security which he pledged to the applicant for which he was granted a facility which he has not satisfied.

Under Section 8 (I) of the Mortgage Act, Cap 229 Laws of Uganda, A mortgagee may apply to court to foreclose its right to redeem the mortgaged property any time after breach of covenant to pay. The said section further provides that where a mortgagor fails to pay, the court shall order that the mortgagor to be foreclosed of his or her right to redeem the mortgaged land and that the land be offered by the mortgagee for sale.

This application is based on the above provisions in that it is stated that the mortgagor has failed to pay for a facility for which he used the mortgaged property as security. The Applicant in this case is therefore as mortgagee entitled to foreclose and sell the mortgaged property of the mortgagor to recover all the money

due in respect of the principal debt, interest and other incidental charges.

In the instant case, Paragraph 4.3 of the Mortgage deed to which the Respondent was a party, provides that the Mortgagor shall vacate the mortgaged property so as to facilitate the property to be sold with vacant possession.

It is not in dispute in this matter that the Respondent defaulted in repayment of the principal sum and interest secured under the mortgage with the apparent indication that the mortgagor failed to comply with the terms of the mortgage agreement as he has not paid the agreed monthly installments of Shs. 2,434,698/- despite repeated demands as far back as 2012. There has been shown either any excuse as to why he has not fulfilled his obligations and neither has the mortgagor responded to the summons in this matter yet he is in occupation of the mortgaged property.

I find and hold that this is a fit and proper case where the Applicant has shown sufficient reasons to be granted the

opportunity to exercise the right of foreclosure as the Defendant has shown total breach of the credit facility Agreement.

The Applicant is therefore entitled to sell the mortgaged property after exercising its rights to a foreclosure to redeem the mortgage in addition to being granted the right to receive vacant possession of the said premises from the mortgagor who is also the principal debtor.

The application is accordingly hereby allowed and the following orders are made:-

1. The Applicant is granted the powers to exercise its rights of foreclosure.
2. The property mortgaged is to be sold to realize the amount due.
3. The defendant is directed to deliver vacant possession of the security or mortgaged property.
4. Costs of the application are granted to the Applicant.

I do so order accordingly.

**Henry Peter Adonyo**

**Judge**

**30<sup>th</sup> October, 2014**