FTCC.192/20 2020 J. NO.5

**IN THE HIGH COURT OF SIERRA LEONE**

**(COMMERCIAL AND ADMIRALTY DIVISION)**

**FAST TRACK COMMERCIAL COURT**

**BETWEEN:**

**ALHAJI AMADU TEJAN-JALLOH - PLAINTIFF**

**AND**

**HFC MORTGAGE & SAVINGS LTD - DEFENDANT**

**THE JUDGMENT OF HONORABLE JUSTICE LORNARD TAYLOR DELIVERED ON THE 1ST JULY 2021.**

The Plaintiffs are customers of the Defendant bank. By mortgage proposal dated 8th April 2014, presented a proposal to the defendant for a Home completion mortgage loan facility under the reducing balance scheme. This proposal was approved by the defendant on the 8th April 2014 and the loan amount of Le 100,000,000 (One hundred Million Leones) was granted to the Plaintiffs. The transaction was reduced into a mortgage deed dated 26th September 2014. Property situate at No. 21 Dambala Road and Hanga Town Road, Bo was delivered as collateral for the facility. The Plaintiffs were to pay in addition to the principal sum, 22% per annum as interest on the facility. Both the mortgaged property and the mortgagors were also to be insured for the duration of the transaction.

The Plaintiff came before this court by Originating Notice of Motion dated 30th March 2020 seeking from this court;

1. A declaration that the Plaintiffs/Applicants herein have fully performed their obligations under law and under the Mortgage deed dated 26th September 2014 and registered as 200/2014 in volume 91 page 56 of the record book of mortgages kept in the office of the Administrator and Registrar-General expressed to be made between AlhajiAmaduTejanJalloh& Abu BakarrJalloh and HFC Mortgage & Savings Limited.
2. A declaration that the defendant/respondent has defaulted in the performance of its obligations under law and the aforesaid mortgage deed.

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3. That an order be granted compelling the Defendant/Respondent to immediately discharge the aforesaid mortgage and reconvey the said property to the Plaintiffs/Applicants.
4. Damages for breach of contract.
5. Any further order(s) that this honourable court deems fit and just.
6. That the cost of this application be borne by the Defendant/Respondent.

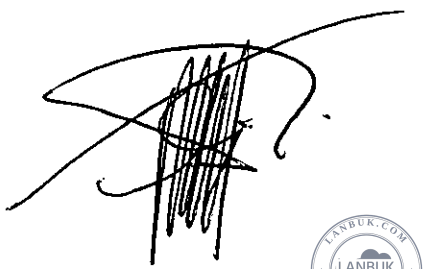
If I must summarise the prayers of the Plaintiffs, I will state that their complaint is simply that they have fully discharged their obligations under the mortgage deed dated 26th September 2014 but that the defendant is refusing to re-convey their collateral despite their demands. The application is supported by the affidavits in support and reply of both Plaintiffs containing the facts on which they rely with respect to making their case in this matter.

Their testimony is that they were granted a loan in the sum of Le 100,000,000 (One hundred Million Leones) to enable them complete their property at No. 21 Dambala Road and Hanga Town layout, Bo. The property itself was used as collateral for the facility and they were to repay the loan over a period of 5 years and at the interest rate of 22%. This was broken down to a monthly payment of Le 2,725,000. A mortgage deed was drawn up and executed by the parties and that deed is before this court marked Exhibit B1-11.

An insurance policy was also taken out with respect to the collateral submitted to secure the facility. A copy of the insurance policy is before the court and marked Exhibit C1-19. The Plaintiffs maintain that the sum of Le 81,000,000 (Eighty one Million Leones) was disbursed to them and the remaining Le 19,000,000 (Nineteen Million Leones) went towards deposit payment and service fees.

The Plaintiffs maintain that during the course of their relationship with the defendant, they requested that the monthly payment be converted to yearly payment and that the defendant agreed to this arrangement. The yearly payment was assessed at Le 33,180,000 (Thirty Three Million, One hundred and Eighty Thousand Leones) which they alleged was paid promptly until the debt was paid in full. They are therefore entitled to their collateral being re-conveyed.

The defendant in opposing the action filed and relied on the affidavit of Alpha Umaru Bah deposed to on the 16th March 2021. The defendant is in agreement with the plaintiff with respect to the following facts;



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1. The plaintiffs were granted a home completion facility by the defendant in the sum of Le 100,000,000 (One hundred million leones).
2. The Plaintiffs deposited property situate at No. 21 Dambala Road and Hanga Town Road, Bo as collateral for the said facility.
3. The plaintiffs started making payment towards the satisfaction of the debt but at some point requested that the mode of payment be transformed from monthly deposits to annual deposits.

However, this is as far as the parties agree in material terms. The defendant alleges that the plaintiffs even after the restructured payment terms, defaulted in their payments thus attracting penalty as per the terms of the mortgage. It also highlighted that the fact that the plaintiffs as per the terms of the facility were to be making payments on their insurance policy. When the Plaintiffs defaulted in this payment, the defendant satisfied the policy using the initial deposit deducted and retained from the principal facility that was granted to the Plaintiffs. According to their records, the plaintiffs are yet to satisfy the facility and there is still a sum due and owing.

The plaintiffs also filed a reply to the affidavit in opposition in which they exhibited proof of payment of the debt. Exhibit H1-2 is proof of payments of the sums of Le 3,000,000 (Three Million Leones), Le 20,000,000 (Twenty million Leones) and Le 10,000,000 (Ten Million Leones) respectively. Exhibit I is proof of payment of the sums Le 5,180,000 (Five million, one hundred and eighty thousand Leones) and Le 28,000,000 (Twenty eight Million Leones) respectively.

Having gone through the evidence before the court and in view of the allegations of the Plaintiffs, this court notes that the primary question from which all other issues must flow is whether the Plaintiffs in making a claim for the re-conveyance of their property have shown that they have indeed satisfied the terms of the mortgage and therefore entitled to a re-conveyance.

It is trite law that the parties to a contract are bound by its terms. There is no denying that the relationship between the parties herein is contractual. Where a contract is wholly in writing, the interpretation of its terms is exclusively within the jurisdiction of the court. **See Bentsen v Taylor, Sons & Co, (1893) 2QB 274.** In this circumstance, the terms of the contract between the parties in this matter can me summarised as follows;

1. The defendant was to give the Plaintiffs a loan of Le 100,000,000 (One hundred million Leones) for a period of 5 years.
2. The said loan was to attract interest at the rate of 22% per annum.
3. The Plaintiffs were to secure the loan with mortgage of property situate at No. 21 Dambala Road and Hanga Town Road, Bo.

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4. Regular payments were to be made on the loan until same is liquidated within the loan period.
5. Where the regular payments were delayed, the defendant was to charge a 10% penalty fee for the delay.
6. When the facility has been fully liquidated, the defendant was to re-convey the collateral to the plaintiffs.

From this brief summary, it is quite clear that it was agreed between the parties that the property would be re-conveyed when the facility has been satisfied. To refuse to do so will be a breach of a term of the contract between the parties. The plaintiffs allege that this breach has occurred. The defendant denies it.

It is also trite law that he who asserts must prove. See the case of ***Miller v Minister of Pensions*** **[1947] 2 All ER 372**and the Sierra Leonean case of ***John &Ano v Stafford & Others Civ. App. No 1/75 (1976) SLSC 4 (13th July 1976).*** In this matter, it is the Plaintiffs that allege that they have satisfied their duties under the contract and are therefore entitled to a re-conveyance. The burden to prove their assertion rests on them. In determining whether the plaintiff have discharged that burden, this court will then be tasked with the duty of ensuring that same is done on a balance of probabilities which is the standard set by the law and applied the cases of ***Hornal v Neuberger Products*** **[1957] 1 QB at 247** and ***Re Dellows's Will Trusts*** **[1964] 1 WLR 451**

The Plaintiffs do not deny the facility or that same has to be satisfied based on the terms as highlighted above. They maintain that they have indeed satisfied same fully. To reach a conclusion on this assertion this court examined exhibits H and I attached to the Affidavit in reply deposed to by the plaintiff, same dated 23rd June 2021. These are the only exhibits before this court that go to show the extent to which the plaintiffs have satisfied the facility sum. When added, they amount to Le 66,180,000 (Sixty-six million, one hundred and Eighty thousand Leones).This sum suffices to say does not even account for the principal let alone interest.

It's possible that there could be an explanation for this state of affairs by the Plaintiffs but same is not contained in the affidavit in support of the Plaintiff's claim nor is it in the affidavit in reply.

As highlighted above, proof of payment of the debt in this instance is quite paramount to these proceedings. In its absence, no other legal argument or position no matter how tempting it may be will be worth analysing or discussing.

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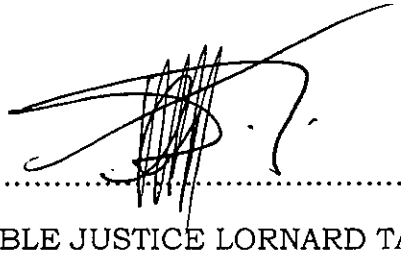
The plaintiffs have failed to discharge the burden imposed on them by law. They have made an assertion they cannot prove on a balance of probabilities. Even without considering the veracity of the defence, I must state that I cannot find for the plaintiffs in these circumstances. I therefore make the following orders;

1. The claims in the originating notice of motion herein are accordingly dismissed.
2. The cost occasioned by this matter is assessed at Le 10 million to be paid by the Plaintiffs to the defendant.



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HONORABLE JUSTICE LORNARD TAYLOR

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