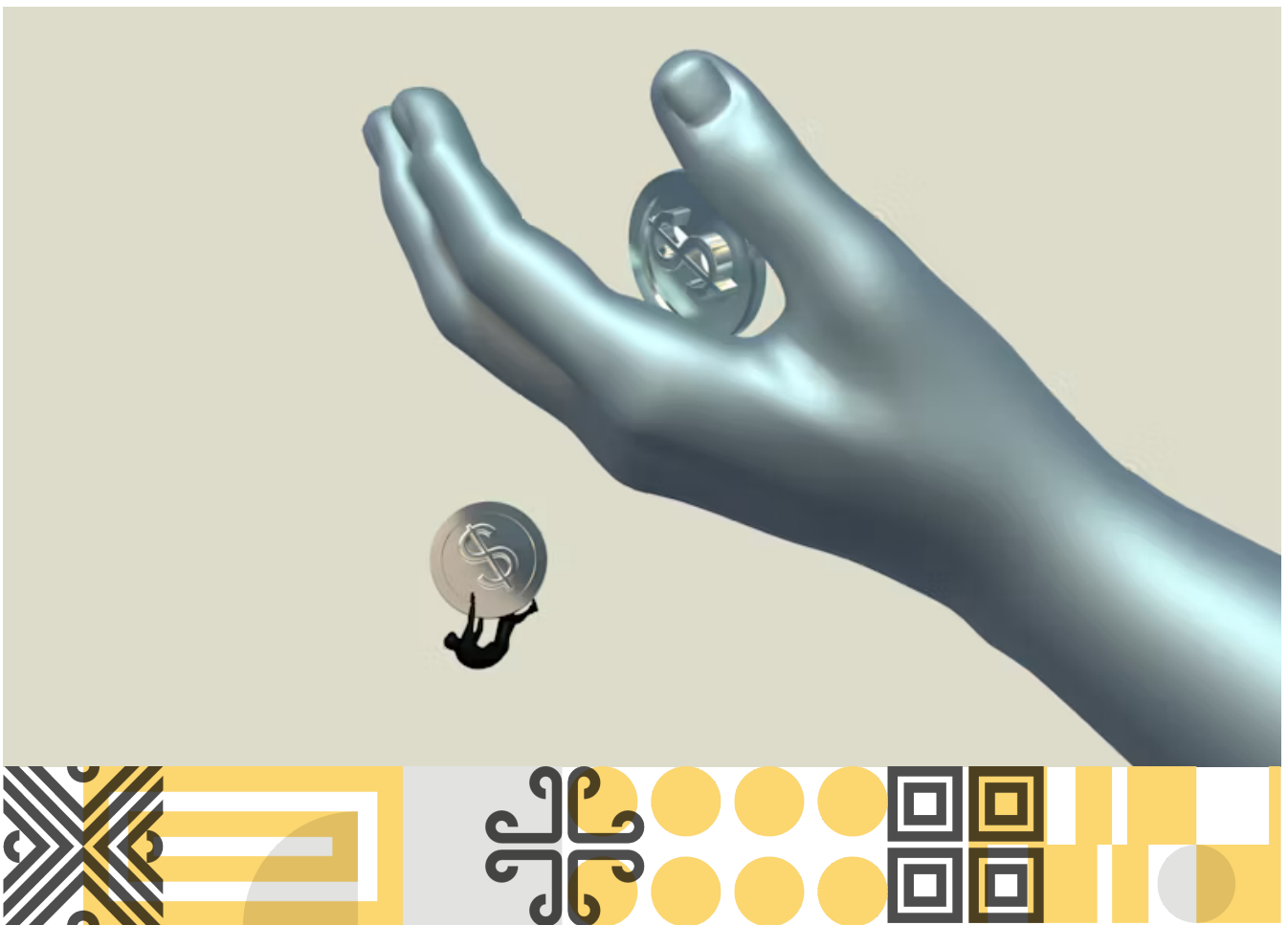


The Illusion of Collateral: *Why Enforcement, Not Security, Is Nigeria's Real Credit Problem*



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A Legal Commentary for Lenders, Borrowers, and Real Estate Investors

You have a registered title. You have a deed of mortgage. You have a fixed and floating debenture over the company's assets, a deed of assignment over receivables, and a personal guarantee signed before a notary. On paper, you are fully secured. Yet when the borrower defaults, you may spend the next four to seven years in court watching your security depreciate, your legal fees compound, and your recovery prospects shrink with every adjournment. This is not a hypothetical scenario. It is the lived experience of virtually every institutional lender, private credit fund, and high-net-worth individual who has extended credit in Nigeria. The problem is not that Nigerian law lacks a framework for secured lending. The problem is that the framework may exist almost entirely on paper.¹

The Statutory Architecture and Its Internal Contradictions

Nigerian secured lending law is a patchwork of colonial-era statutes, federal enactments, and state-level property regimes that were never designed to operate as a coherent system. The Land Use Act vests all land in the Governor of each state, meaning that a mortgagee seeking to perfect a legal mortgage over real property must obtain the Governor's consent, a bureaucratic process that routinely takes eighteen months to three years² and can be refused at administrative discretion.³ The Mortgage and Foreclosure (Special Provisions) Act creates a theoretical right of sale but tethers it to court orders that are rarely granted on the timeline

¹Companies and Allied Matters Act 2020 (CAMA 2020), ss. 8-10; Land Use Act, Cap. L5, LFN 2004, s. 22.

²Dependent on the internal processing activities of the different land registries

³Land Use Act, Cap. L5, LFN 2004, s. 22. The Governor's consent requirement has been judicially affirmed in *Savannah Bank of Nigeria Ltd v Ajilo* [1989] 1 NWLR (Pt. 97) 305.

the statute contemplates.⁴ The result is a system where security is strong in its creation and enfeebled in its realisation.

The implications for pricing and availability of credit are severe. Banks and alternative lenders respond to enforcement uncertainty not by refusing to lend but by shortening tenors, imposing high interest rates, and demanding collateral cover ratios that price most borrowers out of the market. A real estate developer seeking long-term construction finance will be asked to provide collateral worth two to three times the loan value precisely because the lender knows that, in a default scenario, it will recover far less than the face value of the security.⁵ This risk premium is essentially an informal tax on credit intermediation paid not by banks but by the productive economy.

What Lenders Actually Get (And What They Think They Get)

Consider a practical scenario familiar to any Nigerian commercial bank or private equity fund. A developer secures a ₦2 billion facility to build a mixed-use complex in Lagos. The security package includes a first legal mortgage over the title to the land, a debenture over the special-purpose vehicle, and personal guarantees from the directors. The documentation is excellent. The legal opinions are thorough. The facility is drawn down. Then the project stalls.

The lender is now entitled, in theory, to enforce its mortgage. But the title is registered in Lagos State, and if the consent under section 22 of the Land Use Act was not obtained, as is the case in a surprising proportion of even well-advised transactions, the mortgage may be void or voidable.⁶ Even if consent was obtained, the lender cannot sell the property without a court order under the applicable mortgage legislation.⁷ The debtor's lawyers will file an originating summons challenging the valuation, disputing the existence of default, or raising equitable arguments about the right of redemption. Each application is an adjournment. Each adjournment is months. The property sits unsold, unproductive, and depreciating in real terms while carrying costs accumulate.⁸

The guarantee is no longer reliable. Enforcing a personal guarantee in Nigeria requires fresh litigation. The guarantor will dispute the quantum of the principal debt, the rate of interest, and the validity of the underlying facility agreement. If the guarantor has restructured their assets into family trusts or transferred property to spouses in anticipation of default, a

⁴Mortgage and Foreclosure (Special Provisions) Act, Cap. M19, LFN 2004; see also the Conveyancing Act 1881 (applicable in some states) and Property and Conveyancing Law (applicable in Western States).

⁵Shelbourne v. Guaranty Trust Bank (Unreported, Lagos High Court, 2014); see generally R.A. Akintunde, "Mortgage Enforcement in Nigeria: Persistent Challenges" (2018) 12 NAUJILJ 44.

⁶National Population Commission data cited in World Bank, "Nigeria Housing Finance" (2022); Lagos State Ministry of Housing, Annual Report 2021.

⁷Land Use Act, s. 1; Attorney-General of Lagos State v. Eko Hotels Ltd [2006] 18 NWLR (Pt. 1011) 378.

⁸Mortgage and Foreclosure (Special Provisions) Act, s. 4; First Bank of Nigeria Plc v. T.S.A. Industries Ltd [2010] 15 NWLR (Pt. 1216) 247.

practice far more common than lenders acknowledge, recovery becomes an exercise in forensic asset tracing that most creditors lack the appetite and budget to pursue.⁹

The Real Problem: Enforcement Infrastructure, Not Security Documentation

The central insight, and it is one that Nigerian credit markets have been slow to internalize, is that the quality of a security interest is a function not of the document that creates it but of the legal and institutional infrastructure that enforces it. A well-drafted English mortgage may be worth more than a well-drafted Nigerian mortgage not because English lawyers are better draftsmen but because an English mortgagee may likely sell a defaulted property in six months without court intervention. The legal right is the same. The enforcement machinery is entirely different.

This means that investing heavily in the perfection of a conventional security package, title searches, Governor's consent, CAMA filings, registration at the Corporate Affairs Commission while ignoring enforcement strategy is the legal equivalent of buying comprehensive insurance from a company you know will dispute every claim. The documentation is necessary but insufficient. What matters, ultimately, is what happens when things go wrong.¹⁰

A Structural Approach to Enforcement-Ready Credit Transactions

The solution is not to wait for legislative reform, which remains perennially delayed. It is to structure credit transactions from inception with enforcement in mind, treating the exit as a design element rather than an afterthought. Several structures, properly implemented, materially improve the enforcement position of creditors under existing Nigerian law.

The first is the incorporation of mandatory arbitration clauses with immediate enforcement mechanisms. The Arbitration and Mediation Act 2023 significantly modernised Nigeria's arbitration framework, and an award from a properly constituted tribunal can be enforced as a judgment of the High Court without the years of litigation that direct enforcement typically requires.¹¹

The second is the use of power-of-attorney structures that enable the lender, as attorney for the borrower, to execute the instruments necessary to realise security without requiring the borrower's cooperation at the point of default. While such structures require careful drafting to withstand challenge, a well-structured irrevocable power of attorney expressed to be given

⁹Administration of Criminal Justice Act 2015 (ACJA 2015), s. 348 et seq.; Administration of Criminal Justice Law (Lagos) 2015, s. 357

¹¹Arbitration and Mediation Act 2023 (AMA 2023), s. 56.

for valuable consideration and coupled with an interest, is enforceable under Nigerian law and can dramatically reduce the procedural exposure of the creditor.¹²

The third and most underutilised is the use of escrow and direct payment arrangements that remove cash flow from the borrower's control before a dispute arises. In real estate finance, this means structuring offtake revenues, rent rolls, or receivables to flow directly to a designated lender-controlled account as a first charge, rather than relying on a floating charge over receivables that can be defeated by a preferential creditor or administrative receiver. Properly implemented, this converts an unsecured or weakly secured cash flow claim into something approaching a true first-priority interest.¹³

What Borrowers Need to Understand

This article has been written primarily from the creditor's perspective, but the analysis is equally important for sophisticated borrowers, developers, manufacturers, and SMEs seeking to access credit on favourable terms. The lender's enforcement anxiety is priced into every facility. A borrower who can credibly reduce that anxiety through clean title, pre-obtained Governor's consent, robust corporate governance, and transparent financial reporting can negotiate meaningfully better pricing and tenor than one who simply offers more collateral of uncertain realisable value.¹⁴

Moreover, a borrower who understands the enforcement landscape will not structure transactions in ways that inadvertently trigger the worst-case outcomes. Offering property without perfected consent, pledging shares with no exit mechanism, or providing guarantees from entities whose assets are already encumbered does not improve credit access, it creates the illusion of security while generating transaction costs that ultimately come back to the borrower in higher interest rates and more restrictive covenants.¹⁵

Conclusion

Nigeria's credit markets are not constrained primarily by a shortage of capital or a lack of creditworthy borrowers. They are constrained by the inability to efficiently transfer value from a defaulted security to an unpaid creditor. Every structural inefficiency in that transfer is priced into the cost and availability of credit for everyone.

The lawyers, lenders, and borrowers who will thrive in Nigeria's credit markets over the next decade are those who treat enforcement architecture as a first-order concern, not a detail to

¹²Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Cap. F2, LFN 2004; Asset Management Corporation of Nigeria Act 2010 (AMCON Act), s. 34.

¹³AMCON Act 2010, ss. 34–36; AMCON (Amendment) Act 2019

¹⁴Mortgage and Foreclosure (Special Provisions) Act, s. 5; compare with English Law of Property Act 1925, s. 101, which confers broader automatic powers of sale on mortgagees.

¹⁵Federal Mortgage Bank of Nigeria Act, Cap. F16, LFN 2004; National Housing Fund Act, Cap. N45, LFN 2004, s. 4.

be managed if things go wrong, but a structural feature of every transaction. The illusion of collateral is comfortable. But it is still an illusion. Security that cannot be enforced is not security. It is documentation.

Author:

Peter Odu

Associate, Hamu Legal



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6 Cairo Crescent, House 9B
Off Adetokunbo Ademola Cr,
Wuse 2, Abuja.



people@hamulegal.com



+234 906 000 5026