

CHAPTER 229

THE MORTGAGE ACT.

Arrangement of Sections.

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CHAPTER 229

THE MORTGAGE ACT.

Commencement: 9 August, 1974.

An Act to amend the law relating to mortgages and for other matters connected therewith or incidental thereto.

1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “court” means a court, not lower than a grade I magistrate’s court, having competence to hear a case with regard to the value and situation of the subject matter;
- (b) “mortgage” means any mortgage, charge, debenture, loan agreement or other encumbrance, whether legal or equitable which constitutes a charge over an estate or interest in land in Uganda or partly in Uganda and partly elsewhere and which is registered under the Act;
- (c) “registrar” means the registrar of titles.

2. Remedies upon breach of covenant.

(1) Upon failure of performance of any covenant in a mortgage under the Registration of Titles Act, the mortgagee may—

- (a) sue the mortgagor, obligor, if any, or both as the case may be, on the covenant; or
- (b) realise his or her security under the mortgage in any manner hereafter provided in this Act.

(2) For the purposes of this section, there shall be implied in every mortgage a covenant on the part of a mortgagor in possession to preserve or keep the mortgaged land from diminishing in value.

3. Realisation of security.

A mortgagee may realise his or her security under a mortgage—

- (a) by appointing a receiver;
- (b) by taking possession of the mortgaged land; and
- (c) by foreclosure.

4. Appointment of a receiver.

A receiver may be appointed in writing either by the mortgagee himself or herself under a power expressly provided in the mortgage in that behalf, or by the court, upon application for the appointment by the mortgagee.

5. Position of the receiver.

(1) A receiver appointed by a mortgagee shall be the agent of the mortgagor notwithstanding anything in the mortgage to the contrary; but the receiver shall, in addition to the mortgagor, be accountable to the mortgagee as well, to the extent of the mortgagee's interest in the mortgaged land.

(2) A receiver appointed by the court shall be liable to account at any time directed by the court.

6. Remuneration, powers and duties of the receiver.

(1) A receiver, whether appointed by the mortgagee or by the court, shall be entitled to retain out of any money received by him or her as receiver any sum fixed in that behalf at the time of his or her appointment as remuneration or, as commission, at such rate as may be determined under this Act.

(2) The receiver shall have power to enter into possession of the mortgaged land, to collect by demand or action in the name either of the mortgagor or mortgagee, all the income, including arrears, accruing to the mortgaged land, to give valid receipt for all income collected and to do any other act necessary or proper to manage the land, including the making of necessary repairs or any improvement directed in writing by the mortgagee and approved by the mortgagor or the court.

(3) Unless otherwise directed by order of the court, the receiver shall apply all income received by him or her from the mortgaged land as follows and in the following order—

- (a) in the payment of his or her remuneration or commission;
- (b) in the payment of insurance premiums payable under the mortgage and the cost of effecting necessary repairs or approved improvements, if any;
- (c) in the discharge of all rents, taxes, rates and other necessary

- outgoings affecting the mortgaged land;
- (d) in the discharge of any payments due under any mortgage having priority over the mortgage in right of which he or she was appointed receiver;
 - (e) in the payment of interest under the mortgage;
 - (f) in the payment of principal money, if so directed in writing by the mortgagee or the court, as the case may be; and
 - (g) to pay the residue, if any, to the person who, but for the possession of the receiver would have been entitled to receive the income or who is otherwise entitled to the mortgaged land.

(4) Any appointment of a receiver not in writing and which is not consistent with the provisions of this section shall be void and of no effect.

7. Possession by mortgagee.

(1) A mortgagee may, for the purposes of the realisation of his or her security in the mortgage, enter into possession of the mortgaged land after giving at least sixty days' notice of his or her intention to do so to the mortgagor.

(2) The right of possession by the mortgagee under this section shall be against the mortgagor and any person deriving an interest in the mortgaged land through the mortgagor where that interest is subsequent to that of the mortgagee.

(3) A mortgagee in possession shall be liable to account to the mortgagor for any income, whether in cash or in kind, derived from the mortgaged land which he or she has received or without wilful default might have received from the time of entering into possession, and to pay over to the mortgagor or to any subsequent encumbrancer of whom he or she has had notice the excess on the amounts due under the mortgage.

(4) In accounting under this section, the mortgagee in possession shall—

- (a) be liable for any failure to be diligent in realising any sum due to him or her from the mortgaged land;
- (b) be liable at the fair market value for an occupation rent if he or she occupies all or part of the mortgaged land;
- (c) be liable for any unreasonable injury to or neglect of the mortgaged land caused by his or her wilful or negligent act or

- omission;
- (d) not be entitled to any remuneration for personally managing the mortgaged land;
 - (e) be allowed the cost of any reasonable repairs or improvements made by him or her to protect the value of the mortgaged land or to maintain or increase the income from that land; and to the extent that any such expenses exceed the income from the mortgaged land, they shall be secured with the same priority as the mortgage and shall, where the mortgage secures the payment of money, be added to the principal sum with interest at the same rate as on the principal sum.

(5) A mortgagee in possession shall have power from the date of his or her possession to collect by court action or otherwise any income from the mortgaged land including arrears to which he or she would have been entitled if he or she had been in possession from the date of the mortgage.

(6) A mortgagee in possession shall be bound by any lease, profit or licence entered into by the mortgagor subsequent to the mortgage which is not lower than the fair market value, but he or she may avoid any such lease, profit or licence lower than the market value, if thirty days after serving notice on him or her to that effect, the person entitled to the lease, profit or licence has not agreed to pay the fair market value; but the person entitled to the lease, profit or licence may apply to the court to fix the fair market value.

8. Foreclosure.

(1) A mortgagee may apply to the court to foreclose the right of the mortgagor to redeem the mortgaged land anytime after the breach of covenant to pay.

(2) Upon an application by the mortgagee under this section, the court shall determine the amount due to the mortgagee and may fix a date, not exceeding six months from the date of the failure to pay, within which the mortgagor shall pay the amount due.

(3) If the mortgagor fails to pay on the date fixed by the court under subsection (2), the court shall order that the mortgagor be foreclosed of his or her right to redeem the mortgaged land and that the land be offered by the mortgagee for sale in accordance with section 9.

9. Sale by foreclosure.

(1) A sale consequent upon an order of foreclosure shall be by public auction, unless the mortgagor and all encumbrancers subsequent to the mortgagee and of whom the mortgagee has notice at the date of the order of foreclosure agree to a sale by private treaty and the terms of the sale are approved by the court.

(2) A sale under this section shall not take place until the expiration of thirty days from the date of the order of foreclosure.

(3) Prior to the sale under this section the mortgagee shall give to the mortgagor and every encumbrancer referred to in subsection (1) reasonable notice, being not less than thirty days, of the date and the place of sale.

(4) Failure to give notice as required by subsection (3) shall not affect the validity of the sale but shall render the mortgagee personally liable for any loss caused thereby.

(5) Neither the mortgagor nor any encumbrancer, including the mortgagee and any mortgagee prior or subsequent to him or her, shall be precluded from purchasing the mortgaged land at the sale; but a purchase by the mortgagee or his or her nominee shall not take effect until approved by the court.

(6) Any purchaser at the sale shall take the land free from all interests subsequent to the mortgage of the mortgagee who obtained the order of foreclosure, but subject to any interests prior to that mortgage, and the purchaser shall be entitled, as against any person, to all certificates of title relating exclusively to the mortgaged land other than those certificates of title held by a person with an interest having priority to the mortgage.

(7) The title of a purchaser under this section shall not be impeached on the ground that the order for the sale was improperly or irregularly made.

10. Sale otherwise than by foreclosure.

Where the mortgage gives power expressly to the mortgagee to sell without applying to court, the sale shall be by public auction unless the mortgagor and encumbrancers subsequent to the mortgagee, if any, consent to a sale by private treaty.

11. Application of proceeds from a sale.

(1) The proceeds from any sale under this Act shall be applied as follows, and in the following order—

- (a) in payment of all expenses properly incurred or incidental to the sale or any prior attempted sale;
- (b) in payment of all sums due to the mortgagee and to any other encumbrancer with the same order of priority;
- (c) in payment in the order of priority of any encumbrancers subsequent to the mortgagee; and
- (d) the residue, if any, in payment to the mortgagor.

(2) Where the sale is consequent upon an order of foreclosure, the proceeds shall be deposited in court for distribution, if so ordered by the court, and in any other case, shall be held in trust for distribution, but the distribution of proceeds from any sale shall be in accordance with subsection (1).

(3) Where a mortgagee holding the proceeds of a sale in trust under this section is in doubt as to the proper distribution of all or part of those proceeds, he or she may apply to the court for direction and may, if the court so orders, deposit the proceeds in court; and the costs of those proceedings shall rank in priority as if they were part of the expenses of the sale.

12. Extinction of certain rights.

(1) Where, upon an application in that behalf, the registrar is satisfied that the right of action to recover any security under a mortgage, whether the right is granted in that mortgage or otherwise, has become extinguished by the operation of the Limitation Act, the registrar shall, after giving notice of not less than thirty days to the mortgagee, remove the mortgage from the title of the land to which it relates; and the mortgage shall be deemed cancelled with effect from the date of the removal.

(2) Where, at the commencement of this Act, a mortgagee has gone into possession of a mortgaged land, whether by virtue of section 120 of the Registration of Titles Act, Cap. 205, 1964 Revision or otherwise, the mortgagee, if he or she is a non-African, may not thereafter sell or foreclose the right of the mortgagor to redeem the mortgaged land, notwithstanding anything to the contrary in the mortgage or in any other law but may continue

to exercise any other rights conferred on him or her by his or her possession; but where the non-African mortgagee has, at that commencement, been in possession for twelve years or more, his or her possession shall cease forthwith and the provisions of subsection (1) relating to the removal and cancellation of mortgages shall, *mutatis mutandis*, apply to the mortgage under this subsection.

(3) Notwithstanding subsections (1) and (2), the mortgagee may, not later than ninety days from the expiration of the notification under subsection (1), apply to the court for an order restoring the mortgage and his or her rights under it.

(4) Upon application by the mortgagee under subsection (3), the court shall grant the order if the mortgagee satisfies the court—

- (a) in the case of the cancellation of a mortgage under subsection (1) that, during the period of limitation—
 - (i) the mortgagor or his or her successor in title acknowledged the mortgage debt in writing, and agreed to pay, or paid part of it;
 - (ii) the mortgagor was dead and that either no successor had been appointed or there was no one competent to receive the notice requiring the repayment of the loan either as personal representative or in some other capacity; or
 - (iii) the exercise of his or her powers of sale or foreclosure was denied by the court;
- (b) in the case of the cancellation of a mortgage under subsection (2), that the exercise of his or her powers of sale or foreclosure was denied by the court.

13. Registrar may issue special certificate of title to mortgagor, etc.

(1) Where, upon the expiration of the time specified under section 12(3) for the mortgagee to apply to the court for the mortgage and his or her rights under the mortgage to be restored, the mortgage and the rights have not been so restored and there are no proceedings pending in the court in respect of such application, the registrar shall, by writing under his or her hand, require the mortgagee or his or her transferee within thirty days to surrender to the registrar any certificate of title in his or her possession relating to the mortgaged land.

(2) Any certificate surrendered to the registrar pursuant to subsection

(1) shall be returned to the mortgagor or his or her transferee.

(3) Where, upon a request by the registrar under subsection (1), the mortgagee or his or her transferee fails to comply within the time specified, the registrar shall issue to the mortgagor or his or her transferee a special certificate of title in place of the certificate in the possession of the mortgagee or his or her transferee, and the provisions of section 70 of the Registration of Titles Act relating to the validity and endorsement of the special certificate of title and the entry of particulars of it in the register book shall, *mutatis mutandis*, apply to the special certificate of title issued under this section.

14. Power of Minister to fix mortgage rates.

(1) The Minister responsible for finance may, from time to time, by statutory order, prescribe the rate of interest chargeable in any mortgage transaction in Uganda and every such transaction shall conform to that rate of interest.

(2) In any account required to be taken for the purposes of any provision of this Act, the court shall have regard to the rate prescribed by the Minister.

15. Applications and fees.

The provisions of the Registration of Titles Act relating to applications to the registrar or to the High Court or the court, as the case may be, and fees payable for the applications shall, *mutatis mutandis*, apply to similar applications under this Act.

16. Liability of guarantors, etc.

The obligations of any party to any agreement or arrangement collateral to a mortgage, whether by way of guarantee, indemnity or otherwise, shall be no greater than the obligations of the mortgagor under the mortgage.

17. Regulations.

The Minister may, by statutory instrument, make regulations for—

- (a) determining the commission to be paid to a receiver; and
- (b) generally carrying out the provisions and objects of this Act.

History: Decree 17/1974.

Cross References

Limitation Act, Cap. 80.

Registration of Titles Act, 1964 Revision, Cap 205.
