



RIGHT OF REDEMPTION IN MORTGAGE

Most people are still scared to take a loan on a security of a mortgage thinking that they will be selling their properties. It is not so. Mortgage has effect as security only.

What transpires in any mortgage contract is that a property owner puts his property as collateral so that a lender can advance the loan with an assurance that the borrower will pay back the advanced sum with the interest since they have something of value from the borrower. It is only when the borrower fails to pay, will the lender take possession of the mortgaged property.

The Land Act, 1999 Cap 113 R.E 2002, is clear that a mortgage shall have effect as security only and shall not operate as a transfer of any interests or rights in the land from the mortgagor to the mortgagee. However, the Act also confers powers and remedies to the lender in case of a default by the borrower. It also subjects the lender to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption.

Since mortgage has effect as security only, it follows that the right of redemption that the mortgagor has is central. The borrower has this right and may exercise it at any time before the mortgaged property is sold to a third party upon default.

The borrower may redeem and discharge his property at any time, even before the redemption date (early repayment) if he pays the entire debt and perform all the conditions and obligation in the mortgage deed.

Terms which tend to deprive the borrower of his right to redemption or which seek to restrict his right of redemption are unacceptable and may render the mortgage agreement void. In other words, we can say that the right of redemption is inviolable under the laws of Tanzania.

To cement the inviolability of the right of redemption, the mortgagee right to foreclose on the mortgagor (borrower) property has been abolished under the provision of section 125 of the Land Act, 1999 Cap 113, RE 2002.

Accordingly, the borrower may redeem his mortgaged property any time before acceptance of a bid in a public auction or on execution of sale agreement under a private agreement.

This implies that even after defaulting, the mortgagor's right of redemption remains intact in the sense that until the property is sold or transferred to a third party, the borrower may still redeem his property before such sale or transfer is complete.

For those wishing to secure a mortgage facility, they should do so knowing that mortgage



RIGHT OF REDEMPTION IN MORTGAGE

has effect as security only, and that they are in no way transferring their ownership of their properties to the lenders, they can redeem their properties at any time provided they fulfill part of their agreements by repaying the loans and interests on their loans so as to have their mortgages discharged.

It is a common knowledge that the cost for construction and/or renovation of houses is very high for a common man to be able to bear, thus mortgage financing is the best way through which people can get decent housing.

The important thing to note, as stated above, is that in mortgage contracts the mortgagor/borrower does not give away the ownership of his property, he rather puts it up as security, the property remains his, this is why the right of redemption is paramount in all mortgage contracts.

Most people think that once the lender gives a notice to exercise his mortgagee remedies, which include right to sell the mortgaged property, it is over for them, that they have already lost their properties. This is not so, as the law is clear that the borrower right of redemption is paramount and remains valid until the property is sold to a third person. Therefore, the borrower can redeem his property anytime before the sale is complete.

Other people complain that they complete repayment of their loans either before the required date or on time but the lenders are slow in returning their title deeds. Some have complained that it took several months for them to get their title deeds back after they completed repayment of their mortgage loans. I urge lenders to ensure that their clients get their title documents back as soon as they finish repaying their loans.

Borrowers should know that when they borrow money on the security of a mortgage, they are bound by the terms of the agreements they sign, and that defaults in repayment may cause the mortgagee to exercise his remedies which include selling the mortgaged property among others. They should to the best of their ability try to repay the loans and put the money into the use upon which they intended so that they can get returns and be able to repay the loans.

In the final analysis, the inviolability of the right of redemption as well as abolishing of foreclosure afford borrowers breathing ground and opportunity to save their properties in case of default up to the last possible moment.

The Author is a Legal Officer with ABC Attorneys.



RIGHT OF REDEMPTION IN MORTGAGE