MISC.APP.027/2019 2019 G NO.25

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT

BETWEEN:

GUARANTY TRUST BANK (SL) LTD - PLAINTIFF

AND

SKAITEL (SL) LTD & ANOTHER - DEFENDANTS

RULING OF THE HONORABLE JUSTICE LORNARD TAYLOR DELIVERED ON THE 22ND JANUARY 2021

This matter came before this court by Originating Summons dated 4th October 2019 and filed by the Solicitors for the Plaintiff on its behalf seeking to recover the debt owed by the Defendants or in the alternative, foreclose on Mortgage dated 24th November 2017 which is security for the debt that as at then stood at the sum of Le 2,180,165,338.19 which had by then become due and owing and was already accumulating interest. Solicitors for the Defendants filed an affidavit in opposition dated 30th January 2020 in which they did not deny owing the Plaintiff in the sum claimed. Counsel for the Defendant in addressing the court on the matter stated as follows; "The defendant is not denying the debt. The defendant is only asking the court for some time to pay off the debt". The matter was withdrawn for judgment and on the 23rd March 2020, judgment was delivered by the court in the presence of both counsel on the following terms;

1. The defendant is indebted to the Plaintiff in the sum of Le 2,180,165,338.96.
2. The defendant is to pay the said sum in 18 equal monthly instalments beginning on the 1st May 2020 until the debt is paid in full.
3. In the event of default of any instalment in order 2 above, the entire sum shall become due and owing immediately.

4. In the event of orders 2 and 3 above, the deed of mortgage dated 24th November 2017 and registered as No. 197/17 at page 100 in volume 97 of the Record book of Mortgages kept in the office of the Administrator and Registrar-General in Freetown shall forthwith thereafter be foreclosed.

5. In the event of foreclosure as above, the defendant shall forthwith deliver to the Plaintiff possession of the mortgaged property.

6. Liberty to apply.

7. Cost of this action is assessed at Le 18 million to be paid by the defendants to the plaintiff forthwith.

8. Interest on the judgment sum is assessed at the rate of 15% per annum from the date of this judgment until payment of the debt in full.

This was thought to be the end of this matter until Solicitors for the Defendants filed a Notice of Motion dated 1st June 2020 asking the court to vary its judgement of 23rd March 2020. Subsequently on the 10th June 2020, Solicitors for the Defendants again filed another application praying for inter alia, an order that the court rescinds its judgment of 23rd March 2020 and varies it to permit the defendant to pay the sum of Le70,000,000 instead of the sum of Le136, 009,150.87 until the complete liquidation of the sum due and owing the Plaintiff. On the 11th June 2020, Counsel for the defendants again filed an Ex Parte Notice of Motion praying for inter alia, an interim Ex Parte stay of execution of the Judgment of this court dated 23rd March 2020. This application was moved on the same day in view of its urgency and an interim stay of Execution of the judgment of 23rd March 2020 was ordered pending the hearing and determination of the application dated 10th June 2020. The matter came up for hearing on the 15th June 2020. Counsel for the Defendants applied to the court that he wishes to withdraw the application dated 1st June 2020 and this application was granted. The application of 10th June 2020 was moved praying for the following;

1. That an interim stay of execution of the judgment of the High Court be stayed pending the hearing and determination of this application.

2. That the order of the court in the judgment of this honourable court bearing the date 23rd March 2020 directing payment to be made by the defendant by instalment of Le136,009,150.87 per month until liquidation of the sum due and owing the Plaintiff be rescinded and varied so that the defendants be permitted to pay the sum of Le 70,000,000 per month until complete liquidation of the sum due and owing the Plaintiff.

3. Liberty to apply.

4. Any other orders that this court may deem fit and just.

It is this application that is currently before this court for hearing and determination.

Attached to the said application is the affidavit of Ali Skaikay deposed to on the 10th June 2020. His complaint is that his solicitors were only served with a copy of the Judgment on the 8th June 2020 and that since receiving the judgment, he had been able to meet the first two instalment payments. However due to the pandemic and the fact that the defendants are owed by other businesses and agencies, they would like the court to vary its judgment to order a reduction of the instalment payment to Le 70 million monthly.

Solicitors for the Plaintiff filed an affidavit in opposition dated 17th June 2020. They maintain that the defendants are in violation of the orders of the court, failed to make the instalment payment as and when ordered. Consequently, they have on the authority of the judgment of 23rd March 2020 proceeded to execute an agreement for the sale of the mortgaged property and that the purchaser have in fact made a deposit of the full purchase price into the account of the 1st defendant to offset the negative balance therein.

The primary question presented by the present application is whether this court in fact has the authority to rescind and or amend its own judgment.Should this question be answered in the affirmative, under what circumstances this authority can be exercised. Secondly, in view of the assertion that the property the subject-matter of the action has become the

object of a sale agreement, this court must also consider whether the agreement to sell the said property at this stage is in line with legal procedure.

Counsel for the applicant in arguing these points relied firstly on Order 43 rule 8(1) of the High Court Rules 2007. This provision has as its side note "Payment by Instalment" and states thus;

> *"Where any judgment or order directs the payment of money, the court may, for sufficient reason, order that the amount be paid by instalment with interest; and any other order may be made at the time of giving the judgment or at or at any other time afterwards by the same or any other judge and may be rescinded upon specific cause shown at any time".*

By this authority counsel for the Applicant argues that this court is vested with the authority to rescind its judgment and grant any other order at any other time afterwards. But is this really the purport of Order 43 Rule 8(1) of the High Court Rules 2007? Does it vest this court with the authority to rescind and amend its judgment based on sufficient reason? This court does not think so and will not hold the argument of counsel for the Applicant as valid. It is clear from the literal interpretation that the above provision envisages a situation like the present one in which the matter is with respect to the payment of money. The matter was brought before this court and this court in its wisdom gave an order for the debt to be paid in instalments. The first part of the provision have been utilised to the fullest by the court in its judgment of the 23rd March 2020 when it ordered that the debt was to be paid in 18 equal monthly instalments. This is the first part of the provision and it reads thus;

> *"Where any judgment or order directs the payment of money, the court may, for sufficient reason, order that the amount be paid by instalment with interest;…"*

Can an order already made under this circumstance be rescinded and replaced. I hold that this in not the purport of the rule.

The second part of the provision gives this court the authority to make any other orders in addition to the order for instalment payment at the time of

giving the judgment or any other time afterwards. It is such other orders as authorised by the second part of the provision that could be rescinded upon specific cause shown at any time.It reads thus;

> "……*and any other order may be made at the time of giving the judgment or at or at any other time afterwards by the same or any other judge and may be rescinded upon specific cause shown at any time".*

On these bases I hold that Order 43 rule 8(1) of the High Court Rules 2007 does not vest this court with carte blanche authority to give judgments and rescind them at any time it wishes if sufficient reason is shown. For then, there will be no finality to litigation. The second part of this provision only empowers the court to give orders, though not prayed for in pleadings, which will facilitate the smooth enforcement of the principal order for the payment of the debt. It is these facilitating orders that can be rescinded upon specific cause shown at any time.

In support of his argument, counsel also relied on Order 46 Rule 6(1) of the High Court Rules 2007. The provision reads thus;

> *"Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified in the order."*

The argument of counsel for the applicant with respect to this provision is the same as above. He maintains that by this provision the court is vested with authority to make an order requiring a particular act which was ordered to have been done, to be done within another time. In the present case, his argument is that this court having ordered the defendant to make payment by instalment within a specific period, now has the authority to alter the specific period in its judgment and order that the instalment payments be made at another date. This argument I also do not find valid.

The rule has as its side note "Judgments, etc. requiring acts to be done: Order fixing time for doing it". However to understand the purport and rationale of the rule, it must be read in totality. It states thus;

> *"6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done,the Court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified in the order.*
> *(2) Where, notwithstanding or by reason of rule 2 of Order 43 a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified in the order.*
> *(3) An application for an order under this rule shall be made by summons and the summons shall be served on the person required to do the act in question."*

The provision does empower the court in sub-rule 1 to make an order requiring an act to be done at another time different from that specified in the judgment or order. As in the present case, the thrust of the application is indeed to have the defendant do the act ordered by the judgment which is for the payment of the debt at a later date. Nonetheless, the application of this this provision cannot be utilised in the present case by the defendant. Regardless of the fact that the rule does seem on the surface to support the present application, in actual fact, it runs contrary to it. The true purport of the rule can only be understood after reading and considering sub-rule 3 of the provision. It states;

> *(3) An application for an order under this rule shall be made by summons and the summons shall be served on the person required to do the act in question."*

Even though the sub-rule states that the application ought to be by summons and the Applicant herein approached the court by Notice of Motion, I will not hold same against the Applicant in this application. This court however takes issue with the limb of the provision that states; *".....shall be served on the person required to do the act in question".* This phrase by default makes the provision a weapon of attack rather than a shield. It speaks to the true intention of the drafters which is that it envisages a situation where an unsuccessful party is required to do an act within a period and he fails to comply with the order of the court. The successful party in a bid to enforce the order of the court and get the other party to comply is at liberty to approach the court by summons for an order requiring the act to be done at another time. It is this application that the provision states ought to "...*be served on the person required to do the act in question."* In the present matter, the person to do the act in question and who is to be served with the Summons is the defendant. As such an application under this sub-rule cannot be intended to be made by this Defendant/Applicant. It could only have been made by the Plaintiff where it deems it necessary for whatever good cause. It is not to be the other way around as in the present application where the party served is the Plaintiff who in effect is not the person directed by the judgment to do the act. On this basis again, I cannot hold the Applicant's argument to be valid in this regard.

The Plaintiff in opposing this application deposed to the fact that the property which was the subject-matter of the mortgage had been sold and the full purchase price already paid. This brings this court to the next issue to be decided; whether the agreement to proceed with the sale of the property is in line with legal procedure.

In presenting their arguments before this court, the Defendants/Applicants also maintain that in addition to their above arguments,this court does have jurisdiction to hear and determine an application in the nature of the current one on the basis that the sale of the property was conducted fraudulently. Further, that it was an abuse of process that the Plaintiff/Respondent proceeded with the sale during the pendency of an application before the

court, the outcome of which was likely to affect the judgment executed by the Plaintiff.

The case Nigerian case of **Vaswani Trading Co. v Savalakh& Co. SC 164/1972**was cited and relied on to argue the point that the Plaintiff ought not to have proceeded with the sale of the mortgaged property during the pendency of an application before the court. In that case, Judgment was given against the Appellants who promptly filed an application in the court below seeking a stay of execution of the judgment pending the hearing and determination of an Appeal. The application was refused and the Applicants again filed an application before the Supreme Court seeking the same relief. Before the application could come up for hearing, the Respondents had proceeded to execute the judgment. In spite of the fact that the Nigerian law was clear and unequivocal in its assertion that an appeal cannot operate as a stay of execution of a judgment, the court had this to say;

> *"In the present case, there is no doubt that the writ was executed and possession was wrested from the applicants whilst their motion to this court for a stay of execution was pending and awaiting a date to be assigned by this court for the hearing of the application. It is true and correct to observe that the notice of appeal filed wouldnot operate as a stay of execution and section 24 of the Supreme Court Act makes this more clear; but it is equally correct to point out that* ***the section does not prescribe in favour of any execution being done during the pendency of an appeal.*** *Indeed, by its provisions, it postulates that during the pendency of an appeal the supreme court has jurisdiction to accede to an application for a stay of execution conditionally or otherwise. The section does not give any licence directly or indirectly for the issue and execution of any process which may ultimately be offensive. This section simply de-limits the scope of the statutory position of the parties after filing a notice of appeal. Clearly therefore to employ this section as a spring-board for the issue and processes of an inopportune execution would be an abuse of the process of the court".*

By this excerpt it is clear that the position of the court is that regardless of the fact that the rules of procedure states that the an appeal does not operate as a stay of execution, a successful litigant must not proceed to execute a judgment where he has been notified of an application that has the potential to affect the execution. According to the court, the order stating that an appeal does not operate as a stay of execution is not to be seen as a permission to execute a judgment in the absence of a stay of execution even though at the same time it does not operate as a stay in itself. We also have a similar provision in our rules but same is embedded in our court of Appeal rules which in the present case cannot be utilised by either party in view of the fact that the judgment in this matter was not appealed against and this court lack the authority to apply same.

Indeed the fundamental difference between the Vaswani matter and the present case is that in the Vaswani matter, the judgment had been appealed against while in the present case there is no such appeal. I agree that the principle with respect to stay of proceedings is that it is ordered to maintain the status quo of the matter as opposed to an injunction which seeks to maintain the status quo of property pending the inquiry of the court into issues raised by any of the parties. In the present application, the Defendant has come before this court seeking respite with respect to the payment of the judgment sum.They have argued that based on the ratio in the Vaswani matter, it was an abuse of process for the Plaintiff to proceed with execution after receipt of notice of the Defendant's application.

The law that forms the basis of the Vaswani matter i.e. Section of 24 of the Supreme Court Act is a Nigerian law. It provides;

> *An appeal under this part shall not operate as a stay of execution but the Supreme Court may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with the rules of court".*

The principles contained in this provision are not in the High court rules by which this court is bound. The closest in the laws of Sierra Leone that we come to a principle of this nature could be found in Order 28 of the Court of Appeal Rules 1985. I will also reproduce same verbatim.

> *"An appeal shall not operate as a stay of execution of proceedings under the judgement or decision appealed from except so far as the court below of or the court may order, and no intermediate act or proceedings shall be invalidated, except so far as the court below or the court may direct".*

It is quite clear from the juxtaposition above that the principles contained in both provisions are on all fours. However, this court cannot apply these principles in this application as they clearly do not sync with the present circumstances.

Firstly, the position in the Vaswani matter was taken by the court using the law as contained in the Rules of the Supreme Court of Nigeria. If this court must apply those principles, it must be within the interpretation of the laws of Sierra Leone. However, this also presents an impossible task. The concurrent law in Sierra Leone is contained in Order 28 of the Court of Appeal Rules 1985. This court cannot apply those rules and hence will not apply the principles in the Vaswani matter which are by their nature, merely persuasive in any case.

Secondly, assuming without conceding that the above argument is flawed and this court is indeed bound to follow the principles in the Vaswani matter, same also cannot be applied in the present matter as both the Sierra Leonean provision and its Nigerian counterpart stated the position of the law with respect to an appeal vis a vis a stay of execution or proceedings pending an appeal. In the present matter, there is no appeal.

Counsel for the Defendant/Applicant argues that it is the principle that matters. The principle that when there is an application before the court that

has the potential to affect the judgement as it is exists, it will be an abuse of process to take a fresh step to render futile and proceedings with the potential to affect the face of the existing judgment. Regardless of this, the position of the law will remain the same in the sense that this principle cannot be applied in the absence of an appeal that has the potential of turning the judgment on its head.

This is not so in the present case. There is no appeal that has such potency and therefore to hold that the decision in the Vaswani matter can safely be applied in this context will mean that the court have participated in an act likely to deprive the successful litigant of the enjoyment of the fruits of his judgment. This is a more fundamental principle in the application of the justice that cannot be violated. The integrity of the courts rests on it. For of what value will a judgment of the court be if it can give with one hand and take with the other simply because one party is not in position to comply with same conveniently?

Regardless of the above, can this court inquire into and change the contents of a judgment in the event the Defendant/Applicant alleges fraud during the execution of the judgment?

I must state at the outset that this was not the specific prayer of the defendant on the face of the application nor is there a prayer for the setting aside of the sale of the mortgaged property for any reason whatsoever. The Defendant/Applicant holds no gripe with the proceedings up to the judgment of 23rd March 2020. This argument about fraud only goes to raise issues with the manner in which the execution of the judgement was conducted. As a result, should this court be minded to consider and inquire into this issue, it can only take it as far back as the point of there being a regular judgment in this matter which the Plaintiff/Respondent is entitled to execute nonetheless. It would therefore be an effort in futility. I take note of the fact that according to counsel for the Defendant/Applicant, the sale of the mortgaged property only came to his attention when the Plaintiff's solicitors filed their affidavit in opposition. On the flip side, regardless of this notice, no application was made

for an amendment of the prayers on the face of the motion which counsel was at liberty to do nonetheless at any stage of the proceedings. There still only remains before this court, a plea for the court to reduce the monthly payment of the judgment sum and grant an extension of time within which to pay and no application to have the execution of the judgment set aside for fraud or for any reason whatsoever. To what end therefore should this court enquire into the allegations of fraud during the course of the execution of the judgment? I see none. The prejudicial effect of even an academic discourse on this issue at this stage will surely outweigh its probative value. As such this court will not countenance the argument in relation to fraudulent activities during the execution of the judgment.

Regardless of the above, this court is faced with the question of whether the Plaintiff as highlighted are right in proceeding with the sale of the property at this stage of the proceedings. This is based on the averments of the Plaintiff in the affidavit in opposition deposed to by Musa Kamara and filed on the 17th June 2020. According to the said affidavit in opposition, the Plaintiff in pursuance of orders 3-5 of the judgment of this court proceeded to issue a praecipe and writ of possession with respect to the mortgaged property. The Plaintiff also executed an agreement for the sale of the mortgaged property.

Of primary importance are the contents of paragraph 8 of the said affidavit in opposition. It states;

> *"The Plaintiff acting on the said court order for foreclosure in default of payment by the defendants has already executed an agreement for the sale of the mortgaged property situate at 141 Wilkinson Road, Freetown in the Western Area of the Republic of Sierra Leone and delineated on survey plan No. LS6608/12 measuring 0.1975 acres and the purchase price in respect of same has already been transferred into the account of the 1st Defendant by the third-party purchaser Messrs B.M. Kodami (SL) Limited. Copies of the 1st Defendant's statement of account and the contract for sale dated 2nd June 2020 are produced and shown to me and marked MK7 and MK8 respectively".*

For clarity I must again reproduce the judgment of this court before I proceed to analyse same vis-à-vis the averments of the deponent in the affidavit in opposition. It states thus;

1. *The defendant is indebted to the Plaintiff in the sum of Le 2,180,165,338.96.*
2. *The defendant is to pay the said sum in 18 equal monthly instalments beginning on the 1st May 2020 until the debt is paid in full.*
3. *In the event of default of any instalment in order 2 above, the entire sum shall become due and owing immediately.*
4. *In the event of orders 2 and 3 above, the deed of mortgage dated 24th November 2017 and registered as No. 197/17 at page 100 in volume 97 of the Record book of Mortgages kept in the office of the Administrator and Registrar-General in Freetown shall forthwith thereafter be foreclosed.*
5. *In the event of foreclosure as above, the defendant shall forthwith deliver to the Plaintiff possession of the mortgaged property.*
6. *Liberty to apply.*
7. *Cost of this action is assessed at Le 18 million to be paid by the defendants to the plaintiff forthwith.*
8. *Interest on the judgment sum is assessed at the rate of 15% per annum from the date of this judgment until payment of the debt in full.*

Based on the evidence before this court, the Defendants had offended the 2nd and 3rd Orders therein which means that at this point, the whole sum had become due and owing. Consequently, as per the said orders of the court, the mortgage shall be foreclosed in the event of which the defendant was to surrender vacant possession of the foreclosed property. Neither counsel raised the issue, but I must in reaching a decision on the matter, address the issue and process of foreclosure. This is so because pursuant to the 3rd order of the court, the consequence of non-compliance with the orders of the court is

not the immediate sale of the property, rather it is expressly stated that upon default, the mortgage will be foreclosed.

What then is foreclosure?

Unlike other jurisdictions, we do not have statutes that regulate issues of foreclosure and its procedures. The most concise definition I could lay hands on for the purposes of this matter and considering that we do not have in our statutes, provisions that expressly deal with the present matter is that contained in the 5th Edition of the Oxford dictionary of law at page 207. It states thus;

> *"FORECLOSURE; A remedy available to a mortgagee when the mortgagor has failed to pay off a mortgage by the contractual date of redemption. The mortgagee is entitled to bring an action in the high Court seeking an order fixing a date to pay off the debt; if the mortgagor does not pay by that date, he will be foreclosed, i.e. he will lose the mortgaged property. If after this order (a foreclosure nisi) is made, the mortgagor does not pay on the date and at the place (usually a room in the Royal courts of justice) named, the foreclosure is made absolute and thereafter the property belongs to the mortgagee."*

In the present case, the defendants failed to pay off the mortgage by the contractual date thus prompting the Plaintiff to issue these proceedings. By its judgment of 23rd March 2020, this court fixed a date for the defendants to pay the debt failing which the mortgage would be foreclosed. The defendant refused to meet this deadline as ordered by the court. Subsequently and consequently, the Plaintiff entered into an agreement for the sale of the security.

As per the above definition, it is most crystal that the next step in the chain of procedure was for the Plaintiff to approach this court to make the foreclosure absolute. This is a necessary feat considering that nature of the legal mortgage between the parties is such that the Plaintiff holds the legal interest to the property while the defendants still have the equitable interest vested in them. Foreclosure is the process by which the court wrests the equitable interest from the Defendants and places both the legal and equitable interest on the Plaintiff. It is for this specific reason that even in the event

where the debt is paid off in full by the mortgagor, the law demands that a deed of re-conveyance be executed. Where a deed of re-conveyance is not executed, the respective interests in the property continue to be vested in the different parties. The owner of the property in those circumstances cannot pass the legal title to a third party nor can the mortgagee pass on the equitable title. By the same token, where a mortgagor defaults in payment, until the foreclosure process is complete, the respective interests still continue to rest in the respective parties. The Mortgagee can in that circumstance only pass the legal interest because that is what he holds. He holds a mortgage and this is what the root of title of the 3rd party purchaser will show in his conveyance; that he acquired the mortgage of the property. Until the foreclosure process is made absolute, the principle of Nemo dat quod non habet, prevails and the Plaintiff can only pass to a third party that which it holds; the legal mortgage only. Any party taking from the Plaintiff will take subject to the defendant's equitable interest and consequently the defendant will be at liberty to redeem the mortgage unless there is an order of foreclosure absolute. There has to be an order of court making the foreclosure absolute, which said order will vest the Master and Registrar or such person as the court may decide, with authority to execute the deed vesting the legal and equitable interests in the mortgagee before the issue is laid to rest.

The Plaintiff in this matter has not taken such steps to make the foreclosure absolute. Instead it has proceeded to agree to sell the property to a third party. I hold that such an agreement of sale is at all material times, subject to Defendant's right to redeem in equity unless and until the mortgage has been foreclosed absolutely regardless of the fact that the date of redemption fixed by the court has elapsed. This position was succinctly put by Godwin Djokoto in his book, "The Law of Mortgages in Ghana" published in 2017. In referencing the dictum of Romer J. in the case of Smith v Smith (1891) 3 Ch 550 at 552, the author had this to say;

> *"It is important to point out that prior to the acquisition of an interest in the mortgaged property by third parties, a mortgagor is permitted to redeem his property even when the mortgagee has taken formal steps to exercise his remedies to enforce his security".*

In the present case, no interest has yet been acquired by the third party. There is only an agreement for the property to be sold. Further, the principle in Walsh v Lonsdale cannot be applied in the current matter because that law is limited to leases and not the sale of property.
In Seton v Slade, (1802) 32 ER, 108, the *maxim "Once a mortgage is always a mortgage"* was used to depict the true nature of a mortgage. It is a conveyance of land or an assignment of chattels as security for the payment of a debt or the discharge of some other obligation for which it was given.

In Thornborough v Baker (1675) 3 Swan 628, the courts held that *"In natural justice and equity the principal right of the mortgagee is to the money, and his right to the land is only a s security for the money"*. This has been the laid law and this position has not changed.

In conclusion, I must ask and answer the following questions;

1. Is there a judgement of this court ordering foreclosure? The answer is in the affirmative.
2. Is the said order of foreclosure absolute? The answer is that the said order is a Nisi order and not absolute.
3. What is the position of the matter prior to the foreclosure order being made absolute? The answer is that the parties are still considered mortgagor and mortgagee respectively with the equity of redemption still active.
4. Can the Plaintiff proceed to sell the mortgaged property prior of the foreclosure being made absolute? The answer is that the Plaintiff can proceed to sell its interest in the property and any purchaser will buy subject to the equity of redemption.

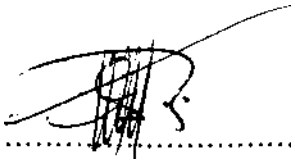
In the circumstances, I make the following orders;

1. The 2nd prayer on the face of the Notice of motion seeking a rescission and variation of the judgment of 23rd March 2020 is refused.

2. The Plaintiff continues to be at liberty to at file an application for the foreclosure of the mortgage granted on of 23rd March 2020 to be made absolute.

3. The defendants continue to be at liberty to exercise the equity of redemption until the foreclosure is made absolute.

4. All parties to bear their respective costs.



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