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## AN EXAMINATION OF THE MEANING AND NATURE OF PLEDGE

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### **Abstract**

*This paper examines the reality of customary pledge practices, its advantages and the threat it poses to contractual relationship in Nigeria. It x-rays the concept of pledge, its practice, rights and duties of both the pledge and the pledgor. consequently, the paper identifies inter alia, lack of writing (reducing) the pledge agreement in writing, long term pledge agreement and the legal protection that guarantee redemption even after many generations as a major setback, further, the paper suggests a number of ways through which these challenges can be tackled. These range from discouraging oral pledge agreement, specifying time of redemption denouncing quic quid plata solo codit to allow those millead to recover value for improvements on pledge property.*

***Keywords:*** Examination, Meaning, Nature, Pledge, Reducing.

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### **Introduction**

The practice of pledge is common in Nigeria and even Africa, pledging land become necessary if a land owner need money or other things and have nothing to secure such money in which case land is used as collateral to secure such items demanded. Land is considered sacred in Nigeria and the sale of land is forbidden by many native laws and practices because it is believed that the present generation are holding land in trust for the

generations to come thus, if outright sale is permitted it will amount to breach of trust.

### **Meaning of Pledge**

A pledge is defined as a thing that is given as security for the fulfillment of a contract or the payment of a debt and is liable to forfeiture in the event of failure.

Pledge is also defined as a serious or formal promise especially one to give money or to be a friend or something you give as a sign that you will keep a promise. It is also seen as making a serious or formal promise to give or do something.

Merriam Webster dictionary defined pledge as a bailment of a chattel as security for a debt or other obligations without involving transfer of title.

Adewale Taiwo in his work also said pledge consist of a loan of money secured by possession of chattels delivered to the lender. Although the lender has certain powers of sale, the general property in the goods remains in the borrower and the lender has possession.

A pledge is an indigenous institution developed by the customary laws of Africa. This kind of indigenous mortgage is the type by which the owner of a land gives possession and the use of land to the pledge in order to secure an advance of money or money's worth until the debt is discharged.

### **Nature of Pledge**

Under a contract of pledge, the debtor and pledger makes physical or constructive transfer of his property to the creditor as security until the debt is paid, such that possession remains with the pledge but legal ownership remains with the pledgor.

Prior to western education, pledge agreements were created informally because majority of the parties were illiterates and the pledge contracts were created in good faith and out of mutual trust. However, the practice is different today as such agreements are mostly reduce into writing.

The property used as object of pledge covers many items that include but not limited to land, animals, crops, trees especially economic trees.

### **Characteristics of a Pledge**

Pledges have two basic characteristics which are;

- i. It serve as a security for a loan made to the pledgor who is the debtor
- ii. The creditor or pledgor takes possession of the property until when the pledge is redeem

### **Rights of the Pledgee**

- i. Enjoyment of the land (usufructure): this is the right of the creditor or pledge to use the property as an owner of the property.
- ii. Right to any agreed interest: if both parties agree on anything to be given or paid as an interest it be deemed binding on both parties.
- iii. Rights to reasonable notice should the pledgor want to sale the property

### **Duties of the pledgee**

- i. Management: the pledge is under duty to manage or take good care of the property he does that by ensuring that the value of the property is maintained or even improved upon.
- ii. Duty to protect the property: the pledge is under duty to protect the pledge property from any act of trespass, he can do that by taking all necessary steps including litigation to stop any trespasser from violating the property.

### **Rights of the Pledgor**

- i. Proper maintenance: the pledgor has the right to assist in the management of the property pledged especially if special skill and experience is required to manage the property.
- ii. Right to any agreed interest if both parties agree at the time of making the pledge that the pledgeee will pay certain interest to the pledgor within the stipulated period, he have the right to such interest.
- iii. In case of sale, he have right to any surplus from the sale

- iv. To meet any extraordinary expenditure incurred in managing the property

#### **Duties of the Pledgor**

- i. To deliver up possession: the pledgor is under duty to deliver up possession of his property to the pledge without unnecessary delay.
- ii. Duty to perform and observe the agreements and covenants shall be absolute
- iii. To discuss any material faults or extraordinary risks in the pledged goods.
- iv. Duty to meet extraordinary expenditure incurred by the pledge for the preservation of the goods.

#### **Redeeming a Pledge**

To redeem simply means to do what you promised to do. Redeeming a pledge means to pay back the debt promised by the pledge to the pledgor at the time of making the pledge agreement so that the property revert back to the owner.

Redemption of a pledge is such that once it is done both parties go back to the former positions before the pledge agreement. The pledge can never acquire the pledgor's property while the agreement is still subsisting.

A pledge does not ripen into ownership because "once a pledge, always a pledge". Acts of possession exercised by a pledge cannot be equated to the acts of the owner of the property. A pledge is perpetually redeemable and the pledgor's family is entitled to redeem the pledged land for the amount of the original loan and for nothing more. That was the decision of the supreme court in the case of Micheal Achilihu & ors V Ezekiel Anyatonwu (2003) SCN 131. Indeed, it has also been held that there is no way long possession by the pledge of land can lead to denial of the right of redemption of the pledged land by the pledgor. The pledger will always be entitled to redeem, that was the position of the Supreme Court in the case of Damin Anyanwu & Anor. V B. Iwachukwu (2000) 12 S.C (pt 11) 67.

Redemption of a pledge cannot be postponed by agreement; what this mean is even if both parties to a pledge agreement have agreed that the pledgor will not redeem the land before certain date, the pledgor is not bound by such agreement as long as he can pay back the amount due, he can redeem the land at any time, however, it is important that the pledgor give reasonable notice to the pledge to enable him maximize profit, and if the property is an economic tree, redemption should be after harvest to make some profit.

In the practice of customary pledge, time is not of essence, the important considerations payment is made at a particular time.

It should be noted however, that strict adherence to the rigidity in the principle of a customary pledge is in great violation of some land law defenses like foreclosure and the defense of taches and acquiescence. Another important consideration is the long silence in settling debts motivates the pledge to make permanent improvements on the pledge property since it can take several generations sometimes the pledgor is even deceased and his offspring's without the proper knowledge of the kind of transaction can improve the property to meet present day reality but whenever the pledgor comes for redemption, the principles of quic quid plata solo solo codit (what is attached to the land also forms part of the land applies) and in such case it creates great hardship for the pledge. The court in the case of *Iwuchukwu, V Anyawu* (1993) 8 NWLR (pt 311) 307, noted that a pledge is contractual in nature and should be performed within a reasonable time.

Parties to a pledge agreement must clearly state if the pledge have right to sub let part or the whole pledge agreement, thus if the pledgor does not want his property to be sub let, we should clearly state it to avoid breach of agreement.

### **Conclusion**

The practice of customary pledge is a very good contractual practice that enables people to meet their needs with available resources like economic

trees, land and other valuables, as old as the practice is, it is still important even in the present day Nigeria.

However, for better efficiency the following recommendations if put into practice can improve the practice;

- i. The pledge agreement should be reduced into writing to avoid arguments over the terms
- ii. Parties to a customary pledge agreement should expressly specify the time for redemption, even if they wish to extend the fellowship, they can form fresh agreement

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