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The Concept of Security as a Panacea in the Hands of the Creditor – A Myth or Reality?

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ABSTRACT
The concept of *Security* with reference to the Nigerian Financial sector and Individuals was discussed broadly in this paper. Security is clearly defined, the usefulness of security is well elaborated in this paper. This paper also gives us an insight into the nature of security, it classifies security into *real* and *personal* security. Before any loan agreement can become valid, certain conditions must be addressed and fulfilled such as *Recognition of parties by law, Capacity of parties under the law, Validity of agreement, Reliability of Security tendered, Issue of acquisition, Compliance with Relevant Planning Regulations, Valuation.* The last three instances are relevant where *Land* is the subject matter of the Security.
This paper emphasizes without doubt, that the major problem with Security as a panacea in the hands of the creditor lies with its *enforcement,* and goes on to suggest that this problem of *unenforceability of security* can be drastically reduced if the Relevant Law Enforcement Agencies in every country, especially in Nigeria begin to take Creditors' Petitions against Debtors seriously and work on them. Once petitions have been investigated to be genuine, the Law Enforcement Agencies should go after the debtors and effect their arrests, especially escapee debtors who have made away with several peoples' monies and those who are owing the banks massive amounts of money. After they have been arrested, if they cannot pay back the money, they should be sentenced to at least twenty one years imprisonment because they may have wrecked some of their Creditors completely and rendered them totally hopeless. We can see from this abstract that Security as used in the context of this paper is both a Myth and a Reality because it has worked well for some creditors, but some other Creditors could not be allowed to take over it to realize the money they loaned to debtors.
KEYWORDS : Security, Creditor, Debtor, Banks, Secured Creditor, Unsecured Creditor, Mortgage, Real Security, Surety, Personal Security, Parties, Loan Agreement, Contract, Indemnity, I.O Smith Guarantee, Law Enforcement Agencies, The EFCC, Valid Title, Mortgagor, Land, Escapee Debtors.

INTRODUCTION
THE NEED FOR SECURITY

Commerce and Investment are the lifeblood of any economy. Financing these major economic activities require the use of credit facilities by individual entrepreneurs, corporate entities, small and large scale industries and multi-nationals, many of whom source capital largely from borrowing. Banks and other Financial Institutions provide the tonic for the vigorous commercial activities through lending. The provision of credit facilities is an investment for banking and a method of financial undertaking which propels economic growth[1].

According to *I.O. Smith*[2], a lender has two options in providing credit facility. Reliance may be placed on the borrower's covenant to repay, having been satisfied of the viable purpose for which the credit facility is required, and the certainty of the source of repayment. It has been said that *the most important factor to be taken into consideration when assessing the safety of an advance is the borrower's capacity to repay the loan in accordance with his promise*[3]. But going by this proposition, the debtor can default and the creditor may discover that his interest is postponed to that of a secured creditor where the debtor's assets have been given to secure another loan[4]. In the event of the debtor's bankruptcy, or insolvency, repayment of the loan depends on availability or sufficiency of debtor's assets, and the creditor may soon discover that he has no remedy.

The second option is for the lender to take, in addition to the debtor's covenant to repay, tangible assets and/or personal assurance in the form of guarantee or indemnity as security for the loan. This option is usually adopted by most, if not all banks, and has been preferred from the earlier times due to the disappointments and losses identified with unsecured credit. If the lender were sure that the borrower would honour his indebtedness when due, there would have been no need for security since there is always a promise to repay in all credit transactions. Experience has taught most lenders that the borrower who promised in earnest to repay on the due date may turn out to be very hostile and uncompromising when called upon to fulfill his

[1] ***I.O Smith – Nigerian Law of Secured Credit*** *(Ecowatch Publications Limited, Nigeria) 2001 @* p. 1
[2] *Nigerian Law of Secured Credit @* p. 1
[3] ***Chorley : Law of Banking*** *(7th Edition, Sweet & Maxwell) @ p. 288*
[4] Where tangible assets are at the disposal of the creditor as security, the creditor may have recourse to them upon the debtor's default, notwithstanding that the debt is preceded by other debts

financial obligations to the lender. As a result, the lender in most cases will refuse to accept the empty promise of the borrower, but would rather insist that certain property or additional third party assurance be made available to secure the debt, so that when the borrower reneges, the lender can have something to fall back on.

Security is indeed an assurance provided by the debtor in addition to the personal promise to discharge an obligation owed the creditor. It shows the debtor's good intention to meet his obligations, and provides an incentive on the part of the creditor to provide credit. Unfortunately, some debtors refuse to give up their security, after defaulting to pay the lender. Some go as far as stopping the lender by filing a court action (normally in the form of an injunction) against the party putting up the security for sale or taking over the security completely. Banks are the highest number of casualty creditors on this issue. Some individual creditors also suffer this non-challant attitude of bad debtors. Otherwise, the risk of non-repayment of a loan should normally be minimized when the debtor provides an alternative means for the creditor to fall back on in the event of default to repay.

A creditor who obtains security for any credit given is assured of a greater control over his debtor[1] in most cases, especially where the security is an immovable property with no defect in the title of its original owner[2]. In the event of a down turn in the debtor's business or undertaking, and consequently, a renegotiation and / or rescheduling of payment, the security provides the creditor with a stronger negotiating hand.

When a credit transaction is unsecured, interest rates tend to be higher to reflect the risk to the lender and this increases the cost of loans, which in turn makes capital equipment more expensive for entrepreneurs[3]. When tangible security is involved in a credited transaction, creditors do not need to gather information about the ability of the debtor to pay since the security exists to fall back upon. By reducing the risk, security reduces the cost of credit by reducing the interest payable[4].

In the event of a debtor's bankruptcy or insolvency, the security places the secured creditor at an advantage over any unsecured creditor. Not only does a secured creditor have priority of claim over an unsecured creditor[5], the assets over which real security is held would be withdrawn from the general body of creditors, and the secured creditor satisfied out of the assets notwithstanding that the unsecured creditor gets nothing[6]. The security is thus an assurance of repayment as opposed to mere possibility of enforcing a claim by action of debt.

Besides, since it is important that bank advances should be turning over continually, it is necessary that repayment be assured, so that the banks may stay afloat and be able to make fresh advances to other customers in need of finances. Inability of banks to recover loans from debtors or enforce the security they obtained from debtors who defaulted have led to the collapse of so many banks in many countries of the world.

Although the direct benefit of security may be to the creditor, and through better credit terms to the debtor, the need to reform a country's financial sector towards profound benefits for the economy may require State Intervention through Regulations. In Nigeria, for example, the Banks and Other Financial Institutions Decree No. 25 of 1991 provides credit limit beyond which banks cannot go without security[7]. And consequent upon distress in the Nigerian Banking sector in the 1990s, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 (as amended) was enacted which makes it mandatory for banks and other financial Institutions to obtain security when giving out credit[8].

In the area of International Trade, secured credit offers a convenient platform for the fulfilment of obligations with little or no hindrance to commerce. The complexity of international commercial transactions and the need to finance transactions across the seas and beyond national frontiers without hopping around the globe are major factors making the use of security significant. The use of maritime and other commercial

[1] *I. O Smith – Nigerian Law of Secured Credit* @ p. 2; *Pedrazzini and Simpson – The Legal Framework for Secured Credit : a suitable case for Treatment* (1999) B.L 1 Issue 1 p. 127 @ 129

[2] In my own view

[3] It has been said that the benefit of secured credit *will be shared by the borrower in the form of lower interest, a longer – term loan or other more favourable conditions*. See *Pedrazzini and Simpson* op.cit @ 129

[4] *I. O Smith* supra @ p. 3

[5] This is however subject to the Rule of destruction in the hands of a bonafide purchaser for value of the legal estate without notice of the security, if such security right is an equitable one.

[6] *Sykes & Walker : The Law of Securities* (5th Edition, Law Book Company Limited), 1993 @ p. 4.

[7] Ibid s. 20 (1) (b) and s. 20 (2) (a) & (b). This Decree qualifies as an Act of the National Assembly by virtue of s. 315 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria.

[8] This Decree qualifies as an Act of the National Assembly by virtue of s. 315 (1) of the 1999 Constitution of Nigeria supra. By s. 19 (1) (a) of that Law (of the Failed Banks Recovery of Debts), any director, manager, Officer or employee of a bank who knowingly, recklessly, negligently, willfully or otherwise grants, approves or is otherwise connected with the grant or approval of any credit facility without adequate security or with no security as normally required, or with a defective security, or without perfecting a security is guilty of an offence punishable with five years imprisonment without an option of Fine pursuant to s. 20 (1) (a) of the Law.

instruments as well as the various forms of assurance underlying bankers' relations across international frontiers basically constitute the main machinery for effective international trade[1].

THE NATURE OF SECURITY

Security is defined by *Sykes and Walker* as *an interest vested in a person called 'the creditor' in certain property owned by another called the 'debtor', whereby certain rights are made available to the creditor over such property in order to satisfy an obligation personally owed or recognized as being owed to the creditor by the debtor or some other person*[2].

R.M Goode[3] defines security (in terms of interest created in property) as *a right given to one party in the assets of another party to secure payment or performance by that other party or by a third party.*

Security interest may be created or may evolve over different types of property which could be tangible and intangible, and all of them are characterized by at least, 3 main features namely:

a) a right in the creditor to make the property answerable for the debt or for other obligation;
b) a right of the debtor to redeem the property by liquidating the debt or performing any other obligation;
c) a liability on the part of the creditor upon such payment or performance to restore the property to the owner.

Therefore security covers real and personal security[4].

CLASSIFICATION OF SECURITY

Real and Personal Security are the main types of security recognized by law. Each type is classified with defined characteristic features in terms of creation and enforcement.

a) **Real security** – real security gives the creditor certain rights over property which has been appropriated to meet the debt. This takes the form of a right *in rem* over specific property to the satisfaction of a particular debt, so that the debt is the primary charge on the property.

There are three traditional methods of classifying real security. These are:

1) ***Security by which the creditor obtains proprietary rights in the subject matter of the security such as mortgage*** **-** in this form of real security, title whether legal or equitable is conveyed to be creditor by the debtor to be held by the former until all his claims under the mortgage have been satisfied.
2) ***Security which depends on the creditor's actual possession of the subject matter of security*** **–** the existence of this form of security depends on the creditor's continued possession and not on conveyance of title by the debtor[5]. Examples are found in the English pledge and possessory lien. Although possessory security generally gives a right of retention to the creditor, in the case of the English pledge, the creditor may sell under special circumstances[6], even though he cannot foreclose[7].
3) ***Security which gives the creditor neither proprietary nor possessory right, but a simple appropriation of specific property to the satisfaction of the debt*** **–** a good example of this form of real security is an equitable charge or hypothecation. Under this class of security, the creditor may liquidate the debt through judicial sale of the property[8].

According to I.O Smith , while the foregoing classification may be a convenient way of classifying real security, it may serve no useful purpose in practice. This is because one type of security may fall into different heads of classification, making a strict compartmentalisation difficult. For example, although a mortgage is a proprietary security, it is not absolutely correct to say that possession is not one of the incidents of a mortgage, for a mortgagee may enter into possession in the absence of a mortgager's default and collect rents and profits. A pledge as a possessory security on the other hand, gives the pledgee a right to sell , a remedy characteristic of proprietary security.

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[1] *I.O smith – Nigerian Law of Secured Credit* @ p. 4
[2] *I. O Smith* supra @ p. 4; Security may also be used to signify investment stocks or to designate shares in a limited liability company suitable on the stock exchange. But that is not the sense in which security is being used in this paper.
[3] *R. M Goode : Legal Problems of credit and security* (2nd Edition, Sweet & Maxwell), 1988 @ p. 1
[4] Many writers do not categorise personal security as security unless it gives real security as well. See *Sykes & Walker* @ p. 11
[5] *Re Morritt* (1886) 18 QBD 122; *Official Assignee of Madras v. Mercantile Bank of India* (1935) AC 53
[6] *Carter v. Wake* (1877) 4 ch.d 605
[7] The reason is that the creditor in this case has no title vested in him which foreclosure could make absolute.
[8] *Tennant v. Trenchard* (1869) LR 4 ch 537. An equitable charge can also apply to court for the appointment of a Receiver to intercept rents and profits

It is also possible to distinguish between securities under a common head of classification. A pledge and possessory lien are both possessory securities, but while the latter merely gives the creditor a right to retain the security, a pledgee can, if the debt remains unsatisfied and after a reasonable time, realize the security by sale[1]. A customary pledgee, like a possessory lienee has a mere right of retention, but unlike its English counterpart, the customary pledgee has no power to sell, for a pledge at customary law is perpetually redeemable[2].

Classification of security may also depend on the evolution of a particular security in law or equity e.g legal or equitable mortgage; or on the source of creation such as consensual security and that which arises by operation of law such as an equitable lien. In practice, it is more appropriate to classify security according to its subject matter. While an immovable property like land may be the subject matter of a mortgage, since the mortgagee need not necessarily go into possession to have a valid security, the same may not be true of personal chattels. For chattels, physical control of the property is necessary not only for its protection, but essentially to forestall disposition of same by the debtor without the creditor's knowledge, bearing in mind that third parties are usually not warned in this regard[3]. Agricultural produce, growing crops, stock in trade or those likely to depreciate in substance and /or require preservation may be the subject matter of a charge or lien since the dominium of such may have to remain in the debtor for obvious reasons[4]. The nature of choses in action such as shares and stocks require that only a mortgage or lien may be created over them[5].

Looking at security from the point of enforcement, certain methods of enforcement may be more appropriate for some securities than others. Thus, *foreclosure* is confined to a mortgage; the right to take possession does not belong to an equitable chargee; sale is not available to the holder of a possessory lien, while the appointment of a Receiver is not open to all creditors[6].

PERSONAL SECURITY

Personal security gives the creditor a secondary contractual action against the surety, should the principal debtor default. It gives the creditor no claim upon any particular thing, but a claim against a particular person who assumes liability as surety for the principal debtor.

Personal security or suretyship exists in two forms namely: by *guarantee* or by *indemnity*. A contract of guarantee assures the creditor of the guarantor's secondary liability in the event of the inability of the principal debtor to meet his financial obligations even after adjudged liable by the Court. In this case, the creditor will have to proceed first against the principal debtor by action in court, and it is only where the latter's assets are insufficient to meet the financial obligation that the guarantor is proceeded against. A contract of indemnity assures the creditor of the primary liability of the indemnifier upon failure of the principal debtor to fulfil his obligation under the loan agreement. In this case, the creditor is not obliged in law to proceed against the principal debtor first before suing the indemnifier under the contract of indemnity[7].

While the foregoing classification remains water – tight in the law of secured credit, it does not follow that the security may be obtained only in accordance with the methods suggested. More often than not, creditors take real security from such sureties, and may attach same in the event of default by the principal debtor[8].

CONSENSUAL SECURITY: PRELIMINARY INQUIRIES AND LEGAL REQUIREMENTS

The most popular method of making real security available for credit facility involves a true agreement between parties of full capacity in law, the existence, availability and viability of the subject matter of security. Therefore, if creditors want to make the security viable and realizable, the following factors should be taken into consideration:

a) **Recognition of parties in law –** an agreement cannot have the force of law or be enforceable between the parties to it, except the parties are juristic persons[9].

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[1] *Carter v. Wake* supra
[2] *Okoiko v. Esedalue* (1974) 3 SC 15
[3] This problem necessitated the mandatory requirement of registeration of such interests created under the Bills of Sale Act 1882
[4] While agricultural produce and growing crops are usually required to be preserved or nurtured in practice by the farmer, the nature of stock in trade as floating assets necessitates the need to have a floating charge created over same.
[5] Stocks and shares are intangible assets, and the interest in them can neither be the subject matter of a pledge, although it is not clear whether a Share certificate may be pledged
[6] *Waldock – Law of Mortgages* @ p. 12
[7] *I. O Smith* @ p. 12
[8] *I. O Smith* @ p. 12
[9] *Fawehinmi v. Nigerian Bar association (no. 2)* (1989) 2 NWLR PT 105 p.558; Iyke Medical Merchandise v. Pfizer Inc (2001) 5 SC PT 1 p. 58 @ 68

b) **Capacity of parties –** in the case of *infants,* the law is that all contracts, whether by specialty or by simple agreement entered into by infants for the repayment of money lent or to be lent shall be absolutely void[1]. Since a contract of loan made to an infant is void, a guarantee of the loan is also void[2].

A *person of unsound mind* under the law may enter into a secured credit transaction during his lucid interval provided that a Receiver has not been appointed for him[3]. A mortgage given for loan taken by a person of unsound mind is valid unless it can be shown that the lender (mortgagee) was aware of the insanity, in which case, it is voidable and may be avoided by him[4].

Where the borrower is *an illiterate*, the lender is required by law to show that the former understood the purport of the agreement, and that the property was meant as security for the loan given to him. It is therefore, usual in practice to insert the *illiterate jurat* as a way of conforming with the Illiterates Protection Law[5] to the extent that the illiterate understood the transaction.

A trustee has no right to borrow money on the security of the trust property, unless such power is reserved for the trustee in the Trust Instrument or by some Statute[6].

The capacity of *a statutory corporation* to enter into contractual relations, including secured credit transactions is regulated by Statute, so that one which lacks power to take or give security under the relevant statute will be acting ultra vires its powers if it enters into such transaction[7]. As regards registered companies, although the Company and Allied Matters Act 2004 (Nigeria) prohibits a company from carrying on any business not authorized by its memorandum or exceeding the powers conferred upon it by its Memorandum or the Act, the Statute protects any act, conveyance or transfer of property from being invalidated and ipso facto, protects the secured creditor.

c) **Validity of Agreement –** a valid secured credit transaction is that which is entered into by parties to a credit arrangement freely, while manifesting their genuine intention in writing[8]. It is essential that the agreement reduced into writing must not have been vitiated by mistake[9], misrepresentation[10], duress[11] or undue influence[12]. The credit arrangement for which security is obtained must be meant only for a lawful purpose. Otherwise, the security becomes unenforceable[13].

In addition to the requirement of due execution, parties must ensure that other requirements of the law which include formalities like *consent of the appropriate authority, stamping and registration* (where necessary) are validly met.

d) **Reliability of security –** a viable security is one which the creditor could enforce in the event of failure or inability of the debtor to pay and realize there from proceeds which liquidate the indebtedness. It is therefore necessary not only that title over the subject matter of the security be secured, but also that the value of the same must be commensurate to the indebtedness. In this case, there are two key issues that must be addressed; which are -

i) **Assurance of title –** a borrower cannot give as security property which does not belong to him. The rule is *nemo dat quod non habet*, and a lender who takes as security property which does not belong to the borrower may discover too soon that there is no security enforceable in law.

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[1] Infant Relief Act 1874, s. 1
[2] *Coutts & Co v. Browne – Lecky* (1974) KB 104
[3] *Hall v. Warren* 32 ER 738
[4] *Campbell v. Hooper* 65 ER 603
[5] *Amizu v. Nzeribe* (1989) 4 NWLR PT 118 p. 757
[6] Equity will not permit a Trustee to unduly subject the Trust Property to financial risk to the detriment of the beneficiaries
[7] *Ashbury Railway Carriage & Iron Co. v. Riche* (1875) LR 7 HL 653
[8] *Olanleye v. Afro Contractor (Nig) Ltd* (1996) 7 NWLR PT 458 p. 29
[9] Mistake may prevent the parties from reaching an agreement or the parties are not in concensus ad idem, since they intend to contract about different things. *Per Lord Atkin* in *Bell v. Lever Brothers* (1932) AC 161
[10] In *Udogwu v. Oki* (1990) 5 NWLR PT 153 p. 721 @ paras C – G, the Nigerian Court of Appeal explained what constitutes misrepresentation to mean that *if two people enter into a contract, and if one of them for the purpose of inducing the other to enter with him, states that which is not true in point of fact, which he knew at the time to be untrue, and if upon that false statement, the contract is entered into by the other party, then, generally, an action at law is open to the latter for damages upon the deceit, and there will be a relief in equity to the same party to escape from the contract.*
[11] Duress is any form of coercion, extortion, extraction or force compelling the victim to act in a particular way contemplated by the party applying it. See *Pao v. Lau Yiu Long* (1980) AC 614; *I.O Smith* supra @ 23
[12] Undue influence is *some unfair and improper conduct, some overreaching, some form of cheating and generally, though not always, some personal advantage obtained by the guilty party.* Per *Lindley C. J in Allcard v. Skinner* (1887) 36 ch.d 145 @ 181
[13] No Court of Law ought to enforce an illegal contract or allow itself to be made an instrument for enforcing any obligation alleged to arise from it. See *Alao v. ACB Ltd* (1998) 3 NWLR PT 542 p. 339.

ii) **Investigation of title to land -** where the subject matter of security is land, the rule *nemo dat quod non habet* still applies rigidly, making investigation of title imminent. In Nigeria, the source of the borrower's title to land given as security for credit facility may lie in customary land tenure, valid transfer or grant. If it is a family or communal land, the lender should know that it is inalienable for any reason whatsoever without the consent of the accredited representatives such as the Head of the family and Principal members in the case of a family property and the Head Chief or Oba in the case of communal land[1].

Where the land is subject to a customary right e.g customary tenancy or pledge, any security created on it is subject to that customary right[2]. No individual member of a family can alienate the family land as own, not even the head of the family[3]. Where the borrower's title before lending was voidable, a subsequent transfer of the land as security is void and of no effect; and this is so, notwithstanding the concurrence of the family[4].

Where a power of attorney exists on family property, the content of the instrument must be properly construed to know whether the donee of the power is entitled to create security over the property in question[5]. Since the type of Power of Attorney contemplated here is one that is registerable[6], an unregistered Power of Attorney must be discountenanced[7]. In the case of a limited liability company as borrower, searches must be carried out at the Corporate Affairs Commission to ascertain whether there is any incumberance on the property to be offered as security.

e) **Issue of Acquisition –** where land is given as security, it is necessary that the borrower verifies the issue of acquisition and /or compensation since the efficacy of the security depends on the preservation of the subject matter of the security for the lender to fall back on in the event of default.

f) **Compliance with Planning Regulations -** a mortgage of structure on land requires investigation as to compliance with the relevant Town Planning Regulations. The Mortgagee must ensure that all buildings on the land and extension thereto and any user of the land which is going on are all effectively covered by Planning Permission.

g) **Valuation –** according to *I.O Smith*[8], the current value of the subject matter of security must be ascertained by a competent Valuer so as to ensure that the loan advanced by the lender leaves an ample margin between the debt and the value of the property in favour of the lender.

Where the lender relies on the careless representation of the Borrower's Valuer as to the value of the property which the Valuer knew would be shown to the lender, and the latter suffers financial loss as a result, an action lies in damages against the Valuer for breach of a duty of care[9]. If the interest in the property is leasehold, it is necessary to ascertain the ground rent, consider the state of repair as well as the general character of the neighborhood.

CONCLUSION

The reluctance of most debtors to repay money borrowed certainly emphasizes the need for security. As opposed to unsecured credit, both real and personal security give the creditor alternative options to exercise towards recovery of the debt in event of the inability or deliberate default of the debtor to repay a loan. In the case of real security, the creditor falls back on specific property of the debtor already appropriated to the satisfaction of the debt and applies same towards its discharge. Personal security offers the creditor the option to either proceed against the Debtor's Surety in Court under a Contract of Guarantee or Indemnity to recover the loan upon default or inability of the debtor to repay the loan, or even proceed against any real security given by such Surety.

The assurance is however stronger and more effective in the case of real security because the right of the creditor persists, notwithstanding that there is a change of ownership of the subject matter of security. Personal security on the other hand, merely provides the creditor with a secondary action of debt against a third party, and unless the undertaking by the surety is backed up by real security obtained by the creditor, personal security offers limited protection to creditors. What is more? Death, bankruptcy or insolvency of the Surety terminates the contract of suretyship.

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[1] *Ekpendu v. Erika* (1959) 4 FSC 79; *Alao v. Ajani* (1989) 4 NWLR PT 113 p. 1; *I.O Smith – Nigeria Law of Secured Credit* @ p. 26
[2] *Lasisis & Anor v. Tubi & Anor* (1974) All NLR PT 11 p. 438
[3] *Solomon & Ors v. Mogaji* (1982) 11 SC 1
[4] *Alli v. Ikusebiala* (1985) 1 NWLR PT 4 p.630
[5] The power of a donee of a Power of Attorney to alienate the property covered by it cannot be implied
[6] Land Registeration Act 1924, s. 2
[7] *I.O Smith supra* @ p. 27
[8] *Nigerian Law of Secured Credit* @ p. 29
[9] *Hedley Byrne & Co. v. Heller & Partners* (1964) AC 465

These apart, the major problem of security being a panacea in the hands of the creditor lies in its *enforcement.* In Nigeria, for instance, the Law Enforcement Agencies at times, do not take creditors' petitions against debtors seriously. I have a personal experience on that, hence, this statement is very authoritative. The Economic and Financial Crimes Commission (EFCC) has no alternative but to work harder towards ensuring that bad debtors are caught, arrested and prosecuted once creditors write petitions to them in this regard. It is absolutely wrong for the EFCC to keep telling genuine creditors that their petitions have not been attended to because so many complaints lie on their tables, even as years pass by. It is also wrong for the EFCC to decide that they will handle only petitions involving huge amounts of money (monies involving millions of naira or their equivalent). The Nigeria Police Force should work with the EFCC to ensure that escapee debtors are caught and arrested. Surprisingly, many debtors *deliberately* escape and hide within their countries of origin, some deliberately escape into other countries, just to avoid paying creditors (secured and unsecured creditors inclusive). At this point, it is suggested that the Interpol should come in and assist, once the EFCC or the Nigeria Police Force (in the case of Nigeria) alerts them. Anybody could be a victim of fraudulent debtors, Nigerians or non- Nigerians. Once debtors realize that they cannot escape justice when they default over peoples' monies, some business people with fraudulent intentions will desist from collecting peoples' monies with fake promises to pay them a certain daily, weekly, monthly, quarterly or yearly interest. This has been the case with the fake, Wonder banks in Nigeria and many other countries of the World.

To assist genuine creditors, the Nigerian Government has at least, banned the so-called *wonder banks* from operating. That is a welcome development, but more can also be done. In the case of Banks, Nigerian banks suffer from many debtors who in most cases just refuse to give up their security when they know that they can no longer repay the loan. This they do by going to the Court to obtain an injunction restraining the creditor from selling the property or doing anything inconsistent with their rights over the property, and this has led to the collapse of many Nigerian Banks in the past few years. The Law Courts should refuse to entertain such suits or grant such frivolous Orders in favour of unrepentant debtors. Debtors must realize that their properties in such cases have to be sold to satisfy their debts. They must be bound by the loan agreements. The Courts should dispense *Creditor v. Debtor* cases quickly because the longer the Matters are adjourned, the more the creditor loses the value of the amount loaned to the debtor, because in most cases, defaulting debtors apply to the Court to return only the principal sums borrowed. We also know what effects inflation can have on any economy. Hence, the EFCC should really assist banks in bringing debtors to book.

Another option is for Creditors to publish the list of debtors in newspapers (or any accredited public place for advertising) when the debtors refuse by all means to repay the loan or return Individual creditors' monies after a specific period of time. This may be done with the leave of the Court where necessary. Any debtor that has integrity would not like to be paraded as a debtor in the public, and would look for a way to pay back the loan he/she has taken. Countries should also expunge the dual nationality/domicile concept, as that has aided many fraudulent debtors to escape from one country to another successfully[1].

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[1] ***CHIGOZIE NWAGBARA : Domicile – A critical analysis of the position in Cheshire, North & Fawcett Private International Law (Vol 24 Journal of Law, policy & Globalization, 2014 pp 1-8)***

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