

JUDICIAL CONTROL OF MORTGAGEE POWERS, ILLEGALITY, AND FAIR HEARING IN NIGERIAN COMMERCIAL JURISPRUDENCE: A CRITICAL ANALYSIS OF *AYOOLA v DOMINION TRUST LTD*

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Abstract

This article undertakes a rigorous doctrinal and jurisprudential analysis of the decision of the Court of Appeal in Ayoola v Dominion Trust Ltd (2025), focusing on the limits of judicial control over the exercise of a mortgagee's power of sale in Nigerian commercial law. The case raises complex issues relating to secured lending, alleged repayment, undervalue sale, procedural irregularities, and claims of denial of fair hearing. It interrogates fundamental questions concerning the evidential burden in proving indebtedness, the sanctity of pleadings, the scope of illegality in commercial transactions, and the extent to which procedural infractions may vitiate judicial outcomes. The article argues that the Court reaffirmed orthodox principles governing mortgage transactions, particularly the primacy of contractual terms and the strict burden placed on mortgagors seeking to restrain the exercise of a mortgagee's power of sale. It further demonstrates that the Court adopted a disciplined approach to procedural law by declining to elevate technical breaches, including delayed judgment delivery and alleged denial of fair hearing, into jurisdictional defects in the absence of proof of miscarriage of justice. The article concludes that the decision consolidates Nigerian appellate jurisprudence on evidentiary evaluation, illegality, and appellate restraint, reflecting a maturing commercial jurisprudence that privileges substantive justice while maintaining procedural discipline.

Keywords: Mortgagee's power of sale, Illegality, Pleadings, Fair hearing, Evidential Burden, Appellate review, Nigerian commercial law

1. Introduction

The development of Nigerian commercial jurisprudence has been marked by a persistent tension between the sanctity of contractual obligations and the demands of equitable justice. Nowhere is this tension more pronounced than in the law of mortgage, where proprietary interests are leveraged against financial obligations and the consequences of default are often both immediate and irreversible. In this context, the judicial function extends beyond the resolution of private disputes to the maintenance of commercial certainty while guarding against the oppressive exercise of legal rights. The decision of the Court of Appeal in *Ayoola v Dominion Trust Ltd & Ors* presents a compelling illustration of this delicate balance. In a judgment delivered with notable doctrinal precision by Affen JCA, the Court was confronted with a complex matrix of issues arising from a mortgage transaction, including alleged repayment, the validity of the exercise of the mortgagee's power of sale, claims of illegality, and allegations of denial of fair hearing.¹ The case thus provided a fertile ground for the Court to revisit and clarify fundamental principles relating to evidential burden, the sanctity of pleadings, and the limits of appellate intervention.

At its core, the case raises a perennial question within common law adjudication: the extent to which courts should intervene in the exercise of contractual rights freely undertaken by parties. The Court's reasoning reflects a clear preference for doctrinal orthodoxy, emphasizing that judicial intervention must be grounded in credible evidence and properly pleaded facts, rather than in speculative or opportunistic claims. In doing so, the decision reinforces the principle that commercial transactions must be governed by certainty, predictability, and fidelity to agreed terms.

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¹ (2025) CA/LAG/CV/439/2019.

This article argues that *Ayoola v Dominion Trust Ltd & Ors* represents a significant consolidation of Nigerian commercial jurisprudence. It demonstrates a disciplined judicial approach that simultaneously affirms the autonomy of contracting parties, circumscribes the scope of illegality as a defensive strategy, and clarifies the threshold for establishing denial of fair hearing within the appellate process. By situating the decision within broader common law and Nigerian appellate authority, the article contends that the case signals a mature jurisprudence that privileges substantive justice while maintaining strict adherence to procedural and evidential discipline.

2. Factual Matrix and Procedural Trajectory

The dispute arose from a commercial lending arrangement culminating in the creation of a legal mortgage over a residential property in Lagos beneficially owned by the late Mr. Daniel Oni.² The initial facility in the sum of three million naira was secured by the mortgage, while a subsequent facility of twenty million naira of which eighteen million naira was disbursed was extended to finance cocoa export transactions.³ The transaction bore the hallmarks of a conventional secured credit relationship with the mortgaged property serving as collateral for repayment.

Upon the alleged default of the borrower, the mortgagee proceeded to exercise its statutory power of sale. The property was sold at a public auction for the sum of fourteen million naira.⁴ This sale triggered the present litigation, with the Appellants contending that the exercise of the power of sale was wrongful. Their challenge was anchored on multiple grounds including alleged repayment of the loan, undervaluation of the property, illegality in the transaction, and trespass.

The trial Court, having evaluated the evidence and the pleadings, dismissed the claims in their entirety and upheld the counterclaim of the purchaser. Dissatisfied with that outcome, the Appellants appealed. In a consolidated judgment, the Court of Appeal affirmed the decision of the trial court, rejecting the grounds of appeal and upholding the validity of the sale.⁵

3. Mortgagee's Power of Sale and Commercial Certainty

A central pillar of the judgment lies in its reaffirmation of the mortgagee's power of sale as an essential incident of secured lending. The Court recognised that upon default by the mortgagor, the mortgagee becomes entitled to realize the security in accordance with the terms of the mortgage instrument without the necessity of prior judicial intervention.⁶ This position is rooted in the orthodox conception of a mortgage as a security device which, upon default, enables the creditor to convert the secured asset into money for the satisfaction of the debt.

The significance of this principle extends beyond the immediate rights of the parties. It reflects a broader commitment to commercial certainty, which remains indispensable to the stability and efficiency of credit transactions. The enforceability of security interests depends on the assurance that contractual remedies, particularly the power of sale, will be upheld by the courts in the absence of demonstrable illegality or bad faith. Without such assurance, the extension of credit would be rendered precarious, and the broader commercial system would be undermined.

Consistent with established Nigerian jurisprudence, the Court reaffirmed that a mortgagee is not a trustee of the mortgagor and is under no obligation to exercise the power of sale for the benefit of the mortgagor beyond acting in good faith.⁷ The duty imposed on the mortgagee is therefore

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ *Olowu v Building Stock Ltd* (2018) 1 NWLR (Pt 1601) 343.

limited but significant. It requires honesty of purpose and the absence of fraud, rather than the attainment of the best possible price or the protection of the mortgagor from the consequences of default.

The Court's reasoning thus underscores a fundamental principle of commercial law, namely that contractual obligations voluntarily undertaken must be honoured. Judicial intervention is not designed to relieve parties from the consequences of their bargains but to ensure that such bargains are enforced in accordance with law. In reaffirming this position, the decision strengthens the doctrinal foundation of secured lending and reinforces the predictability that underpins commercial transactions.

4. Burden of Proof and the Question of Repayment

The Appellants contended that the loan facilities had been fully repaid through deposits made in foreign currency and the liquidation of accrued interest. The Court rejected this contention, holding that once a borrower admits the receipt of a loan, the evidential burden shifts to him to establish repayment.⁸ This approach accords with the settled principle of Nigerian law that he who asserts discharge of an admitted obligation must prove it by credible evidence.

This principle is firmly anchored in the law of evidence and has received consistent judicial affirmation. In *Macaulay v NAL Merchant Bank Ltd*, the Court held that the burden of proving repayment rests squarely on the debtor who alleges that the debt has been extinguished.⁹ The rationale is both logical and practical. Repayment is a fact peculiarly within the knowledge of the debtor, and it would be contrary to both reason and commercial convenience to require the creditor to prove a negative.

The Court's reasoning in the present case reflects a disciplined application of this evidential rule. It underscores the necessity for precise and verifiable proof in commercial transactions, particularly where large financial obligations are involved. Bare assertions of repayment, unsupported by cogent documentary evidence, are insufficient to discharge the burden imposed by law. In further reinforcing this position, the Court emphasised the primacy of documentary evidence in commercial litigation.¹⁰ Where transactions are reduced into writing, documentary records constitute the most reliable evidence of the rights and obligations of the parties. The Court therefore observed that where evidence is predominantly documentary, an appellate court is in as good a position as the trial court to evaluate it and draw appropriate inferences.

This approach serves an important systemic function. It promotes certainty and accountability in commercial dealings by encouraging proper record keeping and discouraging speculative claims. In doing so, the decision aligns evidential doctrine with the practical realities of modern commerce, where documentation remains the primary means of verifying financial transactions.

5. Undervaluation and the Limits of Judicial Intervention

The Appellants contended that the sale of mortgaged property at fourteen million naira, as against an alleged market value exceeding fifty million naira, constituted evidence of fraud. The Court rejected this contention, holding that mere inadequacy of price does not, without more, establish fraud in the absence of proof of bad faith, collusion, or improper conduct.¹¹ This position reflects a well settled principle of mortgage law that distinguishes between a low price and a dishonest sale.

⁸ *Ayoola v Dominion Trust Ltd* (n 1).

⁹ *Macaulay v NAL Merchant Bank Ltd* (1990) 4 NWLR (Pt 144) 283.

¹⁰ *Ayoola v Dominion Trust Ltd* (n 1).

¹¹ *Ibid.*

The governing rule, consistently affirmed in Nigerian and common law authorities, is that a mortgagee is not under a duty to obtain the best possible price but is required to act in good faith and to take reasonable care to obtain a proper price in the circumstances.¹² The obligation is therefore one of conduct rather than outcome. It does not guarantee that the price realised will correspond with the highest market value, but it requires that the process leading to the sale be free from impropriety.

The Court's reasoning demonstrates a principled reluctance to equate undervaluation with fraud. To do so would impose an unduly onerous burden on mortgages and would introduce uncertainty into the enforcement of security interests. Commercial transactions, particularly forced sales, are influenced by prevailing market conditions, urgency, and the nature of the asset. A price that appears low in hindsight does not, without credible evidence of misconduct, justify judicial interference. In declining to intervene, the Court reaffirmed the limited role of the judiciary in regulating commercial outcomes. The function of the court is not to act as a price assessor or to second guess the commercial judgment of a mortgagee acting within the bounds of the law. Rather, it is to ensure that the power of sale is exercised honestly, in good faith, and in accordance with the governing legal framework.

This approach preserves the balance between protecting mortgagors from abuse and maintaining the certainty required for the effective operation of secured lending. It underscores the principle that judicial intervention is warranted only where there is clear evidence of fraud, collusion, or other forms of bad faith, and not merely because the outcome appears unfavourable to one of the parties.

6. Illegality and Pleadings

One of the most compelling aspects of the judgment lies in its treatment of the doctrine of illegality. The Appellants sought to invalidate the transaction on the ground that the lender lacked a valid licence under the Banks and Other Financial Institutions Act. This contention, if properly established, would have had far reaching consequences for the validity of the transaction.

The Court, however, rejected the argument on a threshold basis, holding that it was not pleaded at trial. In doing so, it reaffirmed the fundamental principle that civil litigation is governed by pleadings, which define the scope of the dispute and bind both the parties and the court.¹³ Pleadings serve not merely as procedural formalities but as the structural foundation upon which adjudication rests. They ensure that each party is aware of the case it is required to meet and that the court confines itself to issues properly placed before it.

The Court further emphasised that illegality, as a serious and potentially dispositive issue, must either be expressly pleaded or arise clearly from the facts already before the court.¹⁴ It cannot be introduced for the first time on appeal as a tactical device to defeat a transaction which was otherwise conducted within the framework of the law. To permit such a course would undermine the integrity of the adjudicative process and encourage speculative litigation.

The reasoning of the Court reflects a disciplined adherence to procedural orthodoxy. While the doctrine of illegality occupies an important place in the legal system, its invocation is not at large. It is subject to the same procedural constraints that govern all civil claims. The court will not assume the burden of raising or constructing a case for a party who has failed to properly present it. This approach serves important systemic purposes. It promotes fairness by preventing trial by ambush, ensures predictability in the conduct of litigation, and preserves the orderly administration

¹² *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949.

¹³ *Ayoola v Dominion Trust Ltd* (n 1).

¹⁴ *Olowu v Building Stock Ltd* (n 7).

of justice. It also reinforces the principle that appellate courts are not forums for reconstituting cases but for reviewing decisions based on the issues properly ventilated at trial.

In affirming these principles, the decision stands as a clear rejection of opportunistic litigation strategies that seek to deploy illegality as an afterthought. It underscores the point that substantive justice is best achieved through procedural discipline, and that the integrity of commercial transactions cannot be lightly disturbed by arguments raised outside the bounds of proper pleading.

7. Fair Hearing and the Nature of Procedural Justice

The Appellants further alleged a breach of fair hearing on the grounds that the counterclaimant failed to file a written address. The Court rejected this contention, holding that written addresses, though valuable in assisting the court, do not constitute evidence and cannot displace the substantive evaluation of the case on the facts properly before the court.¹⁵

Relying on established authorities, the Court reaffirmed that a trial court is entitled to determine a matter on the basis of the evidence adduced, notwithstanding the absence of written addresses.¹⁶

The function of a written address is to guide and persuade, not to supply deficiencies in proof. Its absence, without more, does not vitiate proceedings where the parties have been afforded a full opportunity to present their case.

The Court's reasoning reflects a principled understanding of the constitutional guarantee of fair hearing. Fair hearing is not a matter of procedural ritual but of substantive justice. It is satisfied where a party is given adequate opportunity to present evidence, respond to the case against him, and be heard by an impartial tribunal. It does not extend to the rigid enforcement of procedural steps which do not occasion any real prejudice.

In further clarifying the scope of the doctrine, the Court cautioned against the increasing tendency to elevate fair hearing into a technical weapon for setting aside otherwise valid proceedings.¹⁷ Fair hearing, it observed, is a factual concept which must be assessed in the context of the entire proceedings. The critical question is whether the complaining party has suffered any miscarriage of justice as a result of the alleged procedural lapse.

This approach aligns with the settled position of Nigerian appellate courts that the constitutional right to fair hearing must not be trivialised or converted into an instrument of procedural obstruction. It preserves the balance between ensuring that justice is done and preventing the undue disruption of judicial proceedings on the basis of non-essential formalities.

In rejecting the Appellants' argument, the Court reaffirmed a mature and pragmatic conception of procedural justice. It emphasised that the essence of adjudication lies in the fair and impartial determination of disputes on their merits, and not in the mechanical observance of procedural steps which do not advance that objective.

8. Constitutional Implications of Delay in the Delivery of Judgment

The issue of delay in the delivery of judgment also arose for determination. The trial court delivered its judgment outside the ninety-day period prescribed by the Constitution. The Court of Appeal held that such delay does not, without more, render the judgment a nullity unless it is shown to have occasioned a miscarriage of justice.¹⁸ This interpretation reflects a careful reading of section 294(5) of the Constitution, which qualifies the strict requirement as to time by introducing the element of prejudice. The constitutional provision does not invalidate every

¹⁵ *Ayoola v Dominion Trust Ltd* (n 1).

¹⁶ *Union Bank v Ayodare & Sons* (2007) LPELR 3391 (SC).

¹⁷ *Orugbo v Una* (2002) 9–10 SC 61.

¹⁸ *Ayoola v Dominion Trust Ltd* (n 1).

judgment delivered outside the prescribed period but requires a demonstration that the delay has adversely affected the substance of the decision or the fairness of the proceedings.

The Court's reasoning is grounded in the established jurisprudence of Nigerian appellate courts, which have consistently held that the question is not merely whether there has been delay, but whether such delay has impaired the evaluation of evidence or led to an erroneous conclusion. The burden rests on the party alleging the breach to establish that the delay resulted in a miscarriage of justice. Applying this principle to the facts, the Court found that no such miscarriage had been demonstrated.¹⁹ The evidence in the case was predominantly documentary, thereby reducing the likelihood that the trial judge's recollection of events or assessment of credibility was compromised by the passage of time. In such circumstances, the delay, though undesirable, was not sufficient to vitiate the judgment.

The approach adopted by the Court reflects a pragmatic and purposive interpretation of constitutional provisions. It avoids elevating procedural timelines into rigid technical rules capable of defeating otherwise valid judgments, while preserving the essential safeguard that delay must not undermine the integrity of the adjudicative process. In affirming the judgment of the trial court, the Court of Appeal reinforced the principle that constitutional guarantees must be applied in a manner that promotes justice rather than frustrates it. The decision thus contributes to a coherent line of authority which recognises that the legitimacy of a judgment depends not merely on compliance with form but on the absence of prejudice and the attainment of substantive justice.

9. Appellate Restraint and Judicial Discipline

The Court reaffirmed the settled principle that an appellate court will not interfere with findings of fact made by a trial court unless such findings are shown to be perverse, unsupported by evidence, or occasioning a miscarriage of justice.²⁰ This principle lies at the heart of appellate adjudication and reflects a disciplined respect for the institutional roles within the judicial hierarchy.

The rationale for this rule is grounded in the unique advantage possessed by trial courts in the evaluation of evidence. A trial court has the opportunity to observe witnesses, assess their demeanour, and evaluate the credibility of testimony within the full context of the proceedings. An appellate court, by contrast, is confined to the printed record and must therefore exercise caution in disturbing findings that depend on factual assessment.

The Court's reasoning in the present case demonstrates a principled adherence to this doctrine. It declined to substitute its own view of the evidence for that of the trial court in the absence of clear error. In doing so, it reinforced the position that appellate review is not an opportunity for a rehearing of the case but a mechanism for correcting errors of law or manifest injustice.

This approach serves an important systemic function. It promotes finality in litigation, enhances confidence in trial adjudication, and prevents the appellate process from degenerating into an endless reconsideration of factual disputes. It also ensures that judicial resources are efficiently deployed and that the hierarchy of courts operates with coherence and discipline.

In affirming the findings of the trial court, the Court of Appeal demonstrated that appellate intervention must remain exceptional and principled. The decision thus consolidates the jurisprudence on appellate restraint and underscores the broader commitment of the courts to judicial discipline, consistency, and the orderly administration of justice.

¹⁹ Ibid.

²⁰ *Ebba v Ogodo* (1984) 4 SC 84.

10. Conclusion

The decision in *Ayoola v Dominion Trust Ltd* stands as a compelling affirmation of doctrinal orthodoxy within Nigerian commercial jurisprudence. In a judgment marked by clarity and discipline, the Court of Appeal reaffirmed foundational principles governing mortgage transactions, evidential burden, procedural propriety, and appellate restraint. The reasoning reflects a judiciary that is not only anchored in settled law but also attentive to the broader demands of certainty and coherence in commercial adjudication.

The judgment underscores the centrality of pleadings as the framework within which civil disputes are determined, the necessity of strict evidential proof in the discharge of admitted obligations, and the limited scope of judicial intervention in the exercise of contractual rights. It further clarifies that allegations of illegality and breaches of fair hearing must be grounded in properly pleaded facts and demonstrable prejudice, rather than deployed as tactical devices to unsettle otherwise valid proceedings.

In its treatment of delay in judgment and appellate review, the Court adopted a purposive and restrained approach that privileges substance over form. By insisting on proof of miscarriage of justice and declining to interfere with factual findings in the absence of clear error, the decision reinforces the integrity of both trial adjudication and the appellate process.

Ultimately, the case represents a consolidation of Nigerian commercial and procedural law. It affirms that justice is achieved not through the disruption of settled principles, but through their disciplined application. In this sense, the decision serves as a reminder that the legitimacy of judicial outcomes rests not only on their correctness, but on the integrity, consistency, and fairness of the processes through which they are attained.