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The Enforcement of Security Interests in Movable Collateral: Evaluating the Nigerian and Kenyan Regimes of Secured Transactions in Light of Article 9 of the U.S. Uniform Commercial Code

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Abstract

Enforcement of security interests in movable collateral determines whether secured transactions law effectively facilitates credit or remains a mere legal fiction. This article presents a comparative analysis of the enforcement regimes under Nigeria's Secured Transactions in Movable Assets Act 2017 (STMA) and Kenya's Movable Property Security Rights Act 2017 (MPSRA), both modeled after Article 9 of the U.S. Uniform Commercial Code. Focusing on repossession, disposition, subordinate interests, and redemption rights, the article evaluates how each framework balances enforcement efficiency with borrower protection. The findings highlight a divergence in enforcement philosophy: Nigeria's STMA implements a cautious, borrower-centric model by mandating pre-repossession notices and police assistance, which safeguards the borrower at the expense of enforcement speed. Conversely, Kenya's MPSRA advances creditor-oriented efficiency by authorizing self-help repossession without statutory notice, subject only to the absence of borrower objection. While both statutes mandate commercial reasonableness and good faith in enforcement, this article argues that optimal enforcement outcomes will depend less on statutory text and more on institutional capacity, systemic fairness, and continuous legislative reform.

Keywords: Secured Transactions Law, Enforcement Of Security Interests, Movable Collateral, Self-Help Repossession, Article 9 Ucc, Stma 2017, Mpsra 2017

1. INTRODUCTION: ENFORCEMENT OF SECURITY INTERESTS IN MOVABLE COLLATERAL FROM THE LENS OF MODERN SECURED TRANSACTIONS LAW

In secured credit lending, a prudent secured creditor would advance funds in exchange of a security interest in the borrower's movable collateral usually after considering enforcement: that is, how recovery of the credit will be achieved if the borrower defaults or enters insolvency.[1] As leading scholarship[2] and judicial practice[3] reveal, prudent secured creditors assess the enforceability of their security rights before advancing loan credits.[4] In other words, an *in rem* security is taken precisely to manage the default and insolvency of a borrower, and a seamless recovery inarguably depends on the clarity and reliability of the enforcement mechanism. The entire logic of secured credit therefore rests on this prospect of effective enforcement: the assurance that, upon default, the creditor can effectively seize, sell, or otherwise realize collateral to recover the debt.[5] In this sense, enforcement is not an ancillary concern, but the normative and functional justification for the elaborate framework of secured transactions law.[6] Thus, this article argues that without credible / efficient (private) enforcement mechanisms, the notion of secured credit itself becomes illusory.

Before the advent of Article 9 of the U.S. Uniform Commercial Code (Article 9 UCC),[7] the enforcement of security interests in (movable) collateral,[8] in common-law systems, including Nigeria and Kenya, was largely court-based.[9] Secured creditors seeking to realize collateral were compelled to sue, obtain judgment, and then execute it through court processes.[10] This approach was consistent with the classical liberal conception of the rule of law that located dispute resolution and enforcement of rights exclusively within judicial institutions, and condemned any form of self-help as anarchy.[11] Yet, within the context of commercial lending, especially small business financing, the sole insistence on judicial enforcement proved counterproductive, especially for Anglophone African countries (e.g. Nigeria and Kenya) with slow-moving judicial systems.[12] Indeed, the costs, delays, and procedural complexities of litigation often exceeded the value of the secured debt, potentially rendering the security interest economically meaningless.[13]

Assuming *arguendo* that a secured lender advanced a modest loan of fifteen (15) million Nigerian Naira (roughly about 12,000 USD at the time of writing) to a small business (secured against movable assets of

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[1] Simeon Djankov and others, 'Debt Enforcement around the World' (2008) 116 *Journal of Political Economy* 1105.

[2] See generally Thomas H Jackson and Anthony T Kronman, 'Secured Financing and Priorities Among Creditors' (1979) 88 *Yale Law Journal* 1143; Alan Schwartz, 'A Theory of Loan Priorities' (1989) 18 *Journal of Legal Studies* 209; Robert E Scott, 'A Relational Theory of Secured Financing' (1986) 86 *Columbia Law Review* 901; Douglas G Baird, 'The Rights of Secured Creditors After ResCap' [2015] *University of Illinois Law Review* 849; Lucian A Bebchuk and Jesse M Fried, 'The Uneasy Case for the Priority of Secured Claims in Bankruptcy' (1996) 105 *Yale Law Journal* 857.

[3] See *United States v Whiting Pools Inc* 462 US 198 (1983); *RadLAX Gateway Hotel LLC v Amalgamated Bank* 566 US 639 (2012); *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949 (CA); *Silven Properties Ltd v Royal Bank of Scotland plc* [2004] 1 WLR 997 (CA); *Re Spectrum Plus Ltd* [2005] UKHL 41, [2005] 2 AC 680.

[4] Douglas G Baird and Thomas H Jackson, 'Possession & Ownership: An Examination of the Scope of Article 9' (1983) 35 *Stanford Law Review* 175, 180-81.

[5] Schwartz (n 2) above 213; Jackson and Kronman (n 2) above 1143; Eric M Sherman, 'Chasing Perfection: Collateral Indications and Ambiguous Borrower Names on Financing Statements Under Article 9' (2020) 61 *Boston College Law Review* 2229, 2230.

[6] Ibid.

[7] The Uniform Commercial Code is freely available online at: <https://www.law.cornell.edu/ucc/9> accessed 24 February 2026; Fred H Miller, 'The Uniform Commercial Code: Will the Experiment Continue?' (1992) 43 *Mercer Law Review* 799, 808.

[8] UCC, article 1-201(b)(35) (defining '"security interest" to mean an interest in personal property or fixtures which secures payment or performance of an obligation').

[9] Tibor Tajti, 'The Efficient Enforcement Challenge of Secured Transactions Law Reforms in Civil Law Systems: Self-help Repossession, Strict Foreclosure, and Other Methods for the Acceleration of Enforcement of Security Interests' (2024) 29(1) *Uniform Law Review* 139, 159.

[10] Ibid.

[11] Frederick Pollock and Frederic W Maitland, *The History of English Law* (first published 1895, Cambridge University Press 1968) 574.

[12] In Kenya, *Giella v Cassman Brown & Co Ltd* [1973] EA 358 (establishes the interlocutory-injunction test widely used to restrain sales / realization, often delaying secured-credit enforcement; *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR (Court of Appeal restates injunction principles; frequently cited to halt lenders' statutory remedies pending trial). In Nigeria, *Biosola Nigeria Ltd v Mainstreet Bank Ltd* (CA/L/890/07) [2016] NGCA 97 (Court of Appeal litigation over injunctions restraining the bank; exemplifies how enforcement is channelled through - and delayed by - court processes); *Intercity Bank Plc v Feed & Food Farms Nig Ltd* (2002) FWLR (Pt 128) 1289 (CA) (dispute over restraining mortgagee's sale; appellate guidance given precisely because trial-level injunctions had impeded realization).

[13] Michael Bridge, 'The Scope and Limits of Security Interests' (2008) 5 *European Company and Financial Law Review* 180. In Anglophone Africa, where MSMEs predominantly hold movable assets, court-centered enforcement has often undermined credit supply: Kenyan and Nigerian courts, for example, routinely entertain interlocutory injunctions (e.g., *Giella*, *Mrao*; *Biosola*, *Intercity Bank* cited above), producing delays that lenders price against or avoid entirely.

the borrower), the cost of court fees, legal representation, and enforcement could easily surpass the loan itself, especially once economic inflation is factored into the analysis.[14] Thus, the traditional English formalism (which was inherited by Nigeria and Kenya owing to the British colonialism in Anglophone Africa), steeped in doctrinal rigidity, could not pragmatically accommodate the commercial need for a swift and inexpensive private enforcement.[15] The idea of self-help repossession, i.e. allowing the secured creditor to reclaim movable collateral without judicial intervention, was deemed incompatible with the English vision of the rule of law and the centuries-old maxim that no person should take the law into their own hands.[16]

In contrast, the United States, inspired by its realist and pragmatic legal tradition which solidified in the early twentieth century,[17] confronted this tension with pragmatism. Article 9 UCC boldly introduced the concept of self-help repossession,[18] permitting a secured creditor to seize movable collateral without court process, provided that the repossession does not breach the peace.[19] This innovation indeed marked a deliberate recalibration of the rule-of-law ideal, acknowledging that efficient self-help repossession, economic growth, and access to credit are themselves complementary public goods that are capable of coexisting within a coherent legal framework.[20] The Article 9's model and its continuing success across civil and common law jurisdictions, demonstrably show that legality and practicality could coexist, provided that adequate safeguards are in place to protect borrowers (especially consumer borrowers) from secured creditors' occasional coercion or abuse.[21]

1.2 The shift from English legal formalism to U.S. functionalism in secured transactions law: Nigeria and Kenya in Perspective

In *The Common Law* (1881),[22] Oliver Wendell Holmes Jr., warned that "[t]he life of the law has not been logic, but instead been experience."[23] Law, Holmes argued, is an expression of a society's history, habits, and material conditions.[24] Building on this insight, the modern debate over legal transplantation between

[14] FSD Kenya, *Costs of Collateral in Kenya: Opportunities for Reform* (September 2009) 10-12 (estimating enforcement costs for movable-collateral recovery in the range of KSh 300,000-700,000 and enforcement periods of 6 months to 10 years); FSD Kenya, *The Kenyan Collateral Process: Constraints and Solutions* (Briefing Note, 2010) table 1 (describing collateral realization as "lengthy, bureaucratic, inefficient and unpredictable" and noting high transaction and enforcement costs: <https://www.fsdkenya.org/wp-content/uploads/2021/aws/Archive%20data%20FSD/10-03-18_costs_of_collateral_briefing_note.pdf?_t=1611222355> accessed 25 February 2026). See also World Bank, *Doing Business 2020 - Kenya* 4 (reporting that enforcing a standard commercial claim in Kenya costs 41.8% of the claim value and takes 465 days; resolving insolvency takes 4.5 years with a recovery rate of 31.8 cents on the dollar); NCIA, *Research Report on Access to Justice in Kenya* (2021) 15-16 (identifying high cost of litigation, backlog, and delays as systemic barriers). For inflationary erosion of recoveries, see Kenya National Bureau of Statistics, *Consumer Price Indices and Inflation Rates: September 2022* (year-on-year inflation 9.2%). Nigeria also has a similar challenge as Kenya.

[15] Iwan Davies, 'The Reform of Personal Property Security Law: Can Article 9 of the US Uniform Commercial Code be a Precedent?' (1988) 37 *International and Comparative Law Quarterly* 465; Michael G Bridge and others, 'Formalism, Functionalism, and Understanding the Law of Secured Transactions' (1999) 44 *McGill Law Journal* 56; Magda Raczynska, 'Replacing Bills of Sale Acts' [2017] *Lloyd's Maritime and Commercial Law Quarterly* 1; Giuliano G Castellano, 'Reforming Non-Possessory Secured Transactions Laws: A New Framework for the UK' (2015) 78 *Modern Law Review* 611.

[16] Pollock and Maitland (n 11) above 574; James R McCall, 'The Past as Prologue: A History of the Right to Repossess' (1973) 47 *Southern California Law Review* 58 (tracing the prohibition of self-help in thirteenth-century English law); *Nino Bonino v De Lange* (1906) TS 120 (AD) 122 (Innes CJ: "no man is allowed to take the law into his own hands"); *Government of Lagos State v Ojukwu* (1986) 1 NWLR (Pt 18) 621 (SC) (executive self-help eviction condemned as contrary to the rule of law).

[17] Katharina Preuß, '"Legal Formalism" and Western Legal Thought' (2023) 13 *Transnational Legal Theory* 1 (discusses American Legal Realism as the principal anti-formalist, pragmatist reaction, and notes that this realist current "does not occupy a major place in English legal discourse); Brian Z Tamanaha, 'Pragmatism in U.S. Legal Theory: Its Application to Normative Jurisprudence, Sociolegal Studies, and the Fact-Value Distinction' (1996) 41 *American Journal of Jurisprudence* 315; Thomas C Grey, 'Holmes and Legal Pragmatism' (1989) 41 *Stanford Law Review* 787.

[18] UCC, article 9-609; Randi McRobert, 'Defining "Breach of the Peace" in Self-Help Repossessions' (2012) 87 *Washington Law Review* 569.

[19] Ibid.

[20] Orkun Akseli, 'Financial Inclusion, Access to Credit, and Sustainable Finance: What Role for the UNCITRAL Model Law for Secured Transactions' (2021) 84(1) *Law and Contemporary Problems* 182.

[21] Tajti (n 9) above 142; Stacy-Ann Elvy, 'Commodifying Consumer Data in the Era of the Internet of Things' (2018) 59 *Boston College Law Review* 423.

[22] Oliver W Holmes, *The Common Law* (MD Howe ed, first published 1881, Harvard University Press 1963).

[23] Ibid, 1.

[24] Ibid, 36-38.

Alan Watson's optimism,[25] on one hand; and Pierre Legrand's skepticism,[26] on the other hand, raises profound questions for postcolonial African jurisdictions about their transplantation of the US-style secured transactions law.[27] In other words, can (private) enforcement mechanisms, designed within the institutional robustness of the United States, function effectively within developing economies, such as Nigeria and Kenya?

The above question is not only doctrinally relevant to the transplanted legal texts, but also sociologically pertinent: i.e. the success of self-help enforcement of security interests in movable collateral in Nigeria and Kenya would largely depend on the existence of complementary institutions that are capable of constraining abuse and ensuring creditor accountability.[28] In the United States, the "without the breach of peace"[29] safeguard is enforceable precisely because systemic infrastructures such as surveillance technologies, efficient policing, and robust judicial oversight inarguably deter creditor misconduct. Most American (urban) spaces are equipped with functional CCTV systems that capture events in real time, making it relatively easy for the borrower to prove whether a repossession by the secured creditor or its agents, was conducted lawfully.

In Nigeria and Kenya, by contrast, such institutional and infrastructural safeguards are weak or absent. In 2017, Nigeria and Kenya respectively enacted the Secured Transactions in Movable Assets Act (STMA) and the Movable Property Security Rights Act (MPSRA). Although both statutory frameworks capture the essential building blocks of Article 9 UCC, the MPSRA is closer to the American enforcement archetype, because under its section 71(1)(b), it advances creditor efficiency by authorizing self-help repossession without any statutory pre-repossession notice, conditioned solely on the absence of borrower objection. In the case of Nigeria, the STMA adapted the self-help mechanism by statutorily requiring that secured creditors engaging in self-help repossession involve the Nigerian police to ensure a peaceful repossession process.[30] In theory, it could be argued that STMA's *ex ante* safeguard mirrors the spirit of Article 9-609(b)(2) UCC in maintaining public peace vis-à-vis self-help repossession of collateral. In practice, however, the Nigerian approach introduces distinct localized challenges. Due to systemic underfunding, law enforcement agencies often face operational deficits, leading to informal cost-shifting where secured creditors are more likely to bear the logistical and administrative expenses of police mobilization:[31] Although section 40(6) of the STMA contains no provision for enforcement fees, commercial practice reveals that secured lenders are likely to provide logistical facilitation to the police to effectuate a repossession. These informal transaction costs inevitably inflate the overall cost of collateral enforcement, ultimately driving up the cost of credit and increasing the likelihood of post-disposition deficiency claims against borrowers.

Under both Nigeria's STMA and Kenya's MPSRA, the foundation of enforceability rests on three well-known elements: (i) the borrower must have rights in the collateral;[32] (ii) the secured party must have

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[25]Alan Watson, 'Legal Transplants and Law Reform' (1976) 92 *Law Quarterly Review* 79, 81.
[26]Charles de Montesquieu, *The Spirit of the Laws* (Garnier Frères 1961) 295; Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4 *Maastricht Journal of European and Comparative Law* 111.
[27]Williams C Iheme, 'Anglophone Africa, Colonial Legacy and the Limits of Legal Transplantation: Should the One-legged Walk on Two Feet?' (2025) 13(1) *Comparative Legal History* 63.
[28]Tajti (n 9) above 167.
[29]UCC, article 9-609(b)(2).
[30]STMA, section 40(6).
[31]Lambe E Oyewole, 'Impact Assessment of Nigeria Police Force on the Security Maintenance in Nigeria' (2024) 8(2) *Wukari International Studies Journal* 210, 211(Oyewole highlights the problems facing the Nigerian police force, comprising of inadequate funding to carry out their functions, leading to bribery and pervasion of justice, unprofessionalism, being susceptible to political control, etc.).
[32] STMA, section 4(1); MPSRA, section 6(1).

given value;[33] and (iii) the parties must have executed a security agreement.[34] Once these conditions are met, a security interest becomes enforceable *between partes*. Perfection,[35] typically through registration of a financing statement (notice) at the collateral registry,[36] is not a prerequisite for enforceability; rather, it determines priority among the borrower's creditors.[37] In this way, "perfection" functions as a superstructure built upon the foundational layer of enforceability.

Enforcement in STMA and MPSRA, is ordinarily triggered by "default."[38] Interestingly, neither legislation (perhaps influenced also by Article 9's silence on the definition of default) defined the term. Instead, like Article 9, they delegate its meaning and effect to contractual autonomy, allowing parties to specify what constitutes a "default" in their security agreement.[39]For Grant Gilmore, one of the intellectual architects / drafters of Article 9 UCC,[40] "default" simply denotes failure of a party to perform when due, and it is "whatever the security agreement says it is."[41] However, where the security agreement is silent on what constitutes a default, courts must resort to commercial customs, as well as the literal meaning that: it is the failure to perform as at when due.[42]

Both Kenyan and Nigerian legal frameworks also recognize creditor discretion in respect of default, ensuring that "default" does not compel immediate enforcement especially if the security agreement contains a non-waiver clause:[43] In that case, a secured creditor may delay to enforce, if immediate enforcement upon default is commercially unwise, such as where a temporary default arises in an otherwise profitable relationship.[44] This flexibility aligns with international best practice and reflects a pragmatic understanding that creditor self-interest can, in many cases, serve as a sufficient regulator.

Remedies under the STMA,[45] and MPSRA,[46] similarly to Article 9 UCC,[47] are cumulative.[48] Notably, they also interact with company law statutes: for example, the STMA supplements its enforcement provisions with those of the Nigerian Companies and Allied Matters Act (CAMA) 2020, permitting the appointment

[33]STMA, section 5; MPSRA, section 6(3)(c).
[34]Under the STMA, the definition of a security agreement under section 63 does not mandate it to be in writing; however, the MPSRA requires it to be in writing and signed by the grantor (borrower) under section 6(3).
[35]Randal C Picker, 'Perfection Hierarchies and Nontemporal Priority Rules' (1999) 74 *Chicago-Kent Law Review* 1157; Leon R Hetherington, 'The Record System, Perfection of a Security Interest and Subsequent Purchasers or Creditors' (1964) 18 *Wyoming Law Journal* 269; David A Ebroon, 'Perfection by Possession in Article 9: Challenging the Arcane but Honored Rule' (1994) 69 *Indiana Law Journal* 1193.
[36]STMA, section 12; MPSRA, section 15.
[37]Douglas G Baird, 'The Importance of Priority' (1997) 82 *Cornell Law Review* 1420, 1431-1435.
[38]STMA, section 39(1); MPSRA, section 65(1); UCC, article 9-609(a).
[39]For example, in *James Talcott, Inc v Franklin Nat'l Bank of Minneapolis*, 292 Minn 277, 194 NW 2d 775 (Minn 1972), the Minnesota Supreme Court, applying Article 9, explained that the secured party's right to repossess the collateral arises upon the borrower's default under the security agreement (here, failure to make payments as agreed). Also see *Chrysler Credit Corp v Koontz*, 277 Kan 64, 82 P 3d 686, where the Kansas Supreme Court held that a secured creditor may repossess a vehicle after default without judicial process so long as there is no breach of the peace, citing UCC article 9-609.
[40]Grant Gilmore, Allison Dunham, and Karl Llewellyn are the principal authors of Article 9 UCC. See James J White and others, *Principles of Secured Transactions* (2nd edn, West 2018) 1-2; Grant Gilmore, *Security Interests in Personal Property* (Little, Brown 1965) 290 fn 2 (citing Grant Gilmore and Allan Axelrod, 'Chattel Security: I' (1948) 57 *Yale Law Journal* 517, 761.).
[41]Gilmore, *Security Interests in Personal Property* (n 40) above 1193.
[42]James J White and Robert S Summers, *Uniform Commercial Code* (6th edn, West 2010) ch 26 (describing "default" as the contractual threshold for Article 9 remedies); Steven L Schwarcz, 'The Easy Case for the Priority of Secured Claims in Bankruptcy' (1997) 47 *Duke Law Journal* 425, 430-31; Douglas G Baird, 'Notice, Filing, and Control' (1994) 82 *Virginia Law Review* 1161, 1165-66.
[43]Chris Peters, 'The Doctrine of Election and No Waiver Clauses' (2009) 20 *Journal of Banking and Finance Law and Practice* 359; Kenneth L Bundy and Stephen M Ikeda, 'How Waiver, Modification, and Estoppel May Alter the Written Deal' (2010) 30(1) *Franchise Law Journal* 3, 5.
[44]Mitchell A Petersen and Raghuram J Rajan, 'The Benefits of Lending Relationships: Evidence from Small Business Data' (1994) 49 *Journal of Finance* 3.
[45]STMA, section 39 (1)-(5).
[46]MPSRA, section 65(1)-(2).
[47]UCC, article 9-601(c).
[48]The remedies being "cumulative" means that, upon default, a secured party may simultaneously pursue any right under the security agreement or any other applicable law: obtaining a judgment on the underlying debt, repossessing and disposing of the collateral, or exercising judicial remedy, until the obligation is fully satisfied, provided that each step complies with the "no-breach-of-the-peace" standard, good faith and commercial reasonableness.

of receivers or administrators when a corporate borrower defaults.[49] Thus, both Nigerian and Kenyan frameworks allow enforcing creditors to pursue contractual, statutory, or judicial remedies concurrently. Also, for both legal frameworks, repossession may proceed either through self-help or judicial process, depending on the circumstances and the parties' assessment of risk.[50]

This article, using the doctrinal method, examines the nature and suitability of the enforcement frameworks of the Nigerian and Kenyan secured transaction regimes. It explores the scope of enforcement rights, the mechanics of repossession, the conduct and consequences of sale, the discharge of subordinate interests, and the borrower's residual redemption rights. Through comparative and functional analyses, the article in its remainder, identifies points of convergence and divergence, drawing broader lessons on how African jurisdictions can design suitable enforcement frameworks that promote access to credit while upholding fairness, transparency, and the rule of law.

In part 2, the meaning and consequences of default are examined. Part 3 analyzes the remedies that are available to a secured creditor following the borrower's default. Part 4 ties together the various distinct approaches of the three jurisdictions under analysis with the aim of highlighting the areas that deserve more attention and improvement for Nigeria and Kenya: this part is also the conclusion.

2. THE MEANING AND CONSEQUENCES OF "DEFAULT" IN SECURITY AGREEMENTS

2.1 What is the default?

In credit transactions secured by movable assets, "default" is an inherent and foreseeable risk: no lender can rationally assume that repayment will always occur in full and on time. For this reason, prudent lenders routinely secure repayment by taking security interests in their borrower's (movable) collateral, thereby allocating the risk of non-performance to a movable asset that can be realized if the borrower defaults in repayment.[51] This commercially rational practice reflects the economic logic underlying secured credit: security interests operate as a credit-enhancement device that cushions the secured lender against the uncertainties of human behavior and market conditions. Modern (Article 9-style) secured-transactions law exists precisely to structure and balance these risks by defining when, how, and to what extent the secured creditor may rely on collateral upon the borrower's default.[52] In other words, the *in rem* security interest in the borrower's movable collateral transforms a creditor's reliance from mere personal faith into a legally enforceable right against that specific collateral.[53] It is this distinction that separates a secured creditor from their unsecured counterpart:[54] i.e. the secured party / creditor has recourse not only against the borrower personally, but also against the identified collateral or proceed.[55]

Under Article 9 UCC, "default" is the pivotal event that triggers enforcement.[56] Interestingly, as already mentioned, Article 9 or even the entire U.S. UCC framework, provides no universal definition of default. Instead, the drafters deliberately left the matter to private agreement, reflecting the UCC's broader philosophy of contractual freedom, but subject to good faith and commercial reasonableness.[57] Article 1-302 of the UCC, for example, allows variation by agreement, while Article 1-304 imposes an

[49] STMA, section 39(5).
[50] STMA, section 39(1)(a) - (b); MPSRA, section 66. See generally Vanessa Finch, 'Security, Insolvency and Risk: Who Pays the Price?' (1999) 62 *Modern Law Review* 633.
[51] Helmut Bester, 'The Role of Collateral in Credit Markets with Imperfect Information' (1987) 31 *European Economic Review* 887.
[52] Douglas G Baird, 'Security Interests Reconsidered' (1994) 80 *Virginia Law Review* 2249, 2251.
[53] Rizwaan J Mokal, 'The Search for Someone to Save: A Defensive Case for the Priority of Secured Credit' (2002) 22(4) *Oxford Journal of Legal Studies* 687; Ugo Mattei, *Basic Principles of Property Law: A Comparative Legal and Economic Introduction* (Greenwood Press 2000).
[54] Lynn M LoPucki, 'The Unsecured Creditors' Bargain' (1994) 80 *Virginia Law Review* 1887; Steven Knippenberg, 'The Unsecured Creditor's Bargain: An Essay in Reply, Reprisal, or Support?' (1994) 80 *Virginia Law Review* 1967.
[55] Mokal (n 53) above 688, 709.
[56] UCC, article 9-609(a).
[57] UCC, article 9-610(b); Imad D Abyad, 'Commercial Reasonableness in Karl Llewellyn's Uniform Commercial Code Jurisprudence' (1997) 83 *Virginia Law Review* 429.

overarching duty of good faith in performance and enforcement.[58] In practice, therefore, what amounts to default is largely defined by the parties themselves in the security agreement. When the agreement is silent, courts adopt the traditional view that "default" occurs when the borrower fails to pay principal or interest as at when due.[59] Grant Gilmore, one of the key drafters of Article 9 UCC, captured this duality when he observed that while failure to make timely payments remains the "classical event of default," beyond that point, default becomes a matter of contract and can mean whatever the security agreement reasonably stipulates.[60]

In modern secured financing practice, security agreements rarely define "default" solely by reference to missed payments. Sophisticated security agreements usually anticipate a range of contingencies that could jeopardize the secured creditor's position. Common examples include breaches of warranties, misrepresentation of material facts, creation of unauthorized liens or encumbrances on the collateral, cross-defaults arising from other indebtedness, uninsured loss or damage to the collateral, and of course, insolvency or dissolution of the borrower.[61] In some cases, secured creditors have used the "insecurity clause",[62] deemed as a functional equivalent of "default" when a secured party feels (reasonably) insecure about the borrower's ability to continue with performance, and thus, accelerate debt recovery.[63] These triggers reflect an understanding that financial distress seldom manifests suddenly: it unfolds gradually, and astute creditors ought to be able to act before value significantly evaporates. Thus, "default" triggered by an insecurity clause in modern secured lending has an *ex ante* / preventive, as well as a punitive function: it allows secured creditors to intervene before insolvency becomes terminal.

As noted above, two related contractual mechanisms commonly accompany default clauses in security agreements: these are the "acceleration clause" and the "insecurity clause".[64] An acceleration clause allows the creditor, upon occurrence of a specified default such as a missed installment-payment, to declare the entire debt immediately due and payable:[65] In other words, one missed payment is considered to be a sufficient writing on the wall about the borrower's deteriorating financial health or its general nonchalance about performance.

Economically, in slow-moving judicial systems like Nigeria and Kenya, where courts of first instance averagely take about five years to resolve contractual disputes,[66] The acceleration clause evidently spares the creditor the inefficiency of suing repeatedly for each missed payment, and preserves the collateral's value by expediting full debt recovery. The insecurity clause, on the other hand, is more subjective.[67] It authorizes acceleration if the creditor (of course in good faith) believes that the prospect of repayment or performance is impaired.[68] Under the UCC, such belief must be exercised honestly and reasonably:[69] if it is

[58]UCC, article 1-304; UCC article 1-201(b)(20).
[59]See *Brockbank v Best Capital Corp*, 341 SC 372, 534 SE 2d 688 (SC 2000); *Chrysler Credit Corp v B.J.M., Jr., Inc.*, 834 F Supp 813 (ED Pa 1993); *McGrady v Nissan Motor Acceptance Corp,* 40 F Supp 2d 1323 (MD Ala 1998); William E Hogan, 'The Secured Party and Default Proceedings under the UCC' (1962) 47 *Minnesota Law Review* 205, 209.
[60]Gilmore, *Security Interests in Personal Property* (n 40) above 1193.
[61]Fred H Miller, 'Is Revision Due of UCC Article 9, Part 5?' (1991) 44 *Oklahoma Law Review* 125, 125-26 (puts forward an elaborate list of possibilities that could trigger default in a security agreement).
[62]See *Don Brown, Josef H Miller & Allen L McAlear v Avemco Investment Corp*, 603 F2d 1367 (9th Cir); *Black v Peoples Bank & Trust Co*, 437 So 2d 26 (Miss 1983); *Watseka First National Bank v Ruda*, 135 Ill 2d 140, 552 NE2d 775 (Ill Sup Ct 1990). These cases generally held that a creditor acts properly in exercising an insecurity clause so long as s/he does so in good faith.
[63]UCC, article 9-609 - 610.
[64]White and Summers, (n 42) above 1327; UCC, art 1-309.
[65]Ibid.
[66]Williams C Iheme and Sanford U Mba, 'Towards Reforming Nigeria's Secured Transactions Law: The Central Bank of Nigeria's Attempt through the Back Door' (2017) 61(1) *Journal of African Law* 131, 138 fn 30.
[67]White and Summers, (n 42) above 1327.
[68]Ibid, 1328.
[69]UCC, article 1-309.

found to be arbitrary or motivated by bad faith, it exposes the creditor to liability in damages.[70] Both clauses represent pragmatic tools for managing risks in dynamic credit relationships, giving lenders flexibility while holding them accountable to a good-faith standard.

Article 9 also recognizes that not all secured transactions involve traditional borrower-creditor relationships. In transactions that are in substance outright sales of receivables, payment intangibles, or promissory notes,[71] the secured party (who is effectively a purchaser) may collect directly from account-debtors even without the occurrence of a default.[72] The logic of this commercial practice is hinged on the legal basis that ownership of the receivables has already been transferred, so the buyer's right to collect arises immediately.[73] In such cases, Article 9 governs perfection and priority, not the commercial trigger for enforcement.

2.2. The consequences of default

Once a default, however reasonably defined in a security agreement occurs, Article 9, STMA and MPSRA provide a structured but flexible suite of remedies.[74] These three legal frameworks articulate three principal options: (1) the right to take possession of the collateral, either directly or by rendering the equipment unusable and disposing of it on the borrower's premises;[75] (2) the right to dispose of the collateral by sale, lease, or license in a commercially reasonable manner;[76] and (3) the right to bring an action on the debt itself.[77] These remedies (discussed in part 3 below) are cumulative,[78] meaning that pursuing one does not automatically preclude pursuit of the others.

Similarly, a creditor who obtains a judgment does not forfeit the right to proceed against the collateral, so long as doing so does not result in double recovery.[79] Courts in the U.S. have consistently affirmed this cumulative approach, emphasizing that the UCC's purpose is to secure, not frustrate, commercial certainty.[80] However, the creditor's power is not unfettered: the law insists that enforcement remains a shield rather than a sword. In other words, creditors must act in good faith, conduct sales in a commercially reasonable manner, and return any surplus to the borrower: overreaching or harassment of the latter can ground liability in tort or under consumer-protection statutes. The cumulative scheme thus balances efficiency with equity: it ensures that credit remains enforceable, but never at the expense of fairness or public order.

To reiterate more succinctly, in Nigeria and Kenya, "default" in secured credit lending is not statutorily defined in the STMA and MPSRA but left to be understood in its ordinary sense: i.e. the omission to perform a legal or contractual duty, most notably the failure to repay a due debt. The remedies available upon default depend primarily on the nature and legal basis of the security interest, i.e. whether the

[70]See *K.M.C. Co v Irving Trust Co*, 757 F.2d 752 (6th Cir 1985); *Brown v AVEMCO Investment Corp*, 603 F.2d 1367 (9th Cir 1979). Collectively, these cases establish that under UCC Article 1-309 (formerly Article 1-208), a creditor's claim of insecurity must be made in good faith. An arbitrary or bad-faith acceleration of debt violates the UCC's fundamental good-faith obligation, exposing the creditor to liability for damages. Should Nigerian or Kenyan courts encounter future challenges regarding insecurity and acceleration clauses in collateral enforcement, these American precedents (together with the ones on footnote 62 above) offer persuasive guidance.
[71]UCC, article 9-109(a)(3).
[72]UCC, article 9-406; UCC, article 9-607.
[73]UCC, article 9-406(a); UCC, article 9-607(a): "If so agreed, and in any event after default, a secured party may notify an account borrower…to make payment to the secured party and may enforce the obligation of an account borrower…"
[74]UCC, article 9-609 - UCC, article 9-610; STMA, sections 39-40; MPSRA, sections 65-66.
[75]UCC, article 9-609(a)(2); STMA, section 40(3)(b), section 42; MPSRA, section 71(2).
[76]UCC, article 9-610(a) and (b); STMA, section 44; MPSRA, section 72(1).
[77]UCC, article 9-609(b)(1); STMA, section 40(4)(a); MPSRA, section 66.
[78]Article 9 UCC rejects the pre-Code doctrine of election of remedies and instead provides that a secured party's rights on default are cumulative. A creditor may reduce his / her claim to judgment, foreclose, or otherwise enforce the claim or security interest by any available judicial procedure, and these rights are cumulative and may be exercised simultaneously. See UCC, article 9-601(a), (c); *In re Adrian Research & Chemical Co., Inc.* (3d Cir 1959); *Farmers State Bank in Afton v. Ballew*, 626 P.2d 337 (Okla Civ App 1981).
[79]UCC, articles 9-608, 9-615; *In re Plante*, 2008 WL 2518616 (Bankr D Idaho 2008).
[80]*Merchants Recovery Serv., Inc. v. Egbe* (9th Cir BAP 1989); *Snake River Equipment Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787.

transaction is governed by the secured-transactions framework or arises under company law through the creation of a fixed or floating charge.[81] In both Nigeria and Kenya, a floating charge empowers the holder to appoint a receiver or administrator upon crystallization triggered by the borrower's default.[82] For present purposes, attention centers on the floating charge because of its close kinship with the floating lien, and its position as the most versatile and frequently employed instrument in high-value secured lending across these two African jurisdictions.[83]

The STMA and MPSRA have brought these two African countries closer to U.S. law: thus, Article 9 case law, and subject to reasonable adaptations, could offer insights on how to understand the Nigerian and Kenyan equivalents which embraced the "functional approach", allowing a wide range of movable property, including inventory, receivables, deposit accounts, and intellectual property, to serve as collateral.[84] Like Article 9, they leave "default" largely to contractual parties' definition within the security agreement. In practice, Nigerian and Kenyan lenders are more likely to define "default" broadly to include non-payment, breach of covenants, cross-defaults, deterioration of collateral, or insolvency events.[85] The STMA and MPSRA also incorporate procedural safeguards reminiscent of Article 9's good-faith and reasonableness standards.[86] Upon default, a secured creditor may take possession,[87] collect receivables,[88] or dispose of collateral,[89] subject to giving notice,[90] and ensuring commercial reasonableness.[91] The borrower is entitled to an accounting,[92] and to any surplus after disposition,[93] while improper enforcement can attract liability or invalidation of sale:[94] Of course, judicial involvement remains available where peaceful repossession is impossible or disputed.[95]

Comparatively, the three jurisdictions illustrate a common evolution of secured credit law: a movement from rigid formality toward pragmatic contractualism, moderated by statutory safeguards that preserve the public interest. And across these legal systems, about three constants seem to always prevail: first, default, though contractually defined, must be exercised in good faith.[96] Secondly, "acceleration" and "insecurity" clauses are indeed legitimate tools to incentivize performance, but must not be abused by the secured (stronger) party. And thirdly, remedies are cumulative but constrained by fairness, reasonableness, and proportionality standards. Most importantly, it is generally understood that a secured-credit regime serves

[81]STMA, sections 2(3) and 39(5) ensure that creation and priority of floating charges are governed by Nigeria's Companies and Allied Matters Act (CAMA) 2020. However, MPSRA's section 94 amends Kenya's Companies Act (CA) 2015: CA's sections 535(2) and 612(4) are accordingly amended to ensure that the priority of floating charges is determined by the MPSRA. It is recommended that Nigeria follows this Kenyan approach.

[82]In Nigeria, the Companies and Allied Matters Act 2020 ("CAMA 2020") defines and governs floating charges and their crystallization: section 203 (definition and crystallization of floating charge), sections 552-553 (appointment of receivers and managers), and sections 443 and 452 (appointment of administrators by the holder of a floating charge). In Kenya, floating charges under debentures are regulated under the Companies Act 2015, section 582 (priority rules when debenture-holders take possession following crystallization), while the Kenyan Insolvency Act 2015 governs enforcement powers: section 534 (appointment of an administrator by holder of a qualifying floating charge) and section 690(2) (restriction on administrative receivership by floating-charge holders).

[83]Williams C Iheme and Sanford U Mba, 'A Doctrinal Assessment of the Insolvency Frameworks of African Countries in Coping with the Pandemic-Triggered Economic Crisis' (2021) 32(2) *Stellenbosch Law Review* 306, 313-317.

[84]STMA, section 63; MPSRA section 2 (see respectively the definitions of "collateral" and "movable assets").

[85]Based on practical experience, most commercial contracts within these two Anglophone African jurisdictions explicitly define what constitutes an event of default and outline the resulting enforcement remedies.

[86]STMA, section 35; MPSRA, sections 5 and 56.

[87]UCC, art 9-609(a)(1); STMA, section 40; MPSRA, section 67(3)(d).

[88]STMA, section 43; MPSRA, section 77.

[89]UCC, art 9-609(a)(2); STMA, section 44; MPSRA, sections 67(3)(e), 72.

[90]STMA section 45; MPSRA, section 73. The UCC art 9 does not provide borrowers the right of notice prior to the repossession of collateral provided the repossession by the secured party was carried out without the breach of peace: UCC, art 9-609(2).

[91]UCC, article 9-610(b); STMA, section 35; MPSRA, section 56.

[92]UCC, art 9-210(2); STMA, section 47; MPSRA, section 74.

[93]UCC, article 9-608(4); STMA 48(2)(b); MPSRA, section 74(3) (under the MPSRA framework, the enforcing secured creditor pays the surplus to a court for distribution in accordance with the rule on priority).

[94]For example, see MPSRA, section 31(3).

[95]UCC, art 9-609(2)(b)(1); MPSRA, section 67(3)(a); STMA, section 40(4)(a).

[96]UCC, article 9-610(b); STMA, section 35; MPSRA, section 56.

not merely the creditor's private interest but the broader economic purpose of ensuring that capital circulates efficiently in society while preserving the integrity of the legal system.

In sum, the notion of "default" in secured transactions is more than a mechanical trigger: it is the fulcrum of trust between private autonomy and public regulation. When drafted clearly and enforced fairly, it underwrites the very confidence that keeps credit flowing, which ultimately keeps markets alive. The experience of the United States underscores the optimal value of codified clarity vis-à-vis security interests in movable collateral (as opposed to the compartmentalized English approach to security interests), while the reforms in Kenya and Nigeria demonstrate that such clarity can be (successfully) transplanted and adapted in non-origin jurisdictions, provided the recipient countries' functional equivalents of the statutory aims and objectives of Article 9 are maintained. Ultimately, a balanced approach, i.e. one that respects contractual freedom, enforces commercial reasonableness, and ensures predictability in enforcement, remains the surest guarantee that secured credit continues to serve as the lifeblood of economic development in Nigeria and Kenya.[97]

3. ENFORCEMENT OF SECURITY INTERESTS IN MOVABLE COLLATERAL AFTER A DEFAULT: NIGERIA AND KENYA IN PERSPECTIVE

Sections 40 STMA and section 67 MPSRA provide that, upon default, a secured creditor may exercise rights under these statutes, the security agreement, or any other applicable law, and may also pursue judicial remedies.[98] These provisions seem deliberately broad owing to their Article 9-609 ancestry: they encompass not only secured creditors but also operating lessors,[99] holders of purchase-money security interests,[100] and transferees of receivables,[101] each of whom may enforce their rights under the relevant agreement or governing statute. The enforcement framework reflects the functional approach, ensuring that the availability of remedies is not confined to a single statutory pathway but extends across the spectrum of consensual and statutory security arrangements. The various enforcement avenues under the STMA and MPSRA, through the lens of Article 9 UCC, are hereunder discussed.

3.1. Repossession of Collateral

Repossession by self-help as enunciated by Article 9-609, constitutes the most immediate and visible form of enforcement of security interests in movable collateral.[102] Under section 40(1) of the STMA, a secured creditor intending to repossess collateral upon default must serve the borrower with a notice detailing both the default and the intended repossession.[103] This notice may be delivered via any contractually agreed medium or through the statutory channels prescribed in section 40(2). Conversely, section 67 of the MPSRA dispenses with the requirement for a pre-repossession notice. Instead, section 67(1) mandates a unique "relief for non-compliance" notice, which primarily serves as a statutory demand or reminder for the borrower to fulfill their obligation. Furthermore, while the Nigerian regime imposes a mandatory statutory waiting period of ten (10) days following the issuance of the notice, the waiting period under the Kenyan framework is tied directly to the timeframe specified by the creditor within the relief for non-compliance notice.[104] Consequently, this procedural flexibility renders the MPSRA significantly more creditor-friendly.

[97] See generally Pau Ali, 'Enforcement of Security Interests' in *The Law of Secured Finance: An International Survey of Security Interests over Personal Property* (Oxford University Press 2002).
[98] UCC, art 9-609(2)(b)(1); MPSRA, section 67(3)(a); STMA, section 40(4)(a).
[99] STMA, section 39(2); MPSRA, section 45(1) and (3).
[100] STMA, section 27; MPSRA, section 48.
[101] STMA, section 43; MPSRA, section 45(2).
[102] Tajti (n 9) above 143.
[103] STMA, 40(3); MPSRA, section 67(3) (depending on the interpretive approach adopted, a notice of repossession may be implied under 67(3)).
[104] Ibid.

The STMA (and to some extent the MPSRA) adopt an enforcement model that diverges sharply from those of reformed common law jurisdictions such as the United States[105] and Canada.[106] In the latter systems, secured creditors may repossess collateral by self-help without any form of prior notice to the borrower, provided the act of repossession does not breach the peace.[107] In contrast, the Nigerian and Kenyan frameworks respectively require expressly and impliedly that the enforcing secured creditor disclose their enforcement intent in advance.[108] While the Nigerian (and to a little extent, the Kenyan) approach is ostensibly designed to protect borrowers and promote procedural fairness, it arguably undermines the element of surprise that is likely central to the effectiveness of self-help repossession.[109] For example, secured creditors who fear that borrowers might exploit the notice period to conceal, dissipate, or relocate collateral are likely to become risk-averse, limiting the availability of credit or imposing higher interest rates to hedge against enforcement uncertainty.

In modern secured-lending regimes, where most security interests are non-possessory, the ability to realize movable collateral swiftly and reliably is the cornerstone of market confidence.[110] The problem is compounded in jurisdictions such as Nigeria and Kenya, where inadequate identification systems, fragmented databases, and limited technological capacity make it notoriously difficult to trace defaulting borrowers or their movable collateral. Unlike the United States, where Article 9 UCC was conceived within the context of robust credit infrastructure and efficient law enforcement, the Nigerian and Kenyan contexts present distinct enforcement challenges.[111] In such settings where borrower or collateral tracing is difficult, adopting a rule that mandates a ten-day (or any length of) notice prior to self-help repossession may significantly undermine enforcement reliability in practice, as the collateral may easily vanish before repossession can ever occur.[112]

Section 40(3)(b) STMA and section 71(2) MPSRA, permit the secured creditor, after the notice period, to either take possession of the collateral or render it inoperative.[113] In these African settings, the practical efficacy of these measures is questionable in light of the express / implied advance notice requirement: borrowers who become aware of imminent repossession may lock out the business premises, or simply remove the collateral from the premises, ultimately leaving nothing to be seized or disabled. Moreover, disabling collateral, for example, by removing essential parts or altering passwords, may still not guarantee (timely) repayment, since borrowers might find other creative ways of circumventing the secured creditor's efforts, either by surreptitiously replacing the parts or finding ways to restore operability.

In any event, rendering production assets inoperative could result in cascading defaults: borrowers unable to generate income may default on other obligations, thereby harming not only the enforcing creditor but all creditors with interests in the borrower's estate.[114] Therefore, it is generally true that the borrower's continuous production with the collateral improves its chances of repaying its creditors, and disablement of the production assets would certainly diminish these chances. Yet, the STMA and MPSRA do not specify a

[105] UCC, art 9-609(a)(1).
[106] Ontario Personal Property Security Act (OPPSA), section 62(1)(a).
[107] UCC, art 9-609(b)(2).
[108] STMA, section 40(3) (the notice period is a minimum of 10 days); under section 67(1)(2) and (3) of the MPSRA, the notice period is implied into the "relief for non-compliance" letter to the borrower. The notice period is the same as the deadline for the borrower to pay debt. Its length will therefore be as mentioned in the said letter of relief.
[109] Tajti (n 9) above 168.
[110] Gilmore, *Security Interests in Personal Property* (n 40) above 24 - 25.
[111] In Nigeria and Kenya, the enforcement of security interests in movable assets faces several challenges, foremost among them being the difficulty of tracing collateral and borrowers. This challenge is exacerbated by the absence of comprehensive national databases containing personal identification data that law enforcement agencies could leverage to facilitate tracing and recovery efforts.
[112] Tajti (n 9) above 145.
[113] STMA, section 40(3(a) and (b); MPSRA, section 67(3)(d). See UCC, art 9-609(a)(2).
[114] Douglas G Baird and Thomas H Jackson, 'Corporate Reorganizations and the Treatment of Diverse Ownership Interests: A Comment on Adequate Protection of Secured Creditors in Bankruptcy' (1984) 51 *University of Chicago Law Review* 97, 117-120.

time limit for such disablement of collateral,[115] thereby creating uncertainty and possibly worsening the borrower's financial distress.

Where the security agreement does not expressly authorize self-help repossession, repossession must be pursued through court order.[116] Given the chronic delays of the Nigerian and Kenyan judicial systems,[117] This route is commercially unattractive. It is therefore very likely that section 40(4)(b) STMA and section 71(1)(a) MPSRA, which allow the parties to authorize self-help repossession by contract, would be dominantly used in practice: astute secured creditors, who typically draft security agreements, will frequently insert such provisions to protect their interests.[118]

Uniquely to Nigeria, the STMA envisages the Nigerian police involvement in repossession. Section 40(6) thereof, requires Nigerian police officers, upon being presented with the security agreement and confirmation statement, to assist in repossession.[119] While probably motivated by concerns for preservation of public order as enshrined in Article 9-609(b)(2), the Nigerian equivalent as stated earlier is (arguably) problematic in practice.[120] Nigeria's long-standing issues of police brutality,[121] and corruption,[122] raise serious risks that repossession, which is a commercial process, could devolve into coercion or violence.

Within the Nigerian context, where asymmetry of bargaining power between institutional lenders and individual borrowers is pronounced, reliance on police intervention introduces a perceptible risk of executive overreach. Absent rigorous oversight, the deployment of state authority can inadvertently weaponize the repossession process in favor of well-resourced creditors, thereby undermining statutory borrower protections.[123] A framework that relies heavily on police intervention may thus undermine commercial confidence rather than enhance it. Legislative vigilance is thus vitally important in the Nigerian context: if police involvement proves susceptible to misuse, section 40(5) and (6) should accordingly be amended.

3.2. Sale of Repossessed Collateral

Once a secured creditor has repossessed collateral in accordance with section 40 STMA and sections 67 and 71 MPSRA, the next stage of enforcement is disposition.[124] The Nigerian and Kenyan regimes authorize the secured creditor to sell the collateral "as is",[125] i.e. in its existing condition without an obligation to refurbish or enhance it for the purpose of realizing a higher price: this notion was inherited from Article 9 UCC.[126]

[115]STMA, sections 40(3)(b), 42; MPSRA, section 71(2). Both statutory provisions empower the enforcing secured creditor to render the collateral inoperative in the borrower's premises. They also provide that the creditor could proceed to sell the collateral on the borrower's premises.
[116]STMA, section 40(4)(a); MPSRA, section 67(3)(a).
[117]See generally Okechukwu Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' (2005) 31 *Brook Journal of International Law* 9; Jay Loschky, 'Less Than Half in Africa Confident in Their Judicial Systems' (Gallup, 6 August 2014) <http://www.gallup.com/poll/174509/less-half-africa-confident-judicial-systems.aspx> accessed 10 April 2026.
[118]Although "collateral policing" is not expressly provided for under Article 9 UCC, the STMA, nor the MPSRA, the UCC art 9-205 and its Official Comment permit parties to a security agreement to contractually authorize a secured creditor to monitor collateral in which s/he holds a perfected security interest, with a view to detecting the early and unauthorized dissipation of collateral.
[119]STMA, section 40(6) provides that: "The Nigerian Police shall provide assistance for the peaceable repossession of the collateral, upon presentation by the creditor of a copy of the relevant security agreement and duly certified confirmation statement."
[120]Daniel E Agbiboa, "Protectors or Predators? The Embedded Problem of Police Corruption and Deviance in Nigeria" (2015) 47(3) *Administration & Society* 244.
[121]Ibid, 253-258.
[122]Ibid, 245-247.
[123]Ibid, 261-265; Oluwagbenga M Akinlabi, "Do the Police Really Protect and Serve the Public? Police Deviance and Public Cynicism Towards the Law in Nigeria" (2017) 17(2) *Criminology & Criminal Justice* 158, 159-162, 165-169.
[124]STMA, section 44(1); MPSRA, section 72(1).
[125]Ibid.
[126]See UCC, art 9-610(a).

In practice, however, commercial prudence often dictates otherwise. A rational secured creditor will most likely undertake minimal refurbishment or cleaning so as to obtain a better sale price and thereby extinguish the debt more fully.[127] Resorting to sale of collateral in poor condition could result to a lower sum, but also exposes the creditor to protracted litigation for any deficiency claim.[128] The Nigerian and Kenyan courts, borrowing insights from their U.S. counterparts,[129] are likely to scrutinize such sales to determine whether the enforcing creditor acted in "good faith" and in a "commercially reasonable" manner.[130] For instance, if it is customary in the relevant market to perform certain pre-sale activities, the absence of such steps would likely weigh heavily against the creditor in deficiency proceedings.[131]

Both the Nigerian and Kenyan regimes impose no restriction on the type of market in which sale may occur.[132] The secured creditor may opt for auction, public tender, or private arrangement, provided the choice is commercially reasonable.[133] The secured creditor's discretion here is also wide, and courts will likely not second-guess decisions unless there is evidence of collusion, fraud, or manifest unreasonableness.[134] Similarly, both regimes, like their Article 9 counterpart, do not require the creditor to wait for a more favorable season or market conditions, although the enforcing secured creditor "is required to follow any commercially reasonable preparation or processing in obtaining a good price."[135] However, a sale conducted immediately after repossession and in good faith is valid even if a brief delay could have produced a higher price.[136]

Nonetheless, section 44(3) STMA requires that a "reasonable price" be obtained, and section 35 STMA and section 5(2) MPSRA, respectively reinforce the overarching obligation of good faith.[137] These provisions serve as guardrails: while the creditor is not required to achieve the best possible price, he or she must avoid conducts that artificially depress value or favor insiders. The standard of commercial reasonableness thus mediates between creditor autonomy and borrower protection. Comparative jurisprudence, particularly from the U.S. Article 9 illustrates the consequences of breaching this duty.[138]

Similarly, U.S. courts have repeatedly denied or reduced deficiency claims where secured creditors failed to dispose of collateral in a commercially reasonable manner.[139] In some instances, courts have also granted borrowers damages or credits reflecting the difference between the proceeds actually realized and those that would likely have been achieved through a commercially reasonable sale.[140] The Nigerian and Kenyan courts could adopt similar reasoning, so as to incentivize creditors to conduct sales with transparency and diligence.

[127]Michael Korybut, 'Searching for Commercial Reasonableness Under the Revised Article 9' (2002) 87 *Iowa Law Review* 1383, 1399-1402.
[128]William E Hogan, 'The Secured Party and Default Proceedings under the UCC' (1962) 47 *Minnesota Law Review* 205, 207.
[129]This perspective stems from Article 9 of the UCC being the pioneer of modern secured transactions law. Its extensive and mature body of case law offers a comprehensive resource for Anglophone African courts addressing similar legal issues.
[130]UCC, article 9-610(b); STMA, section 35; MPSRA, section 56.
[131]Maury B Poscover, 'A Commercially Reasonable Sale under Article 9: Commercial, Reasonable, and Fair to All Involved' (1994) 28 *Loyola Los Angeles Law Review* 235, 244-246.
[132]STMA, section 44(2); MPSRA, section 72(2) and (3).
[133]Ibid.
[134]STMA, sections 35 and 36; MPSRA, section 72(1).
[135]STMA, section 44(1); MPSRA, section 72(1).
[136]Ibid.
[137]See Denise R Boklach, 'Comment, UCC Section 1-201(19) Good Faith—Is Now the Time to Abandon the Pure Heart/Empty Head Test?' (1992) 45 *Oklahoma Law Review* 647, 655.
[138]See generally John E Heath Jr, 'Remedies and Collateral Liquidation under Uniform Commercial Code Article 9' (1969) 4 *Gonzaga Law Review* 216.
[139]See *Westgate State Bank v Clark* 231 Kan 81, 642 P2d 961 (1982); *Clark Leasing Corp v White Sands Forest Products, Inc* 87 NM 451, 535 P2d 1077 (1975).
[140]See *Hicklin v Onyx Acceptance Corp* 970 A2d 244, 252-255 (Del 2009); *Coxall v Clover Commercial Corp* 4 Misc 3d 654, 781 NYS2d 567, 579-583 (NY Civ Ct 2004).

Finally, section 45(1) STMA and section 73(1) MPSRA require the creditor to notify both the borrower and any other secured creditors of the intended sale.[141] This gives affected parties an opportunity to redeem the collateral before disposal.[142] The rule admits sensible exceptions: where the collateral is perishable or cannot conveniently be stored, immediate sale is permissible.[143] The notice requirement, therefore, balances creditor efficiency with borrower fairness, while accommodating commercial realities.

3.3. Discharge of Subordinate Security Interests

Both the STMA and MPSRA respectively codified the subordination principle, stipulating that the sale of collateral by a secured creditor extinguishes subordinate interests in that collateral asset.[144] At this juncture, it is important to reemphasize that the enforcement rights of a secured creditor are confined to the borrower's collateral in which that creditor holds an enforceable *in rem* security interest, rather than extending generally to the borrower's assets.[145] A secured creditor therefore cannot extend enforcement to assets outside the scope of the security agreement or beyond what has been registered in the notice / financing statement.[146] This principle preserves certainty: only assets expressly encumbered can be repossessed and sold.[147]

A superficially plausible exception to the general attachment and perfection framework of modern secured transactions law arises with floating charges,[148] which extend to both present and after-acquired property of the borrower.[149] A close, though hardly equivalent counterpart to floating charges are floating liens:[150] the latter, embodying both attachment and perfection, typically evolve with the borrower's asset base, automatically attaching to new collateral as it enters the estate and remaining perfected by virtue of the original registration.[151] Ostensibly, the floating lien device might seem to depart from the rule that each item of collateral requires distinct perfection. However, this does not constitute a true exception because the scope, priority, and continuing validity of the floating lien are determined by the initially registered financing statement / notice, which serves as a legal anchor for the newly acquired assets of the borrower.[152] Thus, each subsequently acquired asset is enveloped within the security interest by reference to that initial perfection in the collateral registry, thereby preserving continuity, transparency, and predictability in the credit system.

It is important to clarify that the floating lien of the STMA and MPSRA, both drawing from Article 9 UCC,[153] differs conceptually and functionally from the floating charge found in the Nigerian and Kenyan company-law statutes.[154] As explained by the court in *Illingworth v Houldsworth,*[155] the floating charge is a creature of corporate law, and hovers over a company's circulating assets but does not attach to them until

[141] The STMA requires 10 working days' notice, whereas the MPSRA requires only five.
[142] UCC, art 9-623; STMA, section 49(1) (a) and (b); MPSRA, section 69(1) and (2).
[143] UCC, art 9-611(d); STMA, section 45(2) (a)-(d); MPSRA, section 73(5).
[144] STMA, section 46; MPSRA, section 76(1). Also see UCC, art 9-617(a).
[145] Michael G Bridge and others (n 15) above 651-653.
[146] See UCC, article 9-502(a); STMA, section 14; MPSRA, section 27 (in sum they state that a financing statement / notice must contain (1) borrower's name; (2) secured party's name; and (3), indicate the collateral and the period covered).
[147] Charles W Mooney Jr., 'Choice-of-Law Rules for Secured Transactions: An Interest-Based and Modern Principles-Based Framework for Assessment' (2017) 22(4) *Uniform Law Review* 842, 845-846.
[148] Lawrence Collins, 'Floating Charges, Receivers and Managers and the Conflict of Laws' (1978) 27(4) *International and Comparative Law Quarterly* 691.
[149] Ibid, 693.
[150] UCC, art 9-204(a); STMA, section 6(1)(b); MPSRA, section 7(1).
[151] Ibid.
[152] See generally Peter F Coogan, 'Article 9 of the Uniform Commercial Code: Priorities among Secured Creditors and the "Floating Lien"' (1959) 72(5) *Harvard Law Review* 838.
[153] UCC, art 9-204(a); STMA, section 6(1)(b); MPSRA, section 7(1).
[154] See section 203 of the Nigerian Companies and Allied Matters Act 2020; section 886 of the Kenyan Insolvency Act 2015.
[155] See *Illingworth v Houldsworth* [1904] AC 355.

crystallization,[156] typically triggered by default, insolvency, or the appointment of a receiver or administrator.[157] In contrast, the floating lien in Article 9-like secured transaction law has both fixed and floating elements, and thus attaches to the agreed category of the borrower's assets from the outset upon execution of the security agreement: it also ensures that the secured creditor maintains a continuously perfected interest over the borrower's changing pool of assets.[158] This distinction underscores the more dynamic and functional approach of Article 9-inspired reforms, which seek to accommodate the realities of commercial credit flows (especially in inventory financing) without reducing the relevance and reliability of the entries found in the collateral registry.[159]

As stated earlier, a critical consequence of enforcement, is the discharge of subordinates *in rem* interests.[160] In other words, once a collateral asset is sold by the senior secured creditor in exercise of enforcement rights, all security interests ranking below that of the enforcing creditor are extinguished in relation to that collateral if the senior creditor's interest absorbed the entire value of the collateral.[161] The rationale for this most likely anchors on commercial ease: security interests are ordered by priority, commonly by the time of perfection, and sale by the senior creditor cuts off junior claims so that purchasers take collateral free from encumbrances.[162] Without this rule, a repossessed collateral would be commercially unmarketable, as no reasonable buyer would take the avoidable risk of purchasing a property that is subject to lingering claims.[163]

Indeed, the wisdom of Article 9 and by extension STMA and MPSRA in discharging subordinate interests is commercially significant: if a collateral asset secures multiple *in rem* security interests and the proceeds from sale are entirely absorbed by the senior secured creditor's claim, subordinate creditors receive nothing: in that case, their *in rem* rights are discharged and cannot be shifted to other assets of the borrower. Their sole recourse lies in whatever surplus that remains after satisfying the senior debt, or the right *in personam* to sue the borrower for any deficiency sum.[164] Conversely, if a junior creditor wrongfully enforces against collateral already subject to a superior perfected interest, that junior creditor must surrender the proceeds for distribution in accordance with the established priority rules.[165] Failure to do so exposes the junior creditor to liability in conversion, including damages for loss, inconvenience, and potential tracing of misappropriated proceeds.[166] This ensures that priority rules are respected in practice and discourages opportunistic enforcement by lower-ranking creditors: it similarly ensures that enforcement confers clear title to buyers, thereby promoting confidence in both the credit and merchandise markets.

3.4. Statement of Account of Disposition

Transparency is the cornerstone of Article 9-like secured transactions law. To prevent abuse and ensure accountability in the enforcement process, the STMA and MPSRA require secured creditors to provide a

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[156] Ibid, 358: the court explained that "[a] floating charge is ambulatory and shifting in nature, hovering over and so to speak floating with the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp."
[157] Ibid. Also see generally Rodney Dean, 'Crystallisation of a Floating Charge' (1983) 1 *Company and Securities Law Journal* 185.
[158] Steven L Harris and Charles W Mooney Jr., 'How Successful Was the Revision of UCC Article 9? Reflections of the Reporters' (1999) 74 *Chicago-Kent Law Review* 1357, 1390-1392.
[159] See Grant Gilmore, 'The Purchase Money Priority' (1963) 76 *Harvard Law Review* 1333, 1368-1373.
[160] STMA, section 46; MPSRA, section 76(1).
[161] Ibid.
[162] UCC, art 9-320(a); STMA, section 32(2); MPSRA, section 45(2).
[163] Lori S Segal, 'The Buyer-Secured Party Conflict and Section 9-307(1) of the UCC: Identifying When a Buyer Qualifies for Protection as a Buyer in Ordinary Course' (1982) 50 *Fordham Law Review* 657, 658-664.
[164] UCC, art 9-615; STMA, section 48(4); MPSRA, section 74(4).
[165] STMA, section 48(2)(a); MPSRA, section 70(1).
[166] This view could be supported by MPSRA, section 68(1)(b).

written statement of account following the sale of repossessed collateral.[167] Specifically, both regimes, drawing from Article 9-210(b) UCC, oblige the creditor to deliver this statement within a period of time to all parties entitled to notice of the sale, including the borrower and any other secured creditors with an interest in the collateral.[168]

The statement must contain three critical pieces of information: (i) the amount realized from the sale,[169] (ii) the costs and expenses incurred in the process of sale,[170] and (iii) the resulting balance, whether in favor of the borrower (as surplus) or in favor of the creditor (as a deficiency claim).[171] By mandating disclosure of these figures, the two regimes create a mechanism for independent verification of the creditor's conduct during disposition. This requirement inarguably serves multiple purposes. For the borrower, it clarifies whether the sale has fully discharged the secured obligation or whether a deficiency liability remains under section 48(4) STMA and 74(4) MPSRA.[172]

For subordinate secured creditors, it provides transparency regarding the availability of surplus proceeds for distribution according to priority rules. And for the enforcing creditor, compliance with the duty of disclosure strengthens the enforceability of any deficiency claim, since courts are more likely to uphold such claims where the process has been demonstrably transparent and commercially reasonable.[173] Comparatively, therefore, both regimes draw from the approach of Article 9 in obligating secured creditors to account for the proceeds of sale and distribute any surplus in line with statutory priorities. In doing so, they echo Article 9's strong emphasis on commercial reasonableness and full disclosure of enforcement outcomes, as recipes for healthy trust between borrowers and secured creditors.[174]

The policy underscoring the requirement for account also aims at instilling confidence in secured credit markets. Without such accountability, borrowers and junior creditors might easily suspect collusion, undervaluation, or improper deduction of expenses without any rightful channel of alleviating their suspicion: in that case, such perceived injustice might congeal and lead to a general apathy in lending. However, by compelling creditors to disclose sale outcomes promptly and in writing, the legislation balances enforcement rights with procedural fairness, thereby reducing disputes and litigation.[175]

3.5. Distribution of Proceeds of Sale

The distribution of proceeds is the culmination of the enforcement process, ensuring that realized value is allocated in accordance with established priority rules.[176] After disposition, the enforcing secured creditor must first deduct reasonable costs and expenses of sale,[177] including auctioneer's fees, storage costs, and other charges directly incurred in the course of disposition.[178] Where the security agreement so provides, other reasonable enforcement-related expenses may also be recovered at this stage.

Only after disposition expenses have been settled may the remaining proceeds be applied to the secured obligation owed to the enforcing creditor. If the realized sum exceeds this obligation, the surplus must be

[167] STMA, section 47; MPSRA, section 74; UCC, art 9-210(b).
[168] Ibid. The STMA prescribes 15 working days, whereas Article 9 provides for 14 days. In contrast, the MPSRA remains silent on the prescribed duration, such that the appropriate timeframe must be determined in accordance with the overarching principles of reasonableness and good faith under section 5(2).
[169] STMA, section 47(1)(a); MPSRA, section 74(1).
[170] STMA, section 47(1)(b); MPSRA, section 74(1)(a).
[171] STMA, section 47(1)(c); MPSRA, section 74(4).
[172] James J White, 'The Abolition of Self-Help Repossession: The Poor Pay Even More' (1973) *Wisconsin Law Review* 503, 524-529.
[173] Ibid, 504.
[174] Ibid, 511-514.
[175] See generally David G Carlson, 'Commercially Reasonable Sales in the 21st Century' (2023) 50(1) *Ohio Northern University Law Review* 47.
[176] STMA, section 48; MPSRA, section 74 - both drawings from UCC, art 9-608.
[177] Ibid.
[178] Ibid.

distributed in a strict order: subordinate secured creditors with perfected security interests, ranked according to their priority of perfection,[179] and the borrower, who is entitled to any remaining balance once all secured claims have been satisfied.[180] This order reflects the logic of the perfection system: priority is respected, subordinate interests are recognized, and the borrower ultimately recovers whatever residual value remains in the collateral.

Both regimes also anticipate disputes. If competing claims arise concerning entitlement to surplus proceeds, the enforcing creditor may pay the disputed sum into court by way of interpleader.[181] This mechanism shields the creditor from liability while allowing the courts to determine the proper distribution. Both frameworks are rooted in the principles of predictability which point to the core of value and integrity of priority rules. Similarly, the policy rationale is arguably twofold: for creditors, the system guarantees that enforcement will respect the order of perfection, thereby encouraging lending against movable collateral. For borrowers, it ensures that enforcement is not unduly punitive: once creditors have been paid, any surplus value rightfully reverts to the borrower. Together, these rules foster confidence among all parties and maintain the delicate balance between creditor protection and borrower fairness.

3.6. The Right of Redemption and Reinstatement of the Security Agreement

The primary rationale of secured lending is to ensure that, in the event of the borrower's default, the secured creditor can resort to the encumbered collateral, dispose of it, and apply the proceeds toward satisfying the outstanding debt obligation.[182] The MPSRA and Article 9 UCC (but not the STMA) provide for the right of forfeiture - i.e. the possibility that the secured party could propose to retain the borrower's collateral in full or partial satisfaction of the secured debt.[183] Thus, unless within the purview of forfeiture (strict foreclosure) - enforcement, especially in light of the good faith standard, is not primarily intended to allow creditors to permanently appropriate collateral for personal use.[184] Rather, repossession is a mechanism to secure repayment: a repossessed collateral must either be sold or redeemed.[185] Consequently, section 49 STMA and section 69 MPSRA, much like Article 9-623, recognize the borrower's right to redeem the collateral by tendering the outstanding debt together with reasonable enforcement expenses, provided redemption occurs before the collateral is sold.[186]

This right of redemption serves some policy functions.[187] On one hand, it ensures that creditors are paid and remain confident in extending secured credit. On the other hand, it allows borrowers to recover assets that are often essential to production and commercial continuity.[188] Collateral such as machinery, vehicles, or equipment may be uniquely integrated into the borrower's business, and losing it (even temporarily) can disrupt production, generate secondary defaults, and compromise the borrower's ability to meet payroll, rent, or other recurrent expenses.[189] In this sense, redemption protects not only the borrower but also other creditors who depend on the borrower's ongoing solvency.

The redemption right is, however, time-sensitive. Once collateral has been sold to a third party, the borrower's right to redeem is extinguished.[190] At that stage, valid title passes to the purchaser, and the

[179] Ibid.
[180] Ibid.
[181] STMA, section 48(3); MPSRA, section 74(3).
[182] Ronald J Mann, 'Strategy and Force in the Liquidation of Secured Debt' (1997) 96(2) *Michigan Law Review* 159, 160-162.
[183] UCC, art 9-620; MPSRA, section 75. Ibid, 213-227.
[184] Mann (n 182) above 179-182.
[185] Ibid.
[186] See generally David G Carlson, 'Article 9 Foreclosures: When Is a Sale Not a Sale?' (2022) 84 *University of Pittsburgh Law Review* 67.
[187] Ibid, 109-111.
[188] LoPucki (n 54) above 1902-1908, 1912-1915.
[189] Ibid, 1904-1907.
[190] UCC, art 9-623(c)(2); STMA, section 49(1); MPSRA, section 69(2).

borrower cannot compel return of the collateral:[191] This ensures predictability in the merchandise market. Thus, redemption can only be pursued before sale; thereafter, the borrower must negotiate directly with the purchaser to reacquire the asset, often at a premium. Importantly, redemption rights are not limited to the borrower. Subordinate secured creditors may also exercise redemption, either to protect their own interests or to acquire the collateral for independent use.[192] However, the STMA (but not Article 9 or MPSRA), gives the borrower priority in the context of redemption: where both the borrower and another party tender redemption, the borrower's claim prevails if he or she offers the outstanding debt and reasonable expenses.[193] This rule reflects a deliberate policy choice to preserve the borrower's productive capacity, prioritizing economic rehabilitation over opportunistic asset acquisitions by subordinate creditors or third parties seeking market dominance.

The overall policy rationale of section 49(2) STMA on the super-priority right of the borrower in the context of redemption is admittedly sensible and pro-business: the borrower has already invested in integrating the collateral into their business, has developed the requisite skills to operate it, and is better placed to generate value from its continued use; meanwhile, a subordinate creditor may redeem purely for resale or private use. Therefore, denying the borrower redemption in such circumstances could result in unnecessary liquidation, disruption of productive activity, and negative ripple effects across the borrower's commercial relationships as well as possible loss of employment.[194] Alongside redemption, the STMA introduces a related but distinct concept: i.e. reinstatement of the security agreement.[195] Whereas redemption discharges the secured obligation in full, reinstatement permits the borrower (no more than twice a year unless otherwise agreed) to cure the default by paying arrears and covering the creditor's enforcement expenses, thereby restoring the agreement as though no default had occurred.[196] Reinstatement is thus narrower than redemption, since it does not require satisfaction of all secured obligations, but allows the borrower to maintain the contractual relationship without forfeiting the collateral.

A key distinction also lies in the beneficiaries: while redemption may be exercised by the borrower or by subordinate creditors; reinstatement is available exclusively to the borrower. Moreover, reinstatement is insulated from contractual provisions such as acceleration clauses, which deem all obligations immediately due upon a single default. In effect, the STMA protects the borrower's ability to cure limited defaults, preventing overreaches by creditors and preserving the economic function of secured transactions as a tool of rehabilitation rather than mere liquidation.

Also, while Kenya's MPSRA confers on borrowers and certain third parties the right to redeem collateral prior to sale, subject to tender of the outstanding sum and reasonable costs, it does not explicitly replicate Nigeria's reinstatement provision. In any event, both regimes reflect a common policy commitment that balances creditor certainty with borrower protection in order to sustain credit markets while avoiding unnecessary economic disruption.

4. COMPARATIVE OBSERVATIONS AND CONCLUSION

The enforcement regimes of Nigeria's STMA and Kenya's MPSRA demonstrate a shared intellectual lineage in Article 9 UCC. Yet, in operational detail, the two statutes embody different emphases. Below, the article summarizes some of the areas of commonalities and differences.

[191] Ibid.
[192] Ibid.
[193] STMA, section 49(2).
[194] LoPucki (n 54) above 1904-1907.
[195] STMA, section 50(1).
[196] STMA, section 50(2).

4.1. Default and Enforcement Triggers

Like Article 9, both regimes deliberately avoid a statutory definition of default, preserving party autonomy. Of course, this omission fosters flexibility, but also creates uncertainty where agreements are poorly drafted, and could be a ground for litigation which is notoriously very slow in both Nigeria and Kenya.

4.2. Repossession of collateral

Both regimes' approaches to collateral repossession differ significantly. Nigeria and Kenya respectively impose mandatory notice periods of ten and five working days prior to disposition of collateral:[197] In Nigeria, this is coupled with the prospect of police involvement.[198] This Nigerian feature tilts towards borrower protection but could also undermine enforcement efficiency which ultimately increases the costs of credit. In contrast to Nigeria, Kenya allows repossession by consent, court order, or self-help without involving the Kenyan police, so long as the borrower does not object to the repossession.[199] The Kenyan model favors creditor efficiency and aligns more closely with the U.S. practice.

4.3. Sale of collateral and distribution of proceeds

Both regimes require creditors to act in good faith and dispose of collateral in a commercially reasonable manner.[200] Secured creditors retain discretion to select the mode and timing of sale,[201] with courts empowered to intervene only where collusion or manifest unreasonableness is alleged. The distribution rules are virtually identical, following this sequence: first, the costs of disposition; next, payment to senior secured creditors; then to junior creditors according to their priority; and finally, any remaining balance to the borrower.

4.4. Discharge of Subordinate Interests

Both statutes adopt the principle that sale extinguishes subordinate security interests, thereby ensuring that purchasers acquire collateral free of encumbrances.[202] This enhances marketability and predictability, though it also means that junior creditors must rely heavily on surplus proceeds, which may often be nonexistent.

4.5. Redemption of collateral and reinstatement of security agreements

Both regimes preserve borrower redemption rights prior to sale; while the STMA gives borrowers statutory priority if others also tender redemption.[203] The STMA goes further by providing reinstatement rights, allowing borrowers to cure arrears and continue the security agreement notwithstanding contractual acceleration clauses.[204] Kenya's MPSRA, by contrast, does not expressly replicate STMA's reinstatement, reflecting a somewhat leaner borrower-protection framework.

Overall, the Nigerian model with its involvement of the Nigerian police in repossession, seems more borrower-protective, though arguably at the expense of creditor certainty and transactional efficiency. Kenya's model is leaner, creditor-oriented, and arguably more attractive to lenders, though it relies heavily on a secured creditor's maturity to observe the safeguards against abuse of self-help. Both approaches illustrate the challenges of adapting Article 9 principles to African legal and institutional contexts.

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[197] STMA, section 45(1); MPSRA, section 73(1)(b).
[198] STMA, section 40(5) and (6).
[199] MPSRA, section 71(1)(b).
[200] UCC, article 9-610(b); STMA, section 35; MPSRA, section 5(2).
[201] STMA, section 44(2); MPSRA, section 72(3).
[202] STMA, section 46; MPSRA, section 76(1). Also see UCC, art 9-617(a).
[203] STMA, section 49(2).
[204] STMA, section 50(1).

4.6. Conclusion

To conclude, enforcement remains the ultimate measure of the success or failure of any secured transactions regime. Nigeria and Kenya demonstrate that even where legal systems share a common lineage in Article 9 UCC, legal transplants do not travel unchanged. Rather, they are reshaped by local institutional realities, producing distinct enforcement cultures and divergent commercial consequences.

Nigeria's STMA adopts a more cautious model through mandatory notice and police-supervised repossession. While these safeguards seek to protect borrowers and preserve public order, they equally carry the risk of slowing down enforcement, thereby increasing transaction costs and weakening creditor confidence within an already delay-prone judicial system. Kenya's MPSRA, in contrast, embraces greater speed and creditor flexibility, permitting enforcement where the borrower does not object or, in the language of Article 9, where repossession occurs "without breach of peace". Yet efficiency comes with trade-offs: broader creditor discretion raises concerns about borrower vulnerability, particularly among MSMEs with limited bargaining power.

Although both regimes impose duties of good faith and commercial reasonableness, statutory design alone cannot guarantee fair outcomes. The decisive question is institutional capacity. In Nigeria, judicial inefficiencies and concerns over police brutality carry the risk of frustrating the very protections the law seeks to create. In Kenya, stronger safeguards against creditor overreach are essential so that flexibility does not devolve into coercion. Beyond Nigeria and Kenya, the comparative experience carries an important lesson for Anglophone Africa. Fragmented enforcement rules continue to generate uncertainty in cross-border lending and discourage commercial financing. A harmonized regional framework, similar to OHADA's secured-transactions regime in Francophone Africa, could enhance predictability, facilitate regional credit markets, and expand MSME access to finance.

Ultimately, this article demonstrates that the effectiveness of secured transactions law depends not merely on statutory transplantation, but on institutional legitimacy. Sound legislation may create the framework of secured credit, but only competent courts, trustworthy enforcement institutions, reliable collateral registries, and commercially responsible actors can give that framework practical meaning. The future of secured-transactions reform in Anglophone Africa will therefore not be determined alone in parliaments, but in the everyday realities of repossession, judicial enforcement, and market practice.

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