AN OUTLINE OF PROPERTY LAW AND ESSENTIAL LAND REFORMS FOR NIGERIA

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Abstract

The chequered history and evolution of the land tenure systems in Nigeria has resulted in a complex web of conflicting laws, rules and practices which appear incongruent with international principles of good land governance. This work discusses the multiple sources of property law in Nigeria, highlighting the areas of conflict and hierarchy of such sources of law. The various legislations which regulate land administration are summarised with emphasis on the major provisions of the Land Use Act. The Act is criticised and recommendations made for land reform in Nigeria.

1. Introduction

The word property has diverse meanings depending on the context in which it is used. It could mean ownership or title such as when it is said that 'property in goods pass to the buyer immediately a contract of sale is concluded'. Ownership here extends to an interest in the thing which although less than ownership, nonetheless confers certain rights on the holder such as a right to use or make profit from the thing. Secondly, it may mean the '*res*' or actual thing over which ownership and other lesser interests may be exercised such as goods, land etc. Property is therefore anything capable of being owned, whether tangible or in tangible.[1] It is generally classified into two types: 'real' and 'personal.' Real property is land and anything ordinarily growing on or affixed to it as well as things artificially attached or erected on it such as buildings and crops. Real property includes intangible rights that issue from interests in land. Personal property (referred to as 'personalty'), is anything other than land that can be the subject of ownership, including stocks, money, notes, patents, copyrights, and other intangible rights over tangible goods.[2]

Property law is the area of law that governs the various forms of ownership and tenancy in real property. It regulates rights in and over land and the processes whereby those rights are created, managed, transferred and terminated.[3] Land is peculiar because unlike other properties, it is immovable, transferable in its form and yet capable of being owned in different forms. Different interests may exist on land simultaneously and each interest is a right enforceable by each interest holder. This feature of land is encapsulated in the theoretical doctrine of estates to facilitate the division of various degrees of ownership and rights in land. For example, A may have a life estate over greenacre with the fee simple reversionary interest

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[1] Oxford Dictionaries, http://www.oxforddictionaries.com/definition/english/property, accessed 26/2/14.

[2] BO Nwabueze, *Nigerian Land Law*, (Enugu: Nwamife Publishers Limited,1972) p 4.

[3] The Free Dictionary, http://legal-dictionary.thefreedictionary.com/Law+of+property, accessed 26/2/14.

falling to B; A may lease the same property to C for a term of years and C may in turn may mortgage his term of years to D and at the same time build a house on the land and let the property to E for a lesser term of years. Upon A's death, B (or his heirs) will not have the right to possession of green acre until C, D, and E's estates have come to an end. The estate of B though futuristic, will be regarded as running consecutively with those of A and his tenants (C, D and E) whose interests run concurrently.[4]

2. Definition and Scope of Land

Land remains the most valuable property in the life of man - the bedrock of all properties. It is a source of livelihood, employment and wealth, a foundation for shelter and a base for agricultural production. The majority of natural resources are extracted from land and it is one asset which *mutatis mutandi*, perennially appreciates in value irrespective of economic conditions. The Common Law definition of land goes beyond the earth surface and its subsoil to include all other objects attached to the earth surface such as trees, rocks, buildings and other structures whether naturally attached or constructed by man. The definition even extends beyond these to incorporate abstract rights and interests like incorporeal hereditaments, easements like rights of way and profits enjoyed by persons over the properties belonging to others.

In Nigerian jurisprudence, the Interpretation Act[5] describes land as '…including any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals.' This is actually no definition at all because it merely gives a restricted list of what land includes thus leaving room for conjecture as to whether other lesser interests such as incorporeal hereditaments may be classified as land. Where a land transaction is regulated by a statute or law, the definition used in that statute will govern the transaction, but where there is no such definition; the definition in the Interpretation Act will apply. The statute which adopts the extensive and all inclusive Common Law definition of land is the Property and Conveyancing Law (PCL) 1959. Section 2 of the PCL defines land to include:

> …the earth surface and everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.[6]

Olawoye[7] describes land as '…including, the surface of the earth, the subsoil and the airspace

[4] MP Thompson, *Modern Land Law*, (Oxford: Oxford University Press, 2012), p 272.
[5] Cap 123 Laws of the Federation of Nigeria (LFN) 2004. However, where a land transaction is regulated by a statute or law, the definition used in the statute will govern the transaction; otherwise, the definition in the Interpretation Act remains applicable.
[6] S. 2, Property and Conveyancing Law, Cap. 100 Laws of Western Nigeria, 1959.
[7] CO Olawoye, *Title to Land in Nigeria*, (Lagos: Evans Brother Ltd., 1974), p 38; E Colson, *The Impact of Colonial Period on the Definition of Land Rights in Colonial Africa*, (London: Oxford University Press,1971).

above it, as well as all things that are permanently attached to the soil. It includes streams and ponds. On the other hand, things placed on land, whether made of the product of the soil or not, do not constitute land.' It follows therefore that while a crop or tree is planted it forms part of land and is regarded as land, but as soon as it is cut and removed it ceases to be land. In the same vein, where a building is standing it forms part of land, but where the building is demolished it ceases to be land. To be regarded as forming part of the land, a fixture must be permanently attached to the land, where the fixture is not of a permanent nature it is not land, and can be disposed off without affecting land.[8]

3. The Quicquid Maxim on Fixtures

Ownership of the developments on land where the development was made by persons who are not the real owners of such land has been a major issue in real property law. The Common Law principle *quicquid plantator solo solo cedit* (whatever is affixed to the soil, belongs to the soil), was formulated to address this issue. A chattel affixed to the land as to become part of it loses its character as chattel and passes with the ownership of the land. Thus, chattels are of a temporary nature, while fixtures remain permanent. Whether or not a chattel has been affixed to the land is a question of law for the judge to decide. The decision turns upon the particular circumstances of each case, and mainly but not decisively, the *degree of annexation* and *object of annexation.*[9]By the degree of annexation test, a chattel will rank as a fixture if it is united to the land or affixed to an object which is physically attached to the land. Mere juxtaposition or lying of an article, however heavy, does not *prima facie* make it a fixture. Under the object of annexation test, one must to ascertain whether the chattel has been fixed for its use as a chattel or for the more convenient use of the land or building.[10]

The *quicquid* rule applies under Nigerian customary law but depends on the circumstances of the case. Where a person builds a house on a land without the consent of the owner, and after the owner has pretested severally, he will ultimately loose the property to the owner of the land at the suit of the owner as the maxim applies.[11] However, where the structure or building was erected with the permission of the owner of the land, the improvements remain the property of the person that constructed the building or structure. In fact customary law allows the maker to continue using the building or structure as long as they remain on the land.[12] Niki Tobi summarised the judicial position thus:

> 'Although judicial opinion on the issue is not uniform, there is more support of the opinion that the [quic quid] maxim applies in Nigerian Customary Law. It will be inequitable to contend otherwise. It would appear however that the maxim will

[8] Ibid.
[9] EH Burn, J Cartwright, *Cheshire and Burn's Modern Law of Real Property* (18thedn, London: Oxford University Press, 2011), p 10.
[10]*Ibid*.
[11]*Osho v Olayioye* (1966) N.M.L.R 329, *Ezoni v Ejodike* (1964) All N.L.R 402.
[12]*Adebiyi v Ogunbiyi* (1965) N.M.L.R 395.

not apply under customary law if improvements are made on the land with the permission of the owner of the land. In that case, customary law draws a clear distinction between the land and the improvement made thereon.[13]

4. Classification of Rights in Land

Rights in Land may be classified under three heads: Ownership, Possession and Incorporeal Rights. Ownership connotes the totality of rights and powers that are capable of being exercised over land. These include the right to make physical use of a thing, right to make profit from it whether in money, in kind or in services and the power of management including that of alienation which is the most conclusive way of demonstrating ownership.[14] Ownership therefore implies the fullest rights of enjoyment, management and disposal over property, the owner's title to these rights being superior and paramount to any other rights that exist in the land in favour of other persons. The absoluteness of a right of owner off land is represented by saying that such right is 'Allodial.'[15] A person cannot have allodial ownership of land in Nigeria because Section 1 of the Land Use Act of 1978 removed same from individuals and groups and vested it in the Governors of respective states. Individuals are now only entitled to rights of occupancy.

Possession on the other hand is an incident of ownership and means actual physical use or occupation of land or the right to do so. Possession need not be based on a right to possess as a person who takes up possession of land without a right to do (an adverse possessor) can lawfully maintain a right in trespass against all except a person with a better title.[16]Though an adverse possessor may not be able to keep out the person with a better title, if he resists entry of such person, the person with better title will have to go to court to eject him from possession. The secured right of the adverse possessor flows from the presumption of law that the person in possession is presumed to have title to the property until the person with better title is established and declared by a competent court.[17]In fact, if the real owner does not take any step for a period of time, the possessory right may ripen into title for lapse of time (prescription) or by *laches and acquiescence* on the part of the real owner.[18]To determine

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[13] N Tobi, *op cit. Cases and Materials on Nigerian Land Law*, (Lagos: Mabrochi Books,1992) 2.

[14]*Nsirem v Nwakerendu*, (1955) 15 WACA 71, BO Nwabueze, *Nigerian Land Law*, (Enugu: Nwanife Publishers, 1972), p.9); AM Olong, *Land Law in Nigeria,* (Lagos: Malthouse Law Books, 2012), p. 35.

[15] Allodial ownership is an English concept which vests all lands in England in the Crown. No individual in England has allodial ownership but rather a right of seisin (occupancy) over land which may be finite or infinite.

[16]*Buraimoh v Bamgbose* (2009) MJSC (pt 1), 120, *Nwadiogbu v. Nnadozie* (2001) 6 SCNJ 161 at 167.

[17]*Ogunleye v. Oni* (1990) 2 NWLR (Pt 135) 745; *Ugoji v. Onukogu* (2005) 16 NWLR (Pt 950) 97 at 112 & 119.

[18] There are Limitation Laws for various states in the Federation, usually culled from the Limitation Act of 1882 – a statute of general application. These require that a law suit must be commenced within a specific period of time from when the injury or omission causing the damage or loss arose or occurred. The effect of not commencing a law suit or judicial proceeding within the period limited for bringing the law suit is that such a law suit or claim will be extinguished after the time limited for commencing the law suit has elapsed. For example, the Limitation Law CAP 118 of the Laws of Lagos State 1994 in Sections 16, 17, 19 and 21 state that

which acts amount to actual possession, the Court will consider the circumstances of each case. For instance, clearing, cultivating, erecting fences and other demarcations on land, erection of survey pillars and letting of premises to tenants have all been held to constitute possession.[19]

An incorporeal right is that thing which has no physical existence but capable of being owned or possessed. Land is a corporeal hereditamnt because it is a physical object capable of being possessed. Incorporeal hereditaments on land would consist of incorporeal rights to the corporeal use and profit of land, in other words, those rights on land which though not capable of physical existence or possession, actually exist and are capable of being enforced in law. For example, the right to institute legal actions, right to easements such as right of way, right to make profit by taking something from another person's land etc. Incorporeal rights are of two types: those which give future possessory rights such as a remainders and reversionary interests after a grant/lease and those such as easements which never entitle their owners to possession of land.[20]

4.1 Multiple Sources of Land Tenure Systems in Nigerian Property Law

Land Tenure as a legal phenomenon is a body of rules which governs access to land and the relationship between the holder of land and the community on the one hand and or that between the holder and another party having superior title. Land tenure systems are always community specific as they reflect particular social and economic outlooks; hence the land tenure system of one community may not be easily imported or adapted by another community unless they have similar customs and socio-economic beliefs.[21]The evolution of land tenure in Nigeria was a complex and dynamic process, involving the traditional political system, the modern legal system and the imported common law system. Conflicts over jurisdiction in land matters arose and still arise between individuals with different tenurial rights under different systems of land tenure.[22]

'Actions based on any legal instrument under seal especially where such legal instrument relates to an interest or charge on land, or the arrears of an annuity charged on an immovable property, or the enforcement of an arbitration award where the Arbitration Agreement is under seal, or the judgment of a competent Court of Law, etc, must be commenced (or where a judgment or award is to be enforced) within a period of twelve (12) years from the period when the cause of action arose or the judgment or award was entered.' See *Owhanda v. Ekpechi* (2003) 9 S.C. NJ 1 at p.14; *Okafor v. Idigo III* (1984) 5 S.C. 1 at p.36; *Regd. Trustees v. James* (1957) 2 NWLR (Pt. 61) 556 at p.567; and *Ukav. Irolo* (2002) 7 SCNJ 137 at pp 167 168.

[19]*Nissan (Nig) Ltd. v. Yaganathan* (2010) 4 NWLR (Pt 1183) 149 at 154; *Alhaji Akibu& 3 Ors. v. Azeez & Anor.* (2OO3) 1 SCNJ. 393, *Adeniyi v Ogunbiyi* (1965) NMLR 395; *Nzekwu v Nwakobi* (1962) 6ENLR 114.

[20]IO Smith, *The Law of Real Property in Nigeria*,(Lagos: Lagos State University Press, 1995) p 26.

[21]CO Olawoye, 'Statutory Shaping of Land Law Administration up to the Land Use Act', in JA Omotola, *Essays on the Land Use Act, 1978* (Lagos: University of Lagos Press, 1982).

[22]PC Lloyd, *Yoruba Land Law*, (London, Oxford University Press, 1962), p 12.

Nigeria has three main sources land tenurial systems: the received English laws, statutory law and customary/ sharia law. These shall be explained briefly.

4.2 Customary Land Tenure Systems

When Britain made a colony and protectorate of Nigeria in the mid 20th century, the customary laws of various communities were the only recognizable systems of land tenure. These diverse systems can be grouped broadly into two. The first obtained in northern Nigeria where the colonial administration had placed all lands under the control and subject to the disposition of the Governor. This was on the basis that the Maliki Law operated by the Fulani over much of Hausaland in the 19th century conferred on the colonial conquerors rights to the land of the conquered.[23] All in the North were managed by the Emirs in accordance with Islamic tenets and upon conquest by the British in the early 20th Century, the ultimate rights in the land held by the Fulani lands dynasty were transferred to the British Crown.[24]

Pieces of land legislation were introduced between 1902 and 1935[25] which consequently metamorphosed into the Land Tenure Law enacted in Northern Nigeria in 1962.[26]The aim of the Law was stated to be 'to protect and preserve the right of the natives to the use and enjoyment of the land of the protectorate and the natural fruits thereof in sufficient quantity for the sustenance of themselves and their families', but the real aim was to facilitate the easy dispossession of the natives from their land if and when the land was needed for other purposes.[27]The interest which an individual could have in land was a right of occupancy which could be statutory or customary. The statutory right of occupancy was one granted by the Governor while customary right of occupancy was derived by force of customary law.[28]

By contrast, in southern Nigeria, the traditional system recognised that land was owned by

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[23] The British colonialists adopted a system of indirect rule in the North which was able to thrive because of the pre-existing policy of paternalism instituted by the Fulani dynasty after the Usman Dan Fodio jihad in the early 19th Century. See AR Mustapha and K Meagher K, *Agrarian Production, Public Policy and the State in Kano Region, 1900-2000,* (Crewkerne, Somerset: Drylands Research Working Paper 35, (2000).

[24]CK Meek, *Land Tenure and Administration in Nigeria and the Cameroons*, (London, HMSO, 1957)

[25] These include Native Lands Acquisition Proclamation 1900, the Native Lands Acquisition Proclamation 1903, the Grown Lands Management Proclamation, 1906, as amended, the Native Acquisition Ordinance 1917, the Niger Lands Transfer Ordinance 1916 and the Crown Ordinance 1918. In 1935, the Registration of Title Act of that year was enacted. This Act provided for the registration of land instruments recognized under the Act and was preceded by the Registered Land Act 1965 which was also enacted for the purpose of registration of titles to land.

[26]IO Smith, "Title to Land in the Former Federal Capital Territory of Lagos: Matters Arising", (1996) *Journal of Private and Property Law*, Vol. 25, 1 at 14-15.

[27]*Ibid.*

[28] The law forbade alienation of a statutory right of occupancy without the consent of the Governor and distinguished between natives and non-natives in that where the alienation was to a native, it was unlawful but not void, but where a non-native was concerned, then the alienation was void *ab initio*. A native was defined in the law as a person where father belonged to a tribe in Northern Nigeria. Thus other Nigerians and aliens were classified as non-natives and are therefore subject to the some degree of discrimination.

lineages or extended families. Individuals had only rights of use over such family land. The only land held at the Governor's disposal was that which had been expressly acquired for public purposes as State land.[29]This strategy enabled the government to free large expanses of land from the prevalent customary land tenure in the South which restricts land ownership to the family and communal and hardly individual.[30]The only control imposed by law on the lineages and other local land-holders was an obligation to seek the consent of Government when rights were being conveyed to aliens[31]and to register changes in title.[32]

4.2.1 The Concept of Land under Customary Law

Whether in Northern or Southern Nigeria, land is considered by the people as having historical, cultural, social and spiritual significance above its economic value, ownership of land conferred community identity. The ideology guiding all types of customary land tenures in Nigeria is that land belongs not to human beings, but to God; humans merely have the use of the land. This right of use belongs primarily to the ancestors, but is also for the living and the future generations.[33] This is why in most Nigerian societies, the position at the beginning of the 20th century was that land was not sold. To sell land to a stranger or migrant was to render the security of the community concerned a hostage to fortune. Yet, the extensive labour migrations that colonialism set in motion could not go on without land being alienated to strangers and migrants. Whether in the urban or rural areas, transactions in land gradually emerged in all parts of the country. Thus, as the colonial era progressed, land alienation and sales not only grew in volume and geographical spread but also became the cause of considerable litigation and communal strife, often resulting in violent confrontation.[34]

Initial acquisition of land under customary law is accomplished by conquest or settlement on virgin land by a group or individual.[35] Thereafter, a hierarchy of authority and control over land is followed. At the apex is the community head, followed by the traditional (village) chiefs and then by family heads. Individuals are entitled to portions of communal land as a

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[29]The Public Lands Ordinance of 1876 (later re-enacted as Public Lands Acquisition 1917) empowered the Government to acquire land compulsorily for public purposes subject to the payment of compensation to the land owners The land acquired becomes state (formerly crown) land, and therefore becomes property of the state. Some of these laws were regional such as the Grown Grants (Township of Lagos) Ordinance, No.18 of 1947, the Arotas (Crown Lands) Ordinance, No19, 1947and the Glover Settlement Ordinance, No.21 of 1947. See also *Ajibola v Ajibola* (1947)18 NLR 125; *Glover & Anor v Officer Administering the Government of Nigeria* (1949)19 NLR 45. Other Ordinances include the.

[30] See AEW Park, "A Dual System of Land Tenure: The Experience of Southern Nigeria" (1965) JAL vol.9 1.

[31] The Acquisition of Land by Aliens Law, Cap 2, Laws of Eastern Nigeria, 1952. Meek, *op cit.*

[32] The Land Registration Act Cap 99 LFN 1958 and the various regional Land Registration Laws. For the most part, these laws were ignored as very few land transactions were ever registered.

[33] RW James, *Modern Land Law*, (Ile-Ife: University of Ife Press, 1973).

[34]DA Guobadia and AO Adekunle (eds), *Ethnicity and National Integration in Nigeria: Recurrent Themes*, (Lagos: NIALS, 2004), pp 58 – 87.

[35]*Mora v Nwalusi* (1962) 1 All NLR 681.

result of membership in a family or clan. Families ensure continuous use of the same land by individual members over time but for the purposes of ownership, the family or community is considered a unit until and unless the land is partitioned. As a result, absolute title to communal or family land can never be vested solely in the family or community head; neither the head nor a member of the family can alienate his or her own private property from family holdings.[36]Nevertheless, personal ownership of land is recognized if it is permitted by the relevant law and custom of that area. Evidence of the partitioning of family or communal land signifies an end to the communal or family ownership of that land.[37]

The customary law of land tenure is recognized by our laws and the High Courts are to 'observe and enforce the observance of customary law which is applicable and not repugnant to natural justice, equity and good conscience nor incompatible either directly or by implication with any law for the time being in force.'[38] The Customary Land Tenure varies from one community to the other, and because it is unwritten law, it must be properly proved before the court as the acceptable law governing the particular situation.[39]

5. Land Tenure vide the Received English Law

By virtue of the Foreign Jurisdiction Acts, 1896 - 1913 the British Government assumed powers to legislate on Nigeria. Pursuant to this, the English Common Law, the Doctrines of Equity and the Statutes of General Application[40] that were in force in England on the 1st January, 1900 became enforceable in Nigeria. The Received English land law consists of all case law establishing common law doctrines and principles of English land law. It follows that the English Common Law rules relating to land tenures, disposition of real property, estates inheritance, perpetuities and a number of others are applicable in Nigeria as are doctrines of Equity such as construction of wills, institution and settlement of land, legal and equitable estates and interests in land and the doctrine of constructive notice and *bonafide* purchaser for value. Likewise, English laws pertaining to real property became applicable in Nigeria such as the Statute of Frauds 1677, the Wills Act, 1837, Limitation Acts of 1882; Real Property Act

[36] However, where the head of family alienates the family property without the concurrence of the principal members the sale is voidable. It is voidable at the option of any member of the family. *Ekependu v Erika* (1959) 4FSC 79. See also, *Lukman v Ogunsusu* (1972) 1 All NLR (pt. 41), *Mogaji v Nuga* (1960) 5 FSC 107. In the case of *Essan v Faro* (1947)12 WACA 135, the court held where majority of the principal members of the family opposed a sale by the head of family, that the sale was invalid. *Ogunbanbi v Abowaba* (1951) 3 W.A.C.A. 222, *Folarin v Durojaiye* (1988) IN.W.L.R (pt. 70) 351.

[37]*Nwadiogbu v. Nnadozie* (2001) 6 SCNJ 161 at 167*; Ogunbanbi v Abowaba* (1951) 3 W.A.C.A. 222, *Folarin v Durojaiye* (1988) IN.W.L.R (pt. 70) 351.

[38] Section 26 of the High Court of Lagos State cap 60, Laws of Lagos State of Nigeria.

[39] Until judicially noticed, every customary practice is a question of fact which is required to be pleaded and proved by witnesses in any legal proceeding - *Olubodun v. Lawal* (2008) All FWLR (Pt. 438) p.1468; *Odutola v. Sanya* (2008) All FWLR (Pt. 400) p. 780, *Amodu Tijani v Secretary of Southern Nigeria* (1921) A.C 399 at 404.

[40] Statutes of general application are all the laws that were in force in England as at 1st of January, 1900. N Tobi, *Cases and Materials on Nigerian Land Law*, (Lagos: Mabrochi Books,1992) 2.

1845, the Partition Act 1868, the Conveyancing Act 1881, the Settled Land Act 1882 and the Land Transfer Act 1887.[41]

The influence of received English law is dwindling because we now have local pronouncements of the Supreme Court and other courts of record interpreting these legislations to suit our local conditions. Also, a number of the received laws have been domesticated, (e.g. Property and Conveyancing Law 1958 of Western Nigeria which replaced the Conveyancing Act 1881). As a result, the received English law on property will no longer be applicable in those areas where the laws have been domesticated. Moreover, when the English common law and doctrines of equity are in conflict with local legislations and laws, the local legislations and laws will prevail.[42]

5.1 Land Tenure under Nigerian Land Legislations

Various municipal laws have direct impact on property transactions in Nigeria, the most prominent being the Land Use Act (LUA) of 1978 which nationalizes all lands in the country by vesting the ownership of same in the Sate via the Governors of constituent states.[43]The need for the promulgation of the Land Use Act was borne out of the necessity to harmonize the land tenure system in the country and regulate land speculation. However, the major thrust of the Act was to extend the northern system of land management to the whole country as a means of ensuring easier access to land for government and, ostensibly, for individuals.[44] Some of the more important provisions of the Act are indicated below:

- All land situated in the territory of each state in the country is vested in the Governor of the state. This means that no person can hold a fee simple, fee tail or even a life estate in land in any state in Nigeria - private individuals are entitled to mere rights of occupancy over land and this is the greatest and highest legal interest a holder can have;[45]
- Land control and management, including land allocation in urban areas come under the Governor of each state while land located in rural areas becomes the responsibility of the various local governments. Only the Governor can declare parts of the state territory governed by him as an urban area by an order published in the state gazette.[46]The Governor and Local Government are respectively empowered to grant Statutory and Customary Certificates of Occupancy (C of O) for a definite term for rights of access to land under their control;[47]

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[41] See *Young v Abina* (1940) 6 W.A.C.A. 180; *Apatira v Akande* (1944)17 NLR 149; *Lawal v Younan* (1961) 1 All NLR 245; *Green v Owo* (1936) 13 NLR 43.
[42]*Ude v Nwara* (1993) 2 NWLR (Pt. 278) p. 647.
[43] Land Use Act Cap L5 LFN 2004, section 1.
[44] IO Smith, *op cit* at 198.
[45] Land Use Act, *op cit*, sections 1, 28 and 29.*Kachalla v Banki* (2006) All FWLR (Pt. 309) p. 1420.– Section 5(1); *Ezennah v Attah* (2004) All FWLR (Pt. 202) p. 1858 at 1884.
[46]*Ibid*, Sections 2 and 3.
[47]*Ibid*, Sections 5 and 6.

- Land in urban areas is to be administered by a body known as the Land Use and Allocation Committee which has the responsibility of advising the Governor on the management of urban land. Similarly, a Land Allocation Advisory Committee is provided to advise local governments in like manner;[48]
- The consent of the Governor must be secured for the transfer of a statutory right of occupancy through either mortgage or assignment. The consent of the Local government or that of the Governor in appropriate cases must also be obtained for the transfer of customary right of occupancy.[49] However, land which had already been developed remained the possession of the person in whom it was vested before the Act became effective. For undeveloped lands, the maximum area that any person could retain in an urban area was one half of a hectare while in the rural areas it was 5000 hectares. Such retained rights are deemed to have been retrospectively granted by the Governor;[50]
- The Governor retains the right to revoke a right of occupancy for overriding public interest, public purposes and for breach of the terms and conditions of a Certificate of Occupancy. Where a right of occupancy is revoked for the first two reasons listed above, the holder shall be entitled to compensation for the value of their improvements on the land. This implies state appropriation of land from families and communities without any compensation except for economic crops and erected structures.[51]

All this notwithstanding, Section 4 of the Land Use Act preserves the application of other State and Federal Property Laws with the proviso that they will 'continue to have effect with such modifications as would bring them into conformity with the Land Use Act or its general intendment.' As a result, this section, the following major property laws are recognised:

- *The 1999 Constitution* which in section 43 provides for the right of every citizen to acquire and own immovable property anywhere in Nigeria and leans against the taking away of proprietary vested rights without specific legal authority and the provision of compensation.[52] Section 315(5)(d) provides for the sanctity of the Land Use Act.
- *The Property and Conveyancing Law (PCL) 1959* was enacted by the western region of Nigeria and requires all conveyances of land or interests in land for the purposes of creating any legal estate to be made by deed.[53]
- *The Conveyancing Acts (1881, 1882)* are English Statute of General Application applicable to States of the old Eastern and Northern Nigeria and a part of Lagos.[54]

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[48] *Ibid*, sections 2(1) and (2).
[49] *Ibid*, sections 21 and 22, *Savannah Bank Ltd v Ajilo* (1989) 1NWLR (pt. 97) p 305.
[50] *Ibid*, sections 34-36, *Abioye v Yakubu* (1991) 5 NWLR (pt. 190) p. 130.
[51] *Ibid*, sections 28 and 29.
[52] Constitution of the Federal Republic of Nigeria 1999, section 44.
[53] Section 77 – 97.
[54] These statutes have been repealed and modernized in England and there is no justification for their being retained in our statute books in Nigeria. As Niki Tobi JCA (as he then was) stated in *Caribbean Trading Fidelity*

- *Stamp Duties Act/Laws (2004)* **–** There is a Stamp Duty Act for every State which provide for remittance of stamp duties on land within the control of a given State to the State Internal Revenue Service.[55]
- *Registration of Titles/Instruments Laws*– There are three principal systems of recording rights/ownership of land in Nigeria. These include private conveyances, registration of titles and registration of deeds. The Registration if Instruments Act of 1924 and the Registration of Titles Act of 1935 apply throughout the Federation though some states have enacted modified versions of the laws.[56] The major purpose of these laws is to guarantee titles that have been investigated and registered by the Registrar of Titles so that purchasers of land can rely on it in determining if the vendor has title to sell the property and the encumbrances that attach to the land. An unregistered registrable land instrument must not be pleaded in court and is not admissible to prove title.[57]
- *Wills Act (Amendment) Act, 1852 and Wills Laws of Various States***–** These laws ensure a testator's freedom to dispose of interests in land in his will.
- *Administration of Estates Laws of States* **-** These laws regulate the administration of the estate of a deceased person who dies intestate or testate. The law substitutes local provision on intestate succession with English law on intestacy.

5.2 Resolving Issues Arising from the Tripartite Land Tenure System in Nigeria

In view of the above-mentioned land tenure systems in Nigeria, the problem had always been identifying the particular law governing a particular situation. In other words, can one apply Customary Law, Common Law/Equity andNigerian Statutes interchangeably? Is it possible for instance, to convert a customary land holding to an English-typefee simple estate? The fee simple estate absolute in possession is the most superior title capable of being held in land in England but is different in its quality and content from the ownership structure under Customary Law because the customary interest merely confers possessory right so that it does not confer any attribute of ownership.[58] What this means is that since the two interests are different in quantum and quality, it would be impossible to convert one into the other.

As Tow J. observed in the case of *Balogun v Oshodi*[59], "I do not think that the equitable jurisdiction of the Court can be invoked to convert a mere customary right of occupancy into a

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Corporation v. NNPC (2002) 14 NWLR (Pt. 786) page 133, "English is English, Nigerian is Nigerian… theirs are theirs, ours are ours… We cannot therefore continue to enjoy this borrowing spree or merry frolic at the detriment of our legal system…"

[55] Stamp Duties Act Cap S.8 Laws of the Federation of Nigeria 2004, section 1.

[56] For instance, the Registration of Titles Law 2003, Cap. R4, Laws of Lagos State and the Land Instrument Registration Laws 1924 adopted as Cap 62, Laws of Lagos State (Lagos) – These

[57]*Adesanya v Aderonmu* (2009) 9 NWLR (Pt. 672) 370; *Olowoake v Salawu* (2000) 11 NWLR (pt. 667) 127; *Ossai v Nwajide* (1975) 4 SC 207.

[58]*Balogun v Oshodi* (1929) 10 W.L.R 36 at 57.

[59]*Supra*

freehold because the occupier purported to convey the freehold by means of an instrument drown in English form". In *Boulous v Odunsi*[60], the plaintiff claimed title in fee simple over a parcel of land which he acquired under customary law. His title under customary law was voidable, and would be voided at the instance of the family. He thereafter created a series of conveyances purporting to convert the land to a fee simple estate. The court held that it was not possible to convert such interest under customary law into an estate in fee simple.

The Land Use Act attempted to address this conflict by converting the occupier status of a customary tenant before the Act into a right of occupancy which is the Nigerian equivalent of a freehold.[61]Indeed, all titles in land prior to the Act were automatically converted into deemed rights of occupancy.[62] By this section, customary land title is legislatively converted into non- customary title. Moreover, the Supreme Court has held that the grant of a certificate of occupancy does not defeat a pre-existing customary right over land although customary rights of occupancy may only be granted on the condition that there are no statutory rights of occupancy which would automatically nullify the former.[63]Customary law also continues to govern inheritance of both customary and statutory land rights.

6. Essential Land Reforms for Nigeria

To ensure that the Land Use Act would not be easily amended by subsequent governments, it was made an integral part of the Constitution.[64]This has proved problematic in the face of the dire need for land reform in the country based on numerous criticisms against the Act.[65]One major criticism is the large amount of discretion given to state governors under the Act which is susceptible to abuse. For instance, some Governors use the provision requiring their consent for assignments or mortgaging as a means of raising revenue for their States through imposing heavy charges for granting such consent, thereby obstructing the development of an efficient land market and housing finance institutions in the country. To acquire control over larger expanses of land, Governors designate entire communities and local governments as urban land. Much agitation has resulted from the gross inconvenience of subjecting the closing of land transactions to the arbitrary whims of Governors who have been known to be negligent in living up to their responsibility of signing the necessary documents at various stages of transactions in land.

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[60] (1959) 4 FSC 234

[61] Section 34.

[62] Sections 34 – 36, *Savannah Bank Ltd v Ajilo (supra).*

[63]*AG Nasarawa State v AG Plateau State* (2012) AFWLR 630 ;*AkunneBosa Mbanefo v Mofunanya ACBU& Anor*. (2007) 1 SCNJ 179; *Raphael Udeze&Ors v Paul Chidebe &Ors.* (1991) 1 SC 148.

[64] Section 315(5)(d) of the 1999 Constitution.

[65]An Act of the National Assembly for the alteration of the Constitution other than creation of states, shall not be passed in either House of the National Assembly unless: i) The proposal is supported by the votes of not less than two-thirds majority of all the members of that House; and ii) Approved by resolution of the Houses of Assembly of not less than two-thirds of all the states. See section 9 (2) of the 1999 Constitution.

These inconveniences and delays in securing Statutory Certificates of Occupancy have discouraged Nigerians from registering their land transactions with the result that many land transactions either remain in the informal market or are falsely dated as having been concluded before March 28, 1978, the operative date for the Land Use Decree. The power of Governors and the Local Governments to revoke any right of occupancy over land for overriding public interest has also been used arbitrarily as Governors are known compulsorily to acquire land for their personal interest. Consequently, there is increasing reluctance by both the Courts and the banks to accept the Statutory Certificate of Occupancy as a conclusive evidence of the title of the holder to the land nor as adequate security in an application for loan.[66]Where the purpose of revocations fails, the land should revert to the original holder.

These various weaknesses of the Land Use Act of 1978 have become the major grounds for agitations to have the Decree first, removed from being part of the Nigerian Constitution and second, subjected to thorough review so as to develop an efficient and effective system of land management in Nigeria.[67] A serious free market economy requires a land reform that recognizes the rights of individuals or communities to land either freehold or for a relatively long term duration and is prepared to document these rights in appropriate fashion. It is recommended that a fee simple interest be once again vested upon those with customary rights in order to enable farmers use land as collateral for loans for commercial farming. With regard to compensation, a holder of land should be compensated whether the land is developed or not. Moreover, the holder should be involved in the assessment of the amount to be paid.

The Governors consent should not be required for alienation of land, rather, independent land reform commissions should be established at federal and state levels to exercise some of the overbearing powers of state Governors under the Land Use Act. For short-term land transactions such as leases mortgages, registration of the transaction in the Lands Registry after searches and due diligence should suffice. Again, reducing the inimical cost of stamp duties and levies for registration of titles and instruments would go a long way to ensure greater compliance in registering land transactions from citizens.

Holders of deemed rights of occupancy should be encouraged and indeed incentivized to apply for certificates of occupancy so as to make their tenure certain and populate and enhance land registration records. A robust land registry would engender the growth of a uniform land tenure system for all land holding interests throughout the various states of the

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[66]*Goldmark Nigeria Limited &Ors. v Ibafon Company Limited* (Unreported) Suit No SC421/2001, decided on on Thursday, 4th Day October 2012 by OlufunlolaOyelolaAdekeye. JSC. See also *Olutola v Federal College of Education (Technical) Asaba* (2010) 10 NWLR (Part 1201) page 1; *Obiuweubi v CBN* (2011) 7NWLR (Part 1247) page 465; *Nsiegbe v Mgbemena* (2007) 10 NWLR (Part 1042) page 364; *Kachalla v Banki* (2006) 8 NWLR (Part 982) page 364*; Elegushi v Oseni* (2005) 14 NWLR (Part 945) page 348; *Obikoya& Sons Ltd. v Govt. Lagos State* (1987) 1 NWLR (Part 50) page 385; *Ogunbambi v Abowaba* (1951) 13 WACA page 222.
[67] World Bank, *Doing Business 2010 Nigeria: Comparing Regulation in 183 Economies*, (Washington DC:, 2010).

country and bring much needed sanity into the land market. It would also generate consistent revenue for state governments by way of property taxes. A digitized system of graphical land registration should be developed in all states of the country (not only Lagos) to improve accessibility of records and enable all State Land Registries to contribute to a central records database as is done for instance, in the Corporate Affairs Commission.