



## A CRITICAL ANALYSIS OF ALIENATION OF LAND UNDER NIGERIAN LAW

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### ABSTRACT

*This study examines the concept of alienation of land within the Nigerian legal framework, with particular emphasis on the interplay between statutory provisions and customary law. It analyzes the legal meaning, forms, and processes of alienation under the Land Use Act of 1978, as well as the role of consent in validating land transactions. The work further explores the peculiar challenges associated with alienation of family land, especially under customary law, where the concurrence of the family head and principal members is essential. Judicial interpretations are also considered, highlighting the strict enforcement of statutory requirements such as the Governor's consent and the evolving equitable approach of the courts. It critically evaluates judicial decisions on alienation of land, including the court's strict interpretation of statutory requirements and the gradual development of equitable principles aimed at preventing injustice in genuine principles. The study evaluates the importance of legal instruments such as deeds, certificate of occupancy, and registration processes in perfecting title and ensuring certainty of ownership. It highlighted on the socio-economic implications of ineffective land administration, including delays in obtaining consent, corruption, multiple sales of land, and conflicts arising from the coexistence of statutory and customary land tenure systems. Additionally, the study evaluates the importance of legal instruments such as deeds in perfecting title and ensuring enforceability of transactions. The paper concludes by identifying systemic challenges, including bureaucratic inefficiencies, corruption, and conflicts arising from dual tenure systems, and proposes reforms aimed at improving the efficiency, transparency, and certainty of land alienation in Nigeria. It further advocates for the adoption of digital land administration mechanisms and stronger institutional oversight to enhance efficiency, reduce fraudulent transactions, and ensure certainty in land alienation processes in Nigeria.*

**KEYWORDS:** *Alienation, Deed, Family Land, Lease and Right of Occupancy.*

### 1 INTRODUCTION

The alienation of land constitutes a foundational pillar of Nigerian property law, regulating the processes through which proprietary interests in land created, transferred, or otherwise extinguished. In its legal sense, alienation is not confined to outright sale but extends to a broad spectrum of



transactions, including leases, mortgages, gifts, and assignments, each producing distinct proprietary and contractual consequences.<sup>1</sup> Within the Nigerian legal system, the regulation of land alienation is uniquely complex, arising from the coexistence of statutory provisions and customary law, both of which operate concurrently and, at times, in tension. A decisive turning point in the development of land law in Nigeria was the enactment of the Land Use Act of 1978, which fundamentally altered pre-existing notions of ownership and control. By virtue of Sections 1 and 5 of the Act, all land in each state is vested in the Governor, to be held in trust for the use and common benefit of all Nigerians.<sup>2</sup> This statutory intervention replaced radical ownership with a system of rights of occupancy statutory and customary thereby redefining landholding as a usufructuary interest rather than absolute ownership.<sup>3</sup> Central to this regime is the requirement under Section 22 that the holder of a statutory right of occupancy must obtain the consent of the Governor before any valid alienation can occur.<sup>4</sup> This provision, designed to ensure effective land administration, curb speculation, and promote orderly development, has become one of the most contentious aspects of Nigerian land law.

Judicial authorities have consistently affirmed the mandatory character of the Governor's consent requirement. In *Savannah Bank Ltd v Ajilo*<sup>5</sup>, the Supreme Court held that any alienation carried out without the requisite consent is null and void. Similarly, in *Awojugbagbe Light Industries Ltd v Chinukwe*,<sup>6</sup> the Court reiterated that non-compliance with Section 22 vitiates the transaction entirely. Notwithstanding this strict approach, subsequent decisions such as *International Textile Industries Ltd v Aderemi*,<sup>7</sup> demonstrate a gradual judicial inclination towards equitable considerations, particularly where consent is subsequently obtained or where the interests of justice so demand. This emerging pragmatism reflects the courts' attempt to reconcile rigid statutory requirements with commercial realities.

In parallel with the statutory framework, customary law continues to play a vital role in regulating land transactions, especially in rural and semi-urban communities. Under customary tenure, land is generally held communally by families or kindreds, with the family head acting as a trustee or fiduciary

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<sup>1</sup> T O Elias, 'Nigerian Land Law' (5<sup>th</sup> edn, Sweet & Maxwell 1971) 123–125.

<sup>2</sup> Land Use Act 1978, s1& 5.

<sup>3</sup> Ibid s34.

<sup>4</sup> Ibid s22.

<sup>5</sup> (1989) 1 NWLR (Pt 97) 305.

<sup>6</sup> (1995) 4 NWLR (Pt 390) 379.

<sup>7</sup> (1999) 8 NWLR (Pt 614) 268.



for the benefit of all members.<sup>8</sup> Consequently, the alienation of family land is subject to strict conditions, most notably the requirement of consent of the family head and principal members. The absence of such consent has been held to render the transaction either void or voidable, depending on the circumstances. In *Ekpendu v Erika*,<sup>9</sup> the Supreme Court established that a sale of family land without the consent of the head of family is void ab initio, while in *Bello Adedubu v Makanjuola*,<sup>10</sup> it was held that a disposition by the family head without the concurrence of principal members is merely voidable. These principles underscore the dual emphasis on authority and collective consent within customary landholding systems.

The interplay between statutory and customary regimes has generated significant doctrinal and practical challenges. The duality of tenure systems often leads to uncertainty, particularly in determining the applicable legal requirements for valid alienation. Furthermore, the procedural demands associated with obtaining Governor's consent, coupled with bureaucratic inefficiencies and corruption, have impeded the smooth operation of land transactions in Nigeria. These challenges are compounded by issues relating to documentation, registration, and the use of formal instruments such as deeds, which are essential for the perfection of title under statutes like the Property and Conveyancing Law.<sup>11</sup>

Against this intricate legal background, this work undertakes a critical and analytical examination of the concept of alienation of land in Nigeria. It explores the statutory and customary frameworks governing land transactions, evaluates the role of judicial interpretation in shaping the law, and interrogates the practical challenges that undermine the effectiveness of the system. The objective is to provide a comprehensive understanding of the legal principles regulating alienation, while also identifying areas for reform in order to enhance efficiency, certainty, and equity within the Nigerian land tenure system.

## 2 ALIENATION

In the context of land law, particularly under Nigeria's Land Use Act of 1978 and customary law, alienation refers to the transfer of land or land rights from one party to another. This can include outright sales, leases, gifts, pledges, or other forms of disposition. Alienation can occur under both statutory and customary land tenure systems, but it is subject to specific legal and customary restrictions.

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<sup>8</sup> T O Elias (n1).

<sup>9</sup> (1959) SCNLR 186.

<sup>10</sup> (1944) 10 WACA 33.

<sup>11</sup> Property and Conveyancing Law, s77(1).



The concept of alienation refers to the legal transfer of land or interest in land from one person to another, In Nigeria, this process is intricately tied to statutory provisions, customary laws, and judicial Pronouncements. The cornerstone of land ownership and alienation in Nigeria remains the Land Use Act of 1978, which vested all land in the Governor of each state and introduced the requirement of Governors consent for alienation of interests in land. This article critically examines the key features of land alienation in Nigerian property law, its statutory and customary frameworks, judicial interpretations, and practical challenges.

## 2.1 Alienation of Family Land

The major problem connected with the alienation of family land is with respect to the issue of consent. Though the chief or head of the family is put in charge of family land, it is when the consent of all the members of the family is obtained that it will confer a valid title to a purchaser of family land. Anything short of this would attract either a void or voidable title. The general principles extracted from so many previous cases are now embodied in the case of *F O Lukan v M O Ogunsusi*,<sup>12</sup> where Ademola, C.J.N. stated the law thus:

"We think it convenient in this case to restate the position on the sale of family property:

1. *Bello Adedubu & Anor. v Makanjuola*,<sup>13</sup> laid down the principle that the head of the family cannot dispose of family property without the consent of the family. The sale will be void-able.
2. *Adewuyin v Ishola*,<sup>14</sup> went further to say that *Bello Adedubu and Anor. v Makanjuola* (supra) must not be taken to mean that every member of the family has to give his consent.
3. *Ekpendu v Erika*,<sup>15</sup> this case establishes that a sale of family land without the consent of the head of family or principal members is void ab initio.
4. *Onyekwuluje v Animashaun*,<sup>16</sup> the Supreme Court held that a sale of family land by a member without the consent of the chief or head of the family and principal members is void ab initio.
5. *Adesanya v Otuewu*,<sup>17</sup> the court noted that in Yoruba custom, where there is no head of family, a sale of family land by principal members acting for themselves and on behalf of other members may be valid until set aside.

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<sup>12</sup> (1972) 5 S.C., 46-48;

<sup>13</sup> 10 W.A.C.A. 33.

<sup>14</sup> (1958) W.R.N.L.R. 110.

<sup>15</sup> (1959) SCNLR 186.

<sup>16</sup> (2019) SC.72/2006.

<sup>17</sup> (1993) SC.217/1989.



6. *Agara v Agunbiade*,<sup>18</sup> the court held that where a family head misappropriates property, the remedy is to remove him and appoint another fit and trustworthy person acceptable to the family.

Although family land may be allotted to members of the family, allottees cannot alienate or part with possession of family property without the consent of the family. As Craig JSC pointed out in the case of *Alao v Ajani*,<sup>19</sup> a member-of the family is not permitted to introduce a stranger into the family by the back door, nor is he permitted to fetter the reversionary interest due to family by a complex commercialization possession granted to him.

However, since the concurrence of every member of the family may be impracticable especially where the family is large, the law is that for any such alienation to be valid, only the concurrence of the family head and principal members shall be sought and obtained,<sup>20</sup> and the position at customary law which has been established beyond doubt by the Supreme Court in the old case of *Ekpendu v Erika*<sup>21</sup> and applied in a plethora of cases,<sup>22</sup> is that alienation of family property without the consent of the family head is void ab initio. Where the family head alienates family land without the concurrence of the principal members, the sale is voidable.<sup>23</sup>

Alienation in relation to family property means any form of transfer of family property and includes not only sale<sup>24</sup> but also lease<sup>25</sup> mortgage,<sup>26</sup> pledge or any other form howsoever in which an interest in land may pass from one party to another. Thus, where all the principal members are minors, the head of the family cannot alienate family property otherwise, he conveys a voidable title which may be set aside by any of the minors upon the attainment of majority<sup>27</sup> But minors may give consent through persons appointed as guardian ‘or otherwise standing in loco parentis.’<sup>28</sup>

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<sup>18</sup> (2012) CA/L/304/2009.

<sup>19</sup> (1989) 4 NWLR (113)1.

<sup>20</sup> *Ekpendu v Erika* (1959)4 F.S.C 79.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Agbloee v Sappor* (1947) 12 WACA 187; *Akerele v Atunrase* (1968) 1 NLR 201; *Lukan v Ogunsusi* (1972) 1 All NLR (Pt 2) 41; *Adejumo v Ayantegbe* (1989) 3 NWLR (Pt 10) 417 at 444 p H & 448 B; *Ojoh v Kamalu* (2005) 18 NWLR (Pt 958) 523.

<sup>23</sup> *Ojoh v Kamalu* (supra); *Esan v Faro* 12 WACA 135; *Aganran v Olushi* (1907) INLR 66; *Mogaji v Nuga* (1960) 5 FSC 107; *Adejumo v Ayantegbe* (1989) 3 NWLR (Pt 110) 417-432, E-G.

<sup>24</sup> *Esan v Faro*.

<sup>25</sup> *Ekpendu v Erika*.

<sup>26</sup> *Jacobs v Oladunni Bros.*

<sup>27</sup> *Chairman LEDB v Ashani* (1937) 3 WACA 143.

<sup>28</sup> *Butler Lloyds J. in Onade v Thomas* (1932) 11 NLR 104 at 105.



The rule that disposition by the family head without the consent of the principal members is voidable is subject to three important qualifications:

1. The rule applies only where the family head has acted as such so that where he alienated the land as his own e.g. where he described himself in the conveyance as a beneficial owner of the land, the sale will be void.<sup>29</sup> In arriving at its decision one way or the other, it may be necessary for the court to ascertain whether the head of the family acted fraudulently. For example, in *Akano v Anjuwon*<sup>30</sup> the family head, although conveyed family property as his own, there was evidence that he was in fact acting in his capacity as family head. The court held that the sale was not void.
2. Where the family head made a gift of such land without the requisite consent, the gift is void and it makes no difference that the gift was made to a member of the family.<sup>31</sup> The family head cannot unilaterally order the partition of family property without the consent of all the principal members of the family. Such partition if made is ineffectual to determine the family ownership of the property.<sup>32</sup>
3. Where a sale is void in law, the purchaser owns nothing and ownership remains in the family. But in the case of a voidable transaction, the sale remains valid until the non-consenting party seeks and obtains a court order to set it aside. The general common law principle that a stranger cannot apply to set aside a Deed of which he was not a party<sup>33</sup> does not apply to contracts relating to sale of family land.<sup>34</sup>

Under Nigerian law, alienation denotes the act of transferring ownership, title, or interest in land from one person (the alienor) to another (the alienee). This can occur through sale, lease, mortgage, gift, or assignment. The Land Use Act 1978,<sup>35</sup> particularly Sections 21 and 22,<sup>36</sup> provides the principal legal framework. Section 22,<sup>37</sup> requires that no holder of a statutory right of occupancy shall alienate such right or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor. This provision is rooted in the need for land control and orderly development. However, it imposes significant administrative burdens and has been the subject of much legal debate.

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<sup>29</sup> *Solomon v Mogaji&Ors, Adejumo v Ayantegbe* (1989) 3 NWLR (Pt 110) 147 at 448, C-D; *Ejileme v Okpara & Anor* (2003) 9 NWLR (Pt 826) 536.

<sup>30</sup> (1967) NMLR 7.

<sup>31</sup> *Oshodi v Aremu* (1952) 14 WACA 83.

<sup>32</sup> *Onasanya v Shiwoniku* (1960) WNLR 166.

<sup>33</sup> *Foko v Foka* (1968) NMLR 441; *Ordorv. Nwosa* (1974) T All NLR (Pt 53) 478.

<sup>34</sup> *Adejumo v Ayantegbe* (1989) 3 NWLR (Pt 110) 417 at 444.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid* s21 and s22.

<sup>37</sup> *Ibid.*



## 2.2 Forms of Alienation in Nigeria

### 1. Alienation Under Customary Law

Under customary law, alienation usually involves the consent of the family head and principal members of the family. Consent of the community may also be required in communal land settings. Customary tenure still governs a significant portion of rural land in Nigeria. It refers to the transfer of land or land rights under traditional or customary land tenure systems which are prevalent in many African jurisdictions, including Nigeria, particularly in rural areas. In the context of Nigeria's Land Use Act of 1978, alienation under customary law is subject to specific regulations and community norms.

### 2. Statutory Right of Occupancy

Created by the Governor's grant or deemed grant under the Land Use Act,<sup>38</sup> alienation here must follow the statutory requirement of obtaining the Governor's consent. It is a legal interest in land granted by the government (typically the state governor in Nigeria) to an individual, organization, or entity for a specified period, usually up to 99 years, under the Land Use Act. It is issued in the form of a Certificate of Occupancy (C of O), which serves as evidence of the holder's right to use and occupy the land for a defined purpose (e.g., residential, commercial, agricultural).

The courts have consistently upheld the mandatory nature of the Governor's consent. In *Savannah Bank Ltd v Ajilo*,<sup>39</sup> the Supreme Court held that any alienation without prior consent of the Governor is null and void. Similarly, in *Awojugbagbe Light Industries v Chinukwe*,<sup>40</sup> the court reiterated that the provision of section 22 is mandatory and non-compliance vitiates the transaction. However, judicial attitudes have slightly softened where equity demands. In the case of *International Textile Industries v Aderemi*,<sup>41</sup> the court allowed a rectification where consent was eventually obtained, showing a pragmatic shift towards justice over strict legality.

### 3. Customary Right of Occupancy

For land in non-urban areas, a customary right of occupancy is granted by the local government. Alienation requires local government consent section 21 of the Land Use Act.<sup>42</sup> It is a legal interest in land granted by a local government authority to individuals, groups, or communities for the use of land in non-urban (rural) areas, as designated under the Land Use Act. It is rooted in customary

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<sup>38</sup> Land Use Act 1978, s 34.

<sup>39</sup>(1989)1 NWLR(Pt 97)305(SC).

<sup>40</sup> (1995) 4 NWLR (Pt 390) 379.

<sup>41</sup> (1999) 8 NWLR (Pt 614) 268.

<sup>42</sup>Land Use Act 1978, s22.



land tenure systems, where land is held, used, or managed according to local traditions, customs, or community practices, often for agricultural, residential, or communal purposes.

### 2.3 Documents for Alienation

A deed is a formal legal document issued to transfer legal ownership or interest in land from one party (the *vendor* or *assignor*) to another (the *purchaser* or *assignee*). It is common in property transactions governed by statutory right of occupancy under Nigerian law, and is often executed after due compliance with the Land Use Act 1978, particularly the Governor's consent.<sup>43</sup> A deed of conveyance in Nigeria is a legally binding document that transfers ownership of real property from one party (the *vendor* or in some cases, the *grantor*) to another (the *purchaser* or in some cases, the *grantee*). The *grantor* is responsible for transferring the property rights, while the *grantee* receives these rights. Both parties must ensure that the deed is properly executed to avoid future disputes.

This document is essential in establishing the legal rights of the new owner and ensuring that the transfer is recognized by law. It is a crucial instrument used in the process of land alienation. It is the document that legally effectuates the transfer of ownership as part of the broader process of alienating the land. Without a valid deed of conveyance, the transfer of land ownership is not legally complete and may be subject to future disputes or legal challenges. According to the Property and Conveyancing Law (PCL), transfer of interest in land can only be done through a deed. Specifically, all conveyances of land or interests therein are void for the purpose of conveying or creating a legal estate unless made by deed. Registration of the deed is crucial for its validity and to protect the grantee's ownership rights.<sup>44</sup> The various types of a deed will be discussed below:

#### A. Deed of Assignment:

A Deed of Assignment constitutes the principal legal instrument for the transfer of an existing proprietary interest in land under Nigerian law. It operates to vest the entire interest held by the assignor in the assignee, subject to the terms and covenants embodied therein. In practice, it is the dominant mode of alienation in respect of statutory rights of occupancy, particularly following the promulgation of the Land Use Act 1978, which centralized land ownership in the Governor of each state. The document typically encapsulates essential elements such as the identities of the parties, a precise description of the property, the consideration exchanged, and covenants relating to title and quiet enjoyment. Its legal efficacy, however, is contingent upon compliance with statutory requirements,

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<sup>43</sup>Land Use Act 1978, s22.

<sup>44</sup> PCL, s77(1).



most notably the procurement of Governor's consent, without which the transaction risks invalidation.<sup>45</sup>

### **B. Deed of Gift**

A Deed of Gift represents a formalized mechanism through which ownership of property is transferred voluntarily and gratuitously from a donor to a donee. Unlike transactions founded on valuable consideration, the validity of a gift depends fundamentally on the clear intention of the donor, proper execution of the instrument, and delivery thereof to the donee. Within the context of land transactions, such gifts must satisfy not only the formal requirements of writing but also statutory conditions imposed by the Land Use Act 1978, including the necessity of obtaining Governor's consent where applicable.<sup>46</sup> The courts have consistently scrutinized gifts of land to ensure that they are not tainted by fraud, undue influence, or lack of capacity, thereby reinforcing the need for formal documentation in such transactions.

### **C. Deed of Mortgage**

A Deed of Mortgage is a security instrument of considerable importance within property and commercial law, facilitating the use of land as collateral for the advancement of credit. By this instrument, the mortgagor transfers an interest in land to the mortgagee as security for a loan, subject to the equitable right of redemption upon repayment. Nigerian law recognizes multiple forms of mortgage creation, including legal mortgages by demise or sub-demise, as well as equitable mortgages arising from agreements or deposit of title documents.<sup>47</sup> The Deed of Mortgage delineates the rights and obligations of the parties, including repayment terms, interest rates, and the mortgagee's remedies in the event of default, such as foreclosure or sale. Its significance lies not merely in evidencing the transaction but in legally securing the lender's interest, thereby enhancing confidence in credit transactions.

### **D. Deed of Conveyance**

Historically, the Deed of Conveyance functioned as the primary instrument for transferring legal title in land from a vendor to a purchaser under the received English law system. Although its practical relevance has diminished in modern Nigerian conveyancing practice largely supplanted by the Deed of Assignment following the advent of the Land Use Act 1978 it remains doctrinally significant. The deed embodies the intention of the parties to transfer ownership for valuable consideration and

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<sup>45</sup> LUA 1978, s22.

<sup>46</sup> I O Smith, *'Practical Approach to Law of Real Property in Nigeria'* (2<sup>nd</sup> edn, Ecowatch, 2007) 189.

<sup>47</sup> E H Burn and J Cartwright, *'Modern Law of Real Property'* (18<sup>th</sup> edn, OUP, 2011) 655.



typically includes operative words of transfer, covenants for title, and a detailed description of the property.<sup>48</sup>

## 2.4 Consequences of Not Using a Deed

### A. Lack of Legal Proof

One of the most immediate implications is the absence of legally admissible evidence to substantiate the transaction. The requirement that contracts for the disposition of interests in land be in writing, as encapsulated in the Statute of Frauds, renders oral agreements largely unenforceable.<sup>49</sup> Nigerian courts have consistently emphasized the necessity of documentary evidence in establishing title, particularly in the face of competing claims.<sup>50</sup> Without a deed, parties are exposed to evidentiary deficiencies that may prove fatal in litigation.

### B. Inability to Perfect Title

Closely related to the issue of proof is the inability to perfect title in the absence of a formal deed. Title perfection entails compliance with statutory requirements such as stamping, registration, and the procurement of Governor's consent under the Land Use Act 1978.<sup>51</sup> The Supreme Court in *Savannah Bank Ltd v Ajilo*,<sup>52</sup> made it clear that failure to obtain the requisite consent renders the transaction null and void. Thus, without a registrable instrument, the transferee cannot secure legal recognition of their interest.

### C. Loss of Legal Rights

The absence of a valid deed may ultimately result in the complete loss of legal rights in the property. A transferee who cannot establish a legally cognizable interest risks dispossession, particularly where competing claims arise from parties with properly documented interests. The decision in *Awojugbagbe Light Industries Ltd vs Chinukwe* underscores the primacy of formal documentation and compliance with statutory requirements in determining priority of interests.<sup>53</sup>

## 3 LEASING RATHER THAN OUTRIGHT SALE OF LAND

The preference for leasing over outright alienation reflects a convergence of customary, economic, and legal considerations within the Nigerian land tenure system.

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<sup>48</sup> (n 47).

<sup>49</sup> Statute of Frauds 1677, s4.

<sup>50</sup> *Awojugbagbe Light Industries Ltd v Chinukwe* (1995) 4 NWLR (Pt 390) 379.

<sup>51</sup> LUA, 1978.

<sup>52</sup> (1989) 1 NWLR (Pt 97) 305.

<sup>53</sup> (1989) 1 NWLR (Pt 97) 305.



### **1. Preservation of Communal Ownership**

Under Nigerian customary law, land is often regarded as a communal resource held in trust for present and future generations. The Privy Council in *Amodu Tijani v Secretary*,<sup>54</sup> Southern Nigeria emphasized that land belongs to the community rather than the individual. Leasing aligns with this principle by enabling economic use without extinguishing communal ownership.

### **2. Avoidance of Permanent Loss of Heritage**

Land is deeply tied to cultural identity and ancestral heritage. Nigerian courts have consistently placed restrictions on the alienation of family land, particularly without the consent of principal members.<sup>55</sup> Leasing avoids the irreversible consequences associated with outright sale. The restrictions placed on the alienation of family land, particularly in the absence of requisite consent. Leasing provides a mechanism for temporary use while preserving the heritage value of land for future

### **3. Economic Flexibility**

Leasing offers a sustainable revenue model by generating periodic income, thereby ensuring continuous economic benefit from the land.<sup>56</sup> Rather than receiving a one-time payment, the lessor benefits from periodic income, which may be adjusted over time to reflect market conditions. This ensures that the land continues to generate value long after the initial transaction, thereby enhancing its long-term economic utility.

### **4. Legal and Planning Advantages**

From a regulatory perspective, leasing facilitates more effective land use planning and administration. Government allocation of land under the Land Use Act 1978 is predominantly leasehold in nature, reflecting its suitability for regulatory control and urban planning.<sup>57</sup> This approach simplifies the resolution of disputes and enhances the flexibility of land management policies.

### **5. Steady Income Stream**

Leasing provides a predictable and continuous stream of income, unlike outright sale which yields only a one-time financial benefit. Leasing provides a predictable and continuous stream of income, which may serve as a reliable source of financial stability. This contrasts with outright sale, where the financial benefit is limited to a single lump sum, potentially exposing the seller to long-term economic disadvantage.

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<sup>54</sup> (1921) 2 AC 399 (PC).

<sup>55</sup> *Ekpendu v Erika* (1959) SCNLR 186.

<sup>56</sup> I O Smith (n 40) 210.

<sup>57</sup> *LUA 1978, s5.*



## 6. Tax and Financial Considerations

Although Nigeria's property taxation framework is still developing, Leasing allows for gradual income realization and cost recovery, whereas outright sale may trigger immediate financial and tax implications.<sup>58</sup> particularly where the property has appreciated in value.

## 4 SUMMARY OF FINDINGS

The research reveals several key findings:

1. Alienation in Nigerian law encompasses various forms, including sale, lease, mortgage, gift, and assignment, all of which involve the transfer of an interest in land. These transactions are governed by both statutory and customary rules, depending on the nature and location of the land.
2. Under customary law, the validity of alienation of family land hinges on the consent of the family head and principal members. A failure to obtain such consent renders the transaction either void or voidable, depending on the circumstances. The courts have consistently upheld this principle in numerous judicial decisions.
3. The Land Use Act of 1978 imposes a mandatory requirement of Governor's consent for the alienation of statutory rights of occupancy. Judicial authorities have affirmed that non-compliance renders such transactions null and void, although recent decisions indicate a gradual shift towards equitable considerations.
4. The study establishes the centrality of formal documentation, particularly deeds, in effecting valid land transfers. Without a properly executed and registered deed, transactions remain legally defective and vulnerable to disputes.
5. Leasing is often preferred over outright alienation, particularly under customary settings, due to its advantages in preserving communal ownership, maintaining heritage, and ensuring long-term economic benefits.
6. The study identifies major challenges affecting land alienation in Nigeria, including bureaucratic delays in obtaining consent, corruption, legal uncertainty arising from dual tenure systems, and insecurity of title due to poor documentation and registration processes.

## 5 CONCLUSION

The alienation of land in Nigeria operates within a complex legal regime characterized by the coexistence of statutory and customary systems. While the Land Use Act of 1978 was enacted to streamline land administration and promote equitable access, its rigid requirements particularly the necessity of Governor's consent have introduced significant practical difficulties in land transactions. Customary law, on the other hand, continues to emphasize communal ownership and collective

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<sup>58</sup> I O Smith (n 40) 233.



decision-making, thereby imposing additional procedural requirements for valid alienation. The courts have largely maintained a strict approach in enforcing these requirements, although there is a growing recognition of the need for flexibility in appropriate circumstances.

Ultimately, the effectiveness of land alienation in Nigeria is undermined by administrative inefficiencies, legal uncertainties, and systemic challenges. Without meaningful reforms, these issues will continue to impede the smooth operation of the property market and undermine security of tenure.

## **6 RECOMMENDATIONS**

In light of the findings, the following recommendations are proposed:

### **1 Amendment of the Land Use Act**

There is an urgent need to review and amend the provisions of the Land Use Act, particularly with respect to the requirement of Governor’s consent under section 22. While the consent requirement was originally intended as a regulatory mechanism to prevent indiscriminate alienation of land, in practice it has become a major bureaucratic bottleneck, causing significant delays and increasing the cost of land transactions. The process is often opaque, susceptible to administrative abuse, and inimical to commercial efficiency. A reformed approach should introduce clear timelines for the grant of consent, reduce discretionary powers, and possibly exempt certain categories of private transactions especially those of low economic risk from mandatory consent. This would facilitate a more efficient land market, enhance ease of doing business, and align Nigeria’s land administration system with modern property law standards.

### **2 Digitization of Land Administration**

The transition from manual to digital land administration systems is imperative. The current reliance on paper-based registries fosters inefficiency, loss of records, and corruption. The adoption of electronic land registration platforms, geographic information systems (GIS), and centralized databases would significantly enhance transparency, accuracy, and accessibility of land records. Digitization would also streamline title searches, reduce processing time for registration, and minimize human interference, thereby curbing corrupt practices. Furthermore, an integrated digital system would improve data sharing among relevant government agencies, ensuring better coordination in land governance and urban planning.

### **3 Harmonization of Legal Frameworks**

Nigeria’s dual system of land tenure comprising statutory and customary law continues to generate conflicts and legal uncertainty. Customary landholding systems, though recognized under the Land



Use Act, often operate without formal documentation, leading to disputes over ownership and boundaries. There is a compelling need to harmonize these parallel systems through legislative and policy reforms that recognize and formalize customary interests while subjecting them to standardized registration procedures. This would bridge the gap between informal and formal land markets, reduce litigation, and provide a coherent legal framework that accommodates Nigeria's socio-cultural realities without compromising legal certainty.

#### **4 Strengthening Documentation and Registration Systems**

The security of land title in Nigeria remains weak due to poor compliance with documentation and registration requirements. Instruments affecting land are often not registered in accordance with applicable laws such as the Land Instruments Registration Law, thereby rendering such transactions vulnerable to challenges. Government authorities must enforce strict compliance with registration laws and improve the efficiency of land registries. Simplifying registration procedures, reducing associated costs, and ensuring proper record-keeping will enhance the reliability of title documentation. A robust registration system is essential for preventing fraud, minimizing disputes, and promoting investor confidence in the real estate sector.

#### **5 Public Awareness and Access to Legal Services**

A significant proportion of land disputes in Nigeria arises from ignorance of legal requirements and procedures. Many individuals, particularly in rural areas, engage in land transactions without proper documentation or legal guidance, exposing themselves to future conflicts.

There is therefore a need for sustained public enlightenment campaigns on land rights, tenure systems, and legal procedures for land transactions. In addition, access to affordable legal services should be expanded, possibly through legal aid schemes or community-based advisory services. Empowering citizens with knowledge and legal support will promote compliance with the law, protect vulnerable groups, and reduce the incidence of land-related disputes.