



EXPLORING THE ROLE OF LAND REGISTRATION AND TITLING IN PROPERTY RIGHTS PROTECTION IN NIGERIA

Anugbum Onuoha, PhD.*

ABSTRACT

At the individual or communal level, a well-defined property rights and a well-administered legal regime of land is critical to circumvent socially detrimental outcomes and conflicts. Protection of property rights comprise one of the most complex and challenging array of concerns that societies have to resolve in logical technique. There are three basic elements of private property as follows: Exclusivity of rights to decide the utility of the property; Exclusivity of rights to the services of the property; and, the rights to interchange, transfer or convey the rem on reciprocally congenial terms. In order to sustain property rights, it is crucial for the property right holder to acquire the title to it, to legally hold and protect it. It is against the backdrop of the sustainability of property rights that this paper seeks to determine whether the mode of protection of land rights in Nigeria through the statutory land registration and land titling systems is justified and sustainable. The paper suggests that the current legal regime in respect of registration and titling is sustainable to the extent of the subsistence of the very controversial Land Use Act. The paper further provides new acumens from the rule of law perspective in an attempt to create scholarly consensus on the critical question of formalizing property rights in Nigeria. It concluded that, the acquisition of title to land through registration does not warranty imperishability of land rights because all lands in Nigeria are held by way of term of year absolute. Consequently, land titles in Nigeria are extinguishable in time because the titles only confer the right of occupancy for a term of stipulated number of years. It is recommended, amongst others, that digitization of land registers should be made compulsory.

Keywords: Land Rights, Land Registration, Land Titling, Land Use.

INTRODUCTION

Property rights play a very vital part in the distribution of resources, investment choices and pecuniary expansion more generally. In cost-cutting based on or transitioning from agriculture, economic activity is shaped in particular by the characteristics of property rights over land.¹ Property rights are the special authority to decide how resources are used, whether

* Anugbum Onuoha, PhD, Associate Professor of Property Law and Secured Credits, Head of Department of Private and Property Law, Rivers State University, Port Harcourt, Nigeria.

¹ Agyei-Holmes, Andrew and Buehren, Niklas and Goldstein, Markus P. and Osei, Robert Darko and Osei-Akoto, Isaac and Udry, Christopher, The Effects of Land Title Registration on Tenure Security, Investment and the Allocation of Productive Resources (September 2020). Global Poverty Research Lab Working Paper No. 20-107,

Available at <http://dx.doi.org/10.2139/ssrn.3694776> Retrieved 31 October 2023.

that resource is owned by government or by individuals.² Society approves the uses selected by the holder of the property right with governmental administered force and with social isolation.³ Where the resources are owned by the government, the agent who determines their use has to work under a set of predetermined legal regime.⁴

Nonetheless, property rights are the in *rem* which bestows in a person with respect to the *rem* or pieces of land, essential in his relation to them, and with prohibition against ‘*erga omnes*’.⁵ Simply put, property rights equal to real rights or rights in *rem*. Property rights give the owners or right holders the capability to do with the property what they so wish - to hold on to it, sell it or rent it out for profit, or convey it to another party.⁶

Alchian⁷ argued that ‘one of the most fundamental requirements of a capitalist economic system and one of the most misunderstood concepts is a strong system of property rights.’ Thus, the Latin maxim *erga omnes* (against the world) stresses that the relationship between the property owner and the property should be of public knowledge.⁸ In the case of property rights in moveable goods and movable assets, factual and actual possession are often demonstrated through the frequency of exclusive use hence there is no other requirements for publicity of ownership of the *rem*.⁹ However, with regards to immovable asset, this is not the case. Property rights on immovable assets demand a kind of publicity other than simple possession, hence the need for registration at the land registry.

THE ORIGIN AND DEVELOPMENT OF LAND REGISTRATION AND TITLING

The earliest known history of property titling is believed to have taken place in two ancient Iraqi cities of Uruk and Ur in 2700 BC.¹⁰ Further evidence of land titling can be traced to the Holy Bible records of the land titles of Jeremiah¹¹ and Abraham.¹² In the relatively modern era, different developed countries have the version of their own story on the

² Armen Alchian. ‘Some Economics of Property Rights’ Il *Politico* [1965] 30: 816–829.

³ (n2).

⁴ Harold Demsetz. ‘When Does the Rule of Liability Matter?’ [January 1972] (1) *Journal of Legal Studies* 13–28. Sachs, Jeffrey, Interview *Omni* (June 1991) 98.

⁵ Latin terminology for ‘against the world’.

⁶ Bernard Siegan, *Economic Liberties and the Constitution* (University of Chicago Press 1980).

⁷ (n 1).

⁸ D.A. Aniyom, ‘An Appraisal of the Land Use Decree and its Effects in its First Five Years’ (29th March, 1978 to 29th March, 1983) (9)(1) *The Map Maker*, 17-26.

⁹ Namnso Bassey Udoekanem; David Odegwu Adoga and Victor Onyema Onwumere. ‘Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations’ [2014] (4)(21) *Journal of Environment and Earth Science*.

¹⁰ JP Powelson, *The Story of Land: A History of Land Tenure and Agrarian Reform*, (The Lincoln Institute of Land Policy 1988).

¹¹ Jeremiah 32:9-12.

¹² Genesis 23.



evolution time-line of land rights through land registration. From the 17th Century to date, Scotland is widely believed to have one of the foremost systems of land registration in the modern world.¹³ The Scottish Parliament enacted the Land Registration Act in 1617.¹⁴

The Act made it mandatory for all land deeds to be registered as it established the third stage of the creation and transfer of real rights in land.¹⁵ In order to supplement the 1617 Act, Scotland, ‘feudal grants and dispositions were required to be registered in the General Register of *Sasines* in order to give the proprietor a real right of ownership.’¹⁶ The land registration requirements endured along with all the laws of Scotland until the enactment of the Union of Great Britain in 1707, and the formation of subsequent United Kingdom states in 1800 and 1922¹⁷ England, Wales and Scotland created the Royal Commission on Registration of Title in 1857 which led to the establishment of the land registration systems of Great Britain.¹⁸ Consequently, the evolution of land registration and titling was predicated on ‘the economic effects of property rights in land in which the formalization of ownership of land rights, through land titling and registration, has been related to improved access to institutional credit, higher investments in land, higher land productivity, higher land values and higher output and incomes.’¹⁹ In England and Wales, land title acquired by private individuals does not confer absolute ownership of the land to the person rather it grants limited²⁰ form of ownership in that the explanatory notes to the Land Registration Act,²¹ states that:

The Crown is the only absolute owner of land in England and Wales: all others hold an estate in land. Estates, which derive from feudal terms of tenure, originally took many forms but were reduced by the Law of Property Act 1925 to two, an estate in fee simple absolute in possession, generally known as ‘freehold’; and an estate for a term of years absolute[,] generally known as ‘leasehold’. Apart from an estate, land may

¹³ S. S Rowton, *Land Law and Registration* (Cambridge, 1976); Ruoff, T B F, *Land Registry Centenary* (London, 1962).

¹⁴ K G C Reid, *The Law of Property in Scotland* (1996); W M Gordon and S Wortley, *Scottish Land Law*, (3rd edn, vol 1 2009); C Anderson, *Property: A Guide to Scots Law* (2016); G L Gretton and A J M Steven, *Property, Trusts and Succession*, (3rd edn 2017); G L Gretton and K G C Reid, *Conveyancing*, (5th edn 2018).

¹⁵ Alan Pemberton, *HM Land Registry - An Historical Perspective* (HM Land Registry, 1992).

¹⁶ *ibid.*

¹⁷ Alan Pemberton, *HM Land Registry - An Historical Perspective* (HM Land Registry, 1992); Mayer, Peter: *Ten Chief Land Registrars* (London 1996).

¹⁸ J S Anderson, *Lawyers and the Making of English Land Law 1832-1940* (Oxford 1992); Real Property Commissioners 2nd Report, England (1830); Registration of Title Commission Report England (1857).

¹⁹ Frank F.K Byamugisha, ‘The Effects of Land Registration on Financial Development and Economic Growth: A Theoretical and Conceptual Framework’ (November 1999). Available at SSRN: <https://ssrn.com/abstract=636204> Retrieved 29 October 2023.

²⁰ SR Simpson. *Land Law and Registration* (Cambridge University Press 1976).

²¹ 2002 (n 4).

have the benefit of or be subject to other interests, which are rights and obligations relating to the land, belonging to the owner or to a third party.²²

In Nigeria, the first major approach to land governance was the Ordinance of 1863 which appointed three commissioners to investigate land titles in Lagos.²³ Additionally, the Land Registration Ordinance of 1863 was promulgated.²⁴ The Land Registration Ordinance created Nigeria's first Land Registry in Lagos and later to other parts of the Colony until the proclamation of the Southern Nigeria Land Registration Ordinance 1907 and the proclamation of the Northern Nigeria Land and Native Rights of 1910. Following the 1914 amalgamation, the Land Registration Ordinance No. 12 of 1915 was enacted.²⁵

In the 1924, the Land Registration Ordinance repealed the Land Registration Ordinance No. 12 of 1915 and was enforced across most parts of Nigeria. In 1954, Nigeria became a federation of three regions namely: North, East and South. All three regions adopted the Land Registration Ordinance of 1924. However, the legislation took different acronyms for example, in Lagos, the Eastern Region, Mid-Western and Western region, the legislation was known as the Land Instruments Registration Laws. On the other hand, in the Northern region, it is known as Land Registration Laws.²⁶ Despite the ambit of coverage of the Land Registration Ordinance of 1924, in 1935, Lagos enacted the Registration of Titles Act for the territory of Lagos. The Land Registration Act No 36 of 1924 underwent several amendments.²⁷ This led to the enactment of The Land Instruments Registration Laws of the various states and largely reinforced by the Land Use Act, s48.²⁸ On the other hand, the Land Use Act is reinforced by the 1999 Constitution (as amended) s315(5)(d).

Registrable Instruments, Land Rights and the Development of Titles

Black's Law Dictionary²⁹ defines instrument as a written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share

²² Jan Gościński and Artur D. Kubacki, 'Land Registration Concepts in Translation' [2021] (34) *Int J Semiot Law* 1451–1482.

²³ S.O. Imhanobe, *Understanding Legal Drafting and Conveyancing* (Academy Press Plc 2002) 195.

²⁴ JF Ade – Ajayi. *Milestones in Nigerian History*, (Ibadan University Press 1962).

²⁵ BM Nugu. 'Enhancing Land Titling and registration in Nigeria' paper presented at FIG Working Week 2009, Eilat, Israel.

²⁶ Otubu, Akintunde Kabir, 'Land Registration Law and Practice in Nigeria: Lessons from UK' (December 22 2020) *International Journal of Comparative Law and Legal Philosophy*, Available at SSRN: <https://ssrn.com/abstract=3809659> Retrieved 30 October 2023.

²⁷ YYY Oadem, *Property Law Practice in Nigeria* (University Press Ltd 2009) 169.

²⁸ CAP L5 Law of the Federation of Nigeria, 2004.

²⁹ B. A Garner, *Black's Law Dictionary*, (10th Edition) 918.

certificate. By the same token, the Land Registration Act, s2,³⁰ provides the meaning of the word ‘Instrument’³¹ to mean where one party usually called the grantor confers, transfers, limits, charges or extinguishes in favor of another party called the grantee any right or title to or interest in the state.³² Similarly, section 15 of the Act explains that, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence as stated in *Akinduro v. Alaya*³³ Succinctly put, registrable Instruments are those land transaction documents that actually have such legal effect of transferring the ownership title or interest in the land to another person. In *Lloyd v Dugdale*,³⁴ it was stated clearly that it is registration alone that confers title to the holder of land.

In *Coker v. Oguntoye*³⁵ and in *Ajao v. Adigun*,³⁶ the courts stated that, registrable instruments are those documents which actually are the very means by which a right or title to or interest in land is conferred, transferred, limited, charged and extinguished in favour of another party and within the ambit of the [extant laws]. Furthermore, the Land Registration Act³⁷ defines a registrable instrument as a document affecting land whereby one party called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any right, title or interest in land. These include a certificate of purchase, deed of assignment, power of attorney as it relates to interest in land, deed of mortgage, instrument creating equitable mortgage is registrable as an estate contract, and so forth but does not include a will. In *Nsiegbu v Mgbemena*,³⁸ the Supreme Court held that:

A purchaser of land who has paid and taken possession by virtue of a registrable instrument that has not been registered has thereby acquired an equitable interest that is as good as a legal estate. In other words, the possession of a receipt by a party for payment for the sale of land and the possession of the land by the party raises equitable interest. This may be converted into a legal estate by specific performance. The equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity.

Pursuant to the Land Instrument Registration Law, s16, instruments take priority in accordance to the date of registration. The essence of land registration system is for publicity

³⁰ (1924).

³¹ D R Denman, *The Place of Property*, (Geographical Publications Ltd 1978).

³² M. C Bardi, ‘Geographic Information System as a Tool for Successful Implementation of the Land Use Decree’ [1998] (29) (1) *The Quantity Surveyor* 17-22.

³³ [2007] (30) NSCQR 601 at 691.

³⁴ [2002] 2 P & CR 13.

³⁵ (1939) 15, NLR 57.

³⁶ [1993] 3 NWLR {PART 282} 389.

³⁷ (1924).

³⁸ (2007) 10 NWLR 364.

and to exclude the world from interference and intermingling with the *rem*.³⁹ Registration reduces the uncertainty of property rights.⁴⁰ The effects of registration differ ominously across the diverse land registration jurisdictions.⁴¹ In all States of Nigeria with unique versions of the Land Registration Act, registration is a mandatory mode of establishing title.⁴² In essence, registrable instruments are the documents that convey or create land rights, land titles and/or the interest in land to or in favour of the grantee.⁴³ In *Elegbede v. Savage*,⁴⁴ the Court listed four categories of registrable instruments as follows:

- (a) Documents which transfers interest in land or extinguish any right in law to another such as Deed of Assignment, Deed of Mortgage, Deed of Lease except where unequivocally expressed otherwise, among others;
- (b) Power of Attorney authorizing third parties to deal in land is a registrable instrument;
- (c) An agreement to mortgage land is a registrable instrument. and
- (d) A sub-lease for a term of five (5) years or a sub-lease with an option to renew for a total aggregate of five years or more shall be registrable.

Two models of registration have developed viz – ‘recording’ and ‘registration’.⁴⁵ The recording system of land registration is used in France and the United States. Under the system, the courts determine cases arising from the *rem* by tracing the property rights to the date of formation of the deed and the nature and content of the deed filed at the public land registry.⁴⁶ By the same token, under the registration model, ‘private contracts also get provisional priority when they are lodged. However, the registrar, acting in a quasi-judicial capacity, only registers a right if no other rights are damaged or consent is given by any right holders affected.’⁴⁷ This mandatory requirement eliminates possible flaws and permits the legal system to cogitate registered rights as irrefutable, shifting the liability rule for those

³⁹ T. O Elias, *Nigerian Land Law*, (Sweet and Maxwell 1971).

⁴⁰ E. O Omuojine, ‘The Land Use Act and the English Doctrine of Estate’ [1999] (22)(3) *Journal of the Nigerian Institution of Estate Surveyors and Valuers*, 54-56.

⁴¹ B. O Nwabueze, *Nigerian Land Law* (Nwamife Publishers Ltd, 1972).

⁴² For example, Lagos State Lands Registration Law (LLRL) 2015, s2.

⁴³ G.O Udo, *Model Building in Property Valuation*, (Institute for Development Studies, University of Nigeria 2003).

⁴⁴ (1951) 20 NLR 9, 10.

⁴⁵ I.A. Umezulike, *ABC of Contemporary Land Law in Nigeria* (Snap Press 2013); D.R Denman and Prodano, *S. Land Use: An Introduction to Proprietary Land Use Analysis*, (Allen and Unwin, 1972).

⁴⁶ M. A. El-Hallaq and M. I. E Eid, ‘Development of GIS-Based Land Registry System for the Gaza Strip’ [2020] (7) (4) *International Journal of Engineering Technologies and Management Research*, 1.

⁴⁷ Benito Arruñada and Nuno Garoupa, ‘The Choice of Titling System in Land’, [2005] (48)(2) *Journal of Law and Economics*, 709-727, Available at SSRN: <https://ssrn.com/abstract=311586> or <http://dx.doi.org/10.2139/ssrn.311586> Retrieved 29th October 2023.



unavoidably erratic cases in which errors arise.⁴⁸ Consequently, the guiltless third party acquirers of land are copiously protected when they rely on the land register.⁴⁹

The registration system applies in most countries including Nigeria and the United Kingdom. Arguably, land registration offers governmental warranty fortifying land title.⁵⁰ This implies that, where the title holder is dispossessed of the title to the property due to errors or omissions in the register, or where the register is to be amended, the title holder is routinely compensated.⁵¹ Consequently, land registration protects land from fraud and third party applications for adverse possession. It further protects the land owner in the event of the loss of the title deeds or damaged or destroyed deeds.⁵²

One hotly debated issue is the status of non-registration of registrable instruments. In *Oredola Okeya Trading Company v. A. G Kwara State*⁵³ and in *Nasiru v. Abubakar*,⁵⁴ the courts held that a document that qualifies as an instrument must be registered. In *Benjamin & Ors V. Kalio & Anor*,⁵⁵ the court held that an unregistered document affecting land must not be pleaded and is not admissible in evidence. If such a document is pleaded in a trial Court, upon an application made to it, the Court must strike out paragraphs of pleadings where such an unregistered document is mistakenly admitted in evidence, part of the evidence relating to the unregistered document should be expunged for reason of lacking evidential value. In *Fumudoh v. Ike*,⁵⁶ the court held that no instrument shall be pleaded or given in evidence in any court, unless the same shall have been registered. Consequently, an unregistered document affecting land must not be pleaded and neither is it admissible in evidence for the purpose of claim and proof of title to land. However, an unregistered document is admissible in evidence as and in proof of payment of purchase price for a piece of land by a party when coupled with possession of the land in question by the party. Such unregistered document is capable and creates an equitable interest in such land which can consequently translate into legal interest or estate.⁵⁷ Similarly, in *Odumade v. Ogunaike*,⁵⁸ the Court held:

⁴⁸ A.Utuama, 'The Land Use Act and the Challenges of Millennium Development Goals' *The Guardian*. 25 (10,687): 41, 2008.

⁴⁹ *ibid*.

⁵⁰ D. Didigwu and others, 'Automated Land Registration in Edo State, Nigeria' [2015] (3) (5) *British Journal of Environmental Sciences*, 1.

⁵¹ E. Wickeri and Kalhan, A, 'Land Rights Issues in International Human Rights Law' [2010] (4)(10) *Malaysian Journal on Human Rights*, 16-25.

⁵² G.L Gretton, "Trust without Equity" [2000] (49) *ICLQ* 599.

⁵³ [1992] 7 NWLR (PT 254) 412.

⁵⁴ [1997] 4 NWLR (Pt 497) 32.

⁵⁵ [2018] 15 NWLR (Pt. 1641) 38.

⁵⁶ (2018) All FWLR (Pt 934) 1213-CA.

⁵⁷ Issa Sulyman Danzaria, 'Land Instruments Registration Laws of States: The Provisions Vis-A-Viz The Evidence Act and The Paradigm Shift in Benjamin Versus Kalio' [2018] (11)(16) *Ilorin Journal of Humanities*.

An unregistered instrument is not admissible to prove title to land, it is however admissible as a receipt or an acknowledgment of a payment of money in respect of a land. Where coupled with delivery of possession, it gives rise to an equitable interest which is capable of being converted into a legal estate by specific performance.

In another judgment, the Supreme Court in *Abdullahi & Ors v. Adetutu*,⁵⁹ held as follows: ‘If the unregistered registrable instrument is tendered to prove title to land, it would not be admissible because the law places registration as a mandatory condition precedent to admissibility of instruments affecting or transferring interests in land.’⁶⁰ However, the court added that: ‘The admissibility or otherwise of an unregistered registrable instrument depends on the purpose of which it is being sought to be admitted.’⁶¹

The above judgments are consistent with the decision in *Umoffia v. Ndem*⁶² where the Supreme Court held *inter alia*:

An unregistered registrable instrument, sought to be tendered for the purpose of passing or establishing title to land or interest in land, would be inadmissible under Section 15 of the Land Instruments Registration Law...Such a document, decided as an ‘amorphous’ document ... is not receivable in evidence for the purpose of establishing any right, title or interest in land being unregistered.

In accordance to the court decision in *Umoffia v. Ndem*,⁶³ the unregistered registrable instrument can be presented to show that there was a transaction between the lessor and the lessee. Therefore, it will be admissible as a purchase receipt. It will also be admissible if it is meant to establish a fact which one or both parties have pleaded.⁶⁴ However, in *Opene v. National Judicial Council*,⁶⁵ it was held that, where two Judgments of the Supreme Court are clearly contradictory, the later in time must be taken to have impliedly overruled the earlier

⁵⁸ (2011) ALL FWLR (Pt. 566) 529 at 547.

⁵⁹ (2019) LPELR 47384.

⁶⁰ TG. Nubi and A. Ajoku, [2009] (23)(1) ‘Nexus Between Effective Land Management and Housing Delivery in Lagos’ *Environment and Urbanization Journal*, 285.

⁶¹ *ibid.*

⁶² (1973) 12 SC.

⁶³ *Ibid.*

⁶⁴ *Okafor v. Soyemi* (2001) 2 NWLR (Pt. 698) 45; *Agboola v. UBA* (2011) 11 NWLR (Pt. 1258) 375; *ABU v. Kuyabana* (202) 4 NWLR (PT. 758) 599.

⁶⁵ (2011) LPELR-CA/A/324/07.

case once the facts of the two cases are not totally different from one another, yet the decisions are inconsistent. The later in time must therefore be chosen over the earlier.⁶⁶

INDEFEASIBILITY OF TITLE TO LAND IN NIGERIA

An ‘indefeasible’ land title is one that cannot be set aside on the ground of any defect in the way that it was acquired.⁶⁷ Hence, ‘a title is indefeasible if it is immune from competing claims, whether these are the claims of a competing owner or of the holder of some derivative right such as a mortgage.’⁶⁸ To fully explore the relevance of Indefeasibility of title, it is important to invoke the judgment in *Breskvar v Wall*,⁶⁹ where it was held that: ‘It is a system of title by registration, not a system of registration of title,’ and simplified in *Lutz v Kawa*,⁷⁰ where the Court stated clearly that, ‘it is registration that gives or extinguishes title.’ Similarly, in *Lloyd v Dugdale*,⁷¹ it was stated clearly that it is registration alone that confers title to the holder of land.⁷²

Land registration system serves two central purposes viz: Protection of land ownership and Simplifies the administration of property tax where applicable.⁷³ Land registers are characterized by six doctrines namely: The doctrine of publicity which implies that the contents of the land register belongs to public domain;⁷⁴ The doctrine of certainty which means that the entries in the register must be definite, unambiguous and flawless;⁷⁵ The doctrine of legality whereby undeniable rights are capable of being included in the register;⁷⁶ The doctrine of credibility which implies that all the entries in the register are precise and trustworthy;⁷⁷ The doctrine of individuality which means that each entry occupies a unique personal space in the register;⁷⁸ and, The doctrine of priority, which means that in

⁶⁶ S.A. Osamolu and others, *Real Property: Law and Practice in Nigeria* (2nd ed, Panaf Press Nigeria 2016) 2.

⁶⁷ P. O'Connor, *Deferred and Immediate Indefeasibility: Bijural Ambiguity in Registered Land Title Systems*. *Edinburgh Law Review*, Vol. 13, No. 2, p. 194, 2009, Monash University Faculty of Law Legal Studies Research Paper No. 2010/16, Available at SSRN: <https://ssrn.com/abstract=1725027> Retrieved 22 October 2023.

⁶⁸ K Reid. *Indefeasibility of Title: Law Reform in Scotland and New Zealand* (September 21, 2018). *Edinburgh School of Law Research Paper No. 2018/33*, Available at <http://dx.doi.org/10.2139/ssrn.3253158> Retrieved 21 October 2023.

⁶⁹ (1971) 126 CLR 376 p 385 per Barwick CJ.

⁷⁰ (1980) 23 A.R. 9 (CA) pp 24–25, per Laycraft J.A.

⁷¹ [2002] 2 P & CR 13.

⁷² O. Olagoke, ‘An Examination of the Competing Layers of Rights in Communal and Family Land.’ [2017] (8)(1) *The Gravitas Review of Business and Property Law*.

⁷³ Monika Vozarikova. *Land registration in England and Slovakia – Comparative Study*.

Unpublished LLM dissertation, School of Law. The University of Birmingham, June 2010. Online at: <https://etheses.bham.ac.uk/1240/1/Vozarikova10LLM.pdf> Retrieved 31 October 2023.

⁷⁴ *ibid*.

⁷⁵ *ibid*.

⁷⁶ *ibid*.

⁷⁷ (n42).

⁷⁸ (n42).

the case of two or more applications for registration of a right to the same property, the first in time of the receipt of the application takes the registry space.⁷⁹ It is on this premise that indefeasibility of title arises.

Reid⁸⁰ and Mapp⁸¹ suggest that it is the Torrence registration system that sufficiently sustains the indefeasibility of title. Both scholars are in consensus in reasoning that:

- a) The registration of an invalid instrument (or deed) leads inevitably to a defeasible title. This implies that, a registered deed must not have been obtained through any form of illegality otherwise, the title so acquired is defeasible and therefore voidable;⁸²
- b) Defeasible titles on the register can be altered, modified or transferred by the operation of law but cannot be eliminated from the register;⁸³
- c) Immediate indefeasibility reallocates the defeasibility consequent on an invalid instrument from the purchaser of the property to the existing owner, the total amount of defeasibility on the register remaining the same;⁸⁴
- d) Subject to qualifications, immediate indefeasibility protects against pre-registration error (ie error in the instrument being presented for registration) while deferred indefeasibility protects against post-registration error (ie error caused by the later registration of a rogue instrument granted without the knowledge of the owner);⁸⁵
- e) The statistical probability of losing property is the same with both immediate and deferred indefeasibility so that titles under the one are just as secure, or insecure, as titles under the other;⁸⁶
- f) The source of peril is different and, in the case of deferred indefeasibility, more easily detected and dealt with.⁸⁷

⁷⁹ (n78).

⁸⁰ Kenneth Reid. *Indefeasibility of Title: Law Reform in Scotland and New Zealand* (September 21, 2018). Edinburgh School of Law Research Paper No. 2018/33, Available at SSRN: <https://ssrn.com/abstract=3253158> or <http://dx.doi.org/10.2139/ssrn.3253158> Retrieved 24 October 2023.

⁸¹ Thomas W. Mapp, 'Torrens' Elusive Title: Basic Legal Principles of an Efficient Torrens' System', University of Alberta, Faculty of Law, 1978.

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ Kenneth Reid. *Indefeasibility of Title: Law Reform in Scotland and New Zealand* (September 21, 2018). Edinburgh School of Law Research Paper No. 2018/33, Available at SSRN: <https://ssrn.com/abstract=3253158> or <http://dx.doi.org/10.2139/ssrn.3253158> Retrieved 24 October 2023.

Nigeria operates ‘a positive’ land registration system which is similar to, but not exactly the Torrens system. It is important to observe that the Torrens system provides the substance for the sole most important quality and indefeasible title,⁸⁸ which provides the land owner with immunity from attack by adverse claims.⁸⁹ In Nigeria however, it is the deeds that are registered which is very different from the Torrens system.⁹⁰ The simple difference between the deeds registration and Torrens system is that the deeds system involves registration of instruments while the Torrens system involves registration of title. Nonetheless, O’Connor⁹¹ explains that:

A “positive system” [as used in Nigeria] is one in which the state warrants that the rights shown on the register are valid and effective according to their terms. This is an authoritative system, a “register of conclusions” which allows purchasers to transact safely in reliance on the registered title even if it turns out to have been procured by defective means.

A positive land registration system creates indefeasibility of title. Indefeasibility of title implies that a registered title over real property precludes third parties from challenging and making claims over the property.⁹² This is because indefeasibility of title means that the name of the title holder is listed as the registered owner on the title records thus, the title so recorded is indefeasible. Therefore, unregistered third parties can only claim rights to the property in exceptional circumstances. It is the need for indefeasibility of title that led to establishment of the Torrens system of land registration believed to have developed from the English Real Property Act 1858 (‘TorrensTitle Act’).⁹³

The Torrens land title system functions on the standard of ‘title by registration’ which requires that all land title ought to grant the highest indefeasibility to registered owner. This implies that registration should act as a shield for the benefit of the title owner. The essence of the Torrens law is to eliminate the long process of proving a chain of titles such as tracing

⁸⁷ (n86)

⁸⁸ I.O. Smith, *Practical Approach to Law of Real Property in Nigeria*. (Ecowatch Publication Limited 1999) 212.

⁸⁹ F. U. Massajuwa and P. A. Aidonjio, ‘The Challenges of the Plain and Unambiguous Legal Interpretation of some the Provisions of Nigeria Stamp Duties Act’ [2020] (6) (3) *Kampala International University Journal of Social Sciences* 91.

⁹⁰ H. Ghebru and A. Okumo, ‘Land Administration Service Delivery and its Challenges in Nigeria: A Case Study of Eight States’ (2016) Working Paper 39 International Food Policy Research Institute 13.

⁹¹ P. O’Connor, *Deferred and Immediate Indefeasibility: Bijural Ambiguity in Registered Land Title Systems*. *Edinburgh Law Review*, Vol. 13, No. 2, p. 194, 2009, Monash University Faculty of Law Legal Studies Research Paper No. 2010/16, Available at SSRN: <https://ssrn.com/abstract=1725027> Retrieved 22 October 2023

⁹² A. Ayanru, ‘Retrospective Registration (Double Consent) of Title at the Lagos State Lands Registry’ <www.mondaq.com> accessed 30th October, 2023.

⁹³ Theodore B.F Ruoff, *An Englishman looks at the Torrens system* (Sydney Law Book Company of Australasia Pty Ltd, 1957) 106.

title back in time through a series of documents.⁹⁴ Torrens title is a land registration and land transfer system, in which a state creates and maintains a register of land holdings, which serves as the conclusive evidence (termed ‘indefeasibility’) of title of the person recorded on the register as the proprietor (owner), and of all other interests recorded on the register. To simplify the Torrens land titling process, the Act created three systems of evidence of title as follows:

- a) Mirror principle: the title becomes a mirror of the legal facts represented by the register, establishing them as true whether or not the deeds say otherwise.⁹⁵
- b) Curtain principle: the register is the sole source of information about the legal title, meaning it is not possible to reconsider the chain of title – the sequence of previous deeds. This effectively draws a curtain once title by registration is conferred.⁹⁶
- c) Indemnity (insurance) principle: this provides for compensation of loss caused by fraud or by errors made by the registrar.⁹⁷

The Torrens Title System (TTS) simplifies dealing with land, as it relies on the indefeasibility of the title concept, where a registered interest has priority over all other interests.⁹⁸ This system allows property buyers to rely solely on title registration to determine ownership or interest in the real property. In accordance with the Torrens title system, the land register functions as definite ‘evidence of the ownership of, and interests in, the land, including any mortgages and leases of the land. This reflects the concept of indefeasibility of title that underpins the Torrens title system. Thus, is guaranteed by the relevant legislation.’⁹⁹

THE EFFECTS OF COERCIVE STATUTES ON LAND TITLES IN NIGERIA

In Nigeria, land use and land titles have become complicated by the enactment of coercive or intolerable laws. The intolerable laws are meant to force the communal and private mineral lands into place, to enable the government at various levels to keep firm grips on mineral resources. The coercive laws allowed the Federal Government to have a monopoly on all minerals in all lands in Nigeria thereby limiting the property rights of communities and

⁹⁴ O.C. Chukwuocha and F. I. Emoh, ‘An Analysis of the Relationship Between the Costs of Title Registration and Property Investment Yields Within Owerri, Imo State of Nigeria’ [2021] (9) (6) *British Journal of Environmental Sciences* 37.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

⁹⁸ K. G Baffour and F N Hammond, ‘Prognosis of Land Title Formalization in Urban Ghana: The Myth and Reality of Awareness and Relevance’ [2013] (14)(1-2) *African Studies Quarterly*.

⁹⁹ Brendan Edgeworth, *Butt's Land Law* (7th ed, Thomson Reuters, 2017) at Chapter 20.

private persons. Thus, registration and titles to land in Nigeria does not guarantee ownership in perpetuity.

The current legal regime in respect of registration and titling is unsatisfactory in that, a substantial aspect of property rights such as the right to mineral resources has been excluded from the private and group ownership of lands. It is therefore inequitable for significant aspects of private land rights to be extinguished through coercive laws notably the Land Use Act, s1¹⁰⁰ which vests all lands in the governor of each state and Section 28(1) which states that ‘it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.’

There other national laws that have limited the land title and land ownership rights in Nigeria such as the Constitution of the Federal Republic of Nigeria, s44(3)¹⁰¹ which states that:

.... entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

Similarly, the Exclusive Economic Zone Act, s2(1)¹⁰² provides that:

...sovereignty and exclusive rights with respect to the of exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive economic Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercised by the Federal Government.....

By the same token, the Petroleum Industry Act 2021, s1 provides as follows: ‘... the entire ownership and control of all petroleum in, under or upon any lands, including and covered by water) which is: (a) is in Nigeria or (b) is under the territorial waters of Nigeria, (c) forms part of the continental shelf; or (d) forms part of the Exclusive Economic Zone of Nigeria.’

Despite the foregoing argument on coercive laws, there are several other problems that are affecting land registration and the recording of land titles in Nigeria. For instance, Nwuba, and Nuhu¹⁰³ have chronicled the changes. Firstly, the scholars argued that the

¹⁰⁰ 1978.

¹⁰¹ 1999 (as amended).

¹⁰² 1978.

¹⁰³ CC Nwuba and S.R. Nuhu, ‘Challenges to Land Registration in Kaduna State, Nigeria’ [2018] (3) (1) *Journal of African Real Estate Research* 162.

Federal Lands Department established the Federal Lands Information System (FELIS) to address the problems in registration of lands that are under the control of the Federal Government across all states of the country. However, that no efforts have been made to alleviate the complexities in the registration processes.¹⁰⁴ They noted that the procedures for formalising land transactions after purchase of land in Lagos and other States are cumbersome, bureaucratic, costly and lengthy therefore, discouraging prospective registrants.¹⁰⁵ The Electronic Document Management System (EDMS) used in land registration in Lagos is relatively reliable.¹⁰⁶ Generally, the problems affecting land registration in Nigeria include the high cost of registration, inadequate technical skills of registry staff, incompetent staff, high land charges, ambiguous legal structure and institutional problems.¹⁰⁷

CONCLUSION

The treatise herein affirms that land registration is purely the system by which all matters vis-à-vis possession, ownership, or rights conveyed in land can be registered and securely recorded with the government to provide evidence of title, facilitate transactions and prevent the unlawful transfer of land titles.¹⁰⁸ Consequently, the article made strenuous attempts to expound the multiplicity and plurality of land registration systems in Nigeria tracing it from the colonial origin to the present era.¹⁰⁹ It acknowledges the use of land registration and titling systems as a major means of sustaining title to the *rem* along with the appertaining rights attached to it, and burdens affecting it. The article affirms that an efficiently operational land registration system warrants the security of land transfer processes. Nevertheless, it acknowledges that, there are noteworthy variances in the way national land registration systems are run due to their historical development and divergent national legal configurations.

¹⁰⁴ BR Adeyinka, 'Transparency in Land Title Registration: Strategies to Eradicate Corruption in African Land Sector, [2020] (3) (5) *African Journal on Land Policy and Geospatial Sciences* 162.

¹⁰⁵ A. Aderibigbe and others, 'An Assessment of Land Title Registration Process in Osun State, Nigeria' (2015) The 15th Aires Annual Conference 85.

¹⁰⁶ UNODC, Corruption in Nigeria: Patterns and Trends (2020).

¹⁰⁷ B. Nwannekanma, 'Land Registries Remain Cesspit for Bribery in Nigeria' <www.guardian.ng> Retrieved 18th September, 2023.

¹⁰⁸ H. Ghebru and A. Okumo, 'Land Administration Service Delivery and its Challenges in Nigeria: A Case Study of Eight States' (2016) Working Paper 39 International Food Policy Research Institute 15.

¹⁰⁹ A. Didigwu and A. Osarenkhoe, 'Automated Land Registration in Edo State' [2015] (3)(5) *Nigeria British Journal of Environmental Sciences* 13.

The acquisition of title to land through registration does not guarantee perpetuity of land rights since all lands are allocated by way of term of year absolute.¹¹⁰ Thus, land titles are extinguishable in time because, land title in Nigeria merely confers the right of occupancy for a term of stipulated number of years.¹¹¹ Probably, the best form of title to land is that acquired through the operation of International law such as the indigenous peoples' rights to their territorial lands.¹¹² However, such rights have been extinguished under Nigeria extant national laws.¹¹³ Nonetheless, there must be an assured system of sustaining and safeguarding deed registration. Thus, there is the need for all-inclusive storage, preservation and registration of land titles. There is also the problem of the complex process of obtaining Governor's consent to regularize registrable Deeds.

RECOMMENDATIONS

The paper proposes the following as endorsements for the enhancement of land registration and land titling in Nigeria:

- a) The Land Use Act should be repealed in its entirety and land registration should be made obligatory in all the state land registration laws in Nigeria.
- b) All State lands across Nigeria should be surveyed and segmented into visibly distinguishable plots in accordance with the cadastral mapping models.
- c) All the States in the country should adopted the geographical information system (GIS) to support land administration.
- d) Digitization of land register should be made compulsory.
- e) A more vigorous approach should be devoted in the authentication of information provided by the registrants.
- f) There should be continuous training and development of Land registry Staff in all the States of Nigeria to add value to competence including ICT skills.

¹¹⁰ I.A. Umezulike, *ABC of Contemporary Land Law in Nigeria* (Snap Press 2013).

¹¹¹ J. Odili, 'Conveyancing Procedure in Nigeria: Recommendations for Better Land Titles' (2021) Munich, GRIN Verlag <<https://www.grin.com/document/1064728>> accessed 21 October, 2023.

¹¹² G.S. Adamu, 'Bauchi State Land Transformation. A situation report in computerization and reform on land sector in Bauchi. (2012) (1) Professional lecture notes on Estate surveying and valuation Bauchi/Gombe Branch, 10.

¹¹³ P. F. Dale and R. A. McLaren, GIS in Land Administration <www.geos.ed.uk> accessed 12 February, 2023.