NIGERIAN LAND LAW

HISTORICAL EVALUATION OF LAND ACTS IN NIGERIA

The jurisdiction of the Nigerian state was grounded in many cases upon treaties of cession concluded between fountain and the Chiefs of the various communities in the country. A treaty of cession operates to transfer to the acquiring power, the powers & rights which the ceding ruler possessed in his capacity as community ruler. Such powers & rights relates to sovereignty or political power. Property, in the absence of express or implied exclusion or reservation, passed under the treaty to the new sovereign of the ceding state. Once the transfer is concluded any reservation exclusion contained in the treaty had a moral force only and did not operate to fetter the powers of the new sovereign. The implication is that the entire legal system of the dependency is abrogated and with it all the rights held there under.

However the British Policy was to recognise the existing legal system and to respect private right held there under in so far as they are not repugnant to natural justice, equity and good conscience; and subject of course to any laws which the new sovereign may enact from time to time for the more effective administration of the territory.

For a clear understanding of the evolution of land acts in Nigeria the country will be divided into 3 based on historical evolution.

(a) The colony of Lagos

(b) The Southern protectorate

(c) The Northern protectorate

The Colony of Lagos:

The treaty of cession in 1861 had the legal effect of passing the loot title of land comprised in the treaty to the British crown. The consistent view then was that the Crown owned Lagos land. However the exact nature of the Crown's legal right over Lagos was not settled until the landmark case of Amodu Tijani v. Secretary, Southern Nigeria (1921) 2 AC 399 in which the Privy Council held, inter alia that "there was a cession to the British Crown, along with the sovereignty, of the radical or ultimate title to the land. By the treaty King Docemo of Lagos granted to the queen of Great Britain, her heirs and successor the legal rights to Lagos land for ever....."

Southern Nigeria:

The treaties in the rest of Southern Nigerian outside Lagos fall broadly into

(1) Those which merely ceded jurisdiction over external affairs

(2) Those which ceded territories together with full powers of both external & internal government.

The British Government saw the two as of the same nature. That is, they amounted to cession of power and jurisdiction without sovereignty. The constitutional states of Southern Nigeria outside Lagos was declared a protectorate in these areas. The British did not make a claim to the beneficial ownership of land by virtue of the area being a protectorate. However, the crown inherited certain parcels of land which were vested in the Royal Niger Company. The company had acquired large concessions of land from local chiefs. These parcels of land with the exception of its trading posts became vested in the crown by virtue of the Niger Landing Transfers Ordinance 1916. Although by 1900 the crown had by usage, acquiesced in by the communities concerned assumed a complete and unlimited jurisdiction which exhausted the entire substance of sovereignty, ports and island of Lagos together with all the rights and profits appurtenant there to, as well as the direct, full and absolute dominion and sovereignty of the Island. See A.G. V John Holt. (1910-15) 2 NLR 1; Onisiwo v A.G. (1912) 2 NLR 77.

Northern Nigeria:

On the proclamation of the Protectorate of Northern Nigeria in 1900 Sir Frederick Lugard as the High Commissioner and representatives of the Royal Niger Company concluded agreements whereby all lands, rights and easement held by the company were vested in the High Commissioner for the time being in trust for His Majesty, his heirs and successors. By section 3 of the Niger Lands Transfer Act No. 2 of 1916 all rights to land belonging to the Royal Niger Company in the Northern provinces of the protectorate on 1st January 1900 "shall be and are hereby vested as from 1st January 1900 in the Governor in trust for Her Majesty, her heirs and successors." Such lands acquired by this agreement became Crown lands while all other lands in the North became public lands which the British Government claim by rights conquest. This was given legal effect by Proclamation No. 13 of 1902. Ntairn v Akpan (1916-18) 3 NLR 10; Amachree v Kaho (1913) 2 NLR 108;A.G. V John Holt. (1910-15) 2 NLR 1 (supra).

After the Fulani conquest of parts of Northern Nigeria in the early 19'° Century, the Fulani conquerors regarded the land of those communities conquered by force of arms as belonging to the Moslem state while the previous owners became merely rent paying tenants. When the British in turn 'conquered' the Fulani rulers they in turn claimed to have succeeded to the rights of the Fulani rulers. This claim was given legal effect in the Public Lands Proclamation of 1902. The proclamation declared as public lands:

(a) All lands being the property of any conquered or deposed rulers

(b) All lands not in actual occupation of persons as of tenants, agents, servants of any person having an origin as derivative title to such lands under any proclamation as under any law or custom preventing in that part of the protectorate where such lands were situated.

In practice the Crown respected prevailing rights in land but kept a strict administrative control of the lands. This gave rise to the Lands and Native Rights Proclamation 1910. This was amended and re-enacted in 1916 as the Lands and Native Rights Ordinance, further re-enacted as the Land Tenure Law of 1962.

The Law defines the rights of the state to be, all the lands in Northern Nigeria whether occupied or unoccupied are held by the government with powers of control, disposition and administration. The government has the power to grant rights of occupancy over unoccupied lands without reference to anybody, family or community and could revoke any right of occupancy under certain conditions.

Nature Of Property Law In Nigeria

From ancient times land to indigenous tribes of Nigeria does not only mean the ground and the subsoil. All Nigerian tribes seem to be agreed that land has a non-material character.

It is expressed as embodying the essence of the community. This is given expression in the nature of customary law in Nigeria. Thus to the lawyer, land is not only the ground, the subsoil and all things attached to it. It includes incorporeal properties known as incorporeal hereditament such as easement restrictive covenants, profits and other immaterial rights in land.

The general rule of custom is that land belongs to the community or family as a corporate entity. It belongs not only to the living members of the community but also to dead members and principally to the unborn members as well.

Sources Of Nigerian Land Law

1. Customary Land law/Islamic law

2. Nigerian Legislation

3. Received land law, which include statute of general application in force before 1900 in England. Common Law and Doctrine of Equity

4. Judicial Precedents (case law)

1. Customary Law/Islamic Law

These are rules relating to and regulating interests and rights in land that have survived colonial rule. However, their admissibility in any court depends on their satisfying the prescribed conditions for their admissibility as the applicable law in relation to any legal proceeding.

Section 16 and 18 of the Supreme Court ordinance provide that the courts in Nigeria will continue to observe and ensure the observance of the rules of native law and custom provided they are not contrary to natural justice, equity and good conscience Section 14(3) Evidence Act Cap 62 LFN 1990 provides ..... Provided in case of any custom relied upon in any judicial proceeding. It shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience".

The above is called the Repugnancy Doctrine Test. Where a rule of customary law satisfies the repugnancy test it would be applied. Customary law governs and regulates the entire body of customary land tenure in Nigeria. This is communal land, family land and inheritance.

In addition to satisfying the repugnancy test customary/Islamic law is applicable only where it is not incompatible with any statutory law in force. Further, such a rule of customary Islamic law must not be contrary to public policy.

2. Nigerian Statutes

These are local enactments by the Nigerian legislative. These include:

(a) Re-enacted foreign statutes

(b) Property and Conveyancing Law Cap 100 Laws of Western Nigeria 1959

(c) Land Instrument Registration Act 1924

(d) Registration of Title Act 1935

(e) Land Tenure Law Cap 59 Laws of Northern Nigeria 1962

(fl Land Use Act 1978

(g) The Federal and state government make enactments on specific subjects affecting land e.g. Rent control Act/Rent control and Recovery of Residential premises law CAP laws of Lagos state.

3. Received Land Law

These consist of Common law, Doctrines of equity, Statutes of general application passed in England before 1900. There is provision for these laws in so far as local conditions permit.

4. Judicial Precedent (case Law)

Nigerian Judicial decisions, subject to the hierarchical order of court have binding effect. Judicial decisions when made in an alien jurisdiction i.e. England have merely persuasive effect on the courts in Nigeria. Olowu v. Olowu (1985) 3 NWLR 372.

Doctrine Of Tenure

The application of customary land law, received land law and statutory enactments have brought about a dual tenurial system in the country. Land can be converted from customary land tenure to a tenure under the English law and vice versa.

Under strict customary law landholding was largely communal rather than individual.

OWNERSHIP

This is the most ample of rights that can exist in land. It connotes the totality of rights that are capable of being excercised over land. Some of the incidents that flow ownership rights are

1. Right to make physical use of the land

(This could be beneficial or even totally wasteful)

2. Right to income and profit from the land

3. Right to possession, management and control of land

4. Right to alienate, partially or out right

Therefore, ownership signifies the maximum right or interest that exist in land. The right of the owner is not subject to or restricted by the superior right of another person. The right of an owner to possession could be immediate (where an owner is in actual possession) or mediate (where the owner grants possession of his land to another). Right to possession is mediative during the duration of the grant. The right of possession reverts to the owner where the tenure of the grant comes to an end.

POSSESSION

This is the physical presence or control a person exercises in relation to land. The right to possession can be lawful where it is exercised as a right of ownership of land or exercised by virtue of a grant from the owner of the land. The right of possession is wrongful where it is exercised neither by virtue of ownership right nor by grant of any description. This is technically expressed as adverse possession, e.g. the possession of a trespasser or a squatter. Possession depends on the nature of land possessed. Land unlike chattel cannot be reduced to absolute and exclusive possession and control at all times. It is immovable. Thus the fullest possession a person can have is where he is resident on the land. One does not need to erect a building on land to amount to physical control and possession. All that the law requires is some physical sign, which will indicate control and this vary with the type of land. In Wuta-Ofei v. Danquah (1961) 1 WLR 1238 (1961) 3 AER 597, the Privy Council held that an uncultivated bush land which was demarcated with pegs at its 4 corners by the defendant amounted to sufficient act of possession on her part against the claimant who never had any title to the land. On the authority of this case it has been held that the erection of pillars

on land is a sufficient indication of possession.

Okechukwu v Okafor (1961) 1 ANLR 685; Alatishe v. Sanyaolu (1964) 1 ANLR 398 in this case the Supreme Court held that surveying of land and demarcation of its boundaries by stout pegs was sufficient to amount to possession.

Whereas in Arefunwon v. Barber (1961) IANLR 887 the defendant only used the piece of land in question for occasional deposit of firewood. The Privy Council held that such act was insufficient to support a claim for title by long possession.

Though the law requires the presence of an intention to control, the degree of control needs not be absolute. The degree of control varies with the nature of the land. Absolute control over land is impossible in the first place as it is immovable. Nevertheless there must be clear overt-physical signs and acts which clearly indicate possession. Thus flimsy make believe acts of user cannot amount to possession. In Lewis v The Colonial Secretary (1891)1 NLR 11 a piece of barren land which had been planted once or twice with cassava but later left to waste and vagrant cattle, though there was a flimsy fence which could not prevent the incursion of goats had been erected was held not to amount to possession.

Note that possession gives rise to rights of possession which is different from right to possession (right to possession being an incident of ownership):

1. Possession gives the right to exclude. The fact of actual physical possession confers on the person in possession the right to exclude all intruders to the land. This right is available to the person in possession against all persons except the person who has the right to possession (the true owner). Thus the adage possession of 90% of the law does not apply to the person with a right to possession.

2. Possession imports the presumption of ownership. 5.145 Evidence Act. Where both parties to a claim for title to land have defective titles or none at, all the person in possession is entitled to the protection of the law: Iseru v. Catholic Bishop, Warri Diocese (1997) 3 NWLR Pt. 495 at 517. Against the person with the right to possession an adverse possessor cannot sustain a claim based on possession. Note that adverse possession is a title that is only voidable and not void ab Inito. It is only liable to be avoided at the instance of the person with a right to possession. Aromire v Awoyemi (1972) 1 A NLR (Pg 10).

3. Adverse possession could ripen into ownership where the true owner is guilty of laches and/or acquiescence, which would lead to the extinction of his right to possession in favour of the person in possession Nwaokafor v Dilibe (1972) 2 ECSLR (PT.2) 489. Adverse possession may confer a possessory title on a squatter under the operation of the relevant limitation law where the owner of land suffers a delay of 12 years after he came to know of the interference with his right to his land before maintaining an action to recover possession.

4. Section 36 of the Land Use Act 1978 confers on an occupier or holder of land not in an urban area before the commencement of the Act who was using such land for agricultural purpose, right to continue to be entitled to possession of such land for use for agricultural purpose as if a customary right of occupancy had been granted to the occupier/holder by the appropriate Local Government. Section 36(3) provides that on such occupier/holder's production of a survey plan of the land and application in the prescribed manner to the local government, if the local government is satisfied with his claim register the holder or occupier as one to whom a customary right of occupancy had been issued in respect of the land.

Section 14 Land Use Act 1978 vests exclusive possession of land on the occupier subject of course to the provisions of the Act and any laws relating to way leaving for prospecting for minerals and the right of the Governor of the state where the land is situated.

It is evident that in earlier times the right to land became established via possession. The settler comes to the land either as a result of persecution in his home town or he is adventurous. He came to the land, possessed it de facto i.e. by operating on the land;

taking physical control of the land. This physical control must couple with the will to possess, a de jure possession, when he has to repel challenges to his possession. Thus for possession to constitute a basis of ownership there must be (1) the corpus i.e. occupation and the (2) animus possedendi which is the intention to appropriate the land to one's exclusive use.

WAYS OF PROVING TITLE

There are five ways of proving ownership of land. Each of the ways suffices. They are not cumulative but alternatives.

1. Ownership may be proved by traditional evidence Idundun v Okumagba (1976) 9/10 SC 227.

2. Ownership of land may be proved by production of documents of title which must of course be fully authenticated in the sense that they must be duly executed. Johnson v Lawanson (1971) 1 All NLR 56.

3. Exercise of numerous acts of ownership over a period of time sufficient to create the inference of ownership. Ekpo v Ita NLR 68.

4. Acts of long possession and enjoyment of the land Section 46. Evidence Act Cap 62.

5. Proof of possession or ownership of the adjacent land. Piaro v Tenalo (1976) 12 SC 31.

Customary Land Tenure

Land tenure is the system of land holding in any particular society. A striking feature of land tenure in Nigeria is the duality between customary land tenure land and the received English law.

Before the advent of the English law all lands were held under customary law. The system is not uniform throughout the country. However there are certain striking common features of customary land tenure in the country. These are:

1. Nature of ownership (which could be communal, or family in exceptional cases individual)

2. Management of land holding

3. Alienation of land

4. Succession to land

5. Customary land relationship.

NATURE OF OWNERSHIP UNDER CUSTOMARY LAW

Long Possession

Under customary land tenure law, land is said to belong to the community, village or family. After many generations of continuous and undisturbed possession with no tribute ever having been demanded or paid, such land is said to belong to the community. The community regards itself and is regarded as the owner of such land. Nsirem v Nwakerendu (1955) 15 WACA 71. A striking characteristic of this system of land holding under customary tenure is that it lacks the modem connotation of individualistic ownership of land. In the words of the Privy Council in Amodu Tijani v. Secretary, Southern Nigeria (1921) 2 AC 399 per Lord Haldene "...the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village and the family, never to the individual....." Omowhosa V Odiuzor (1999) 1 NWLR (Pt. 586) 173; (1999) 1 SC 40; Ali v. Alesinloye (2000) 4 SC (Pt.1)111, 136.

It is of course not true to hold the presumption that individual ownership was foreign to customary law. On the contrary it can be argued that family lands must have had their origin in individual ownership. However the onus is on him who asserts individual ownership to prove that the land belongs to him. Ovie v Onoriobokinhe (1957) WRNLR 1 69.

Community land ownership can come from the history of origin and settlement of the community. The founders of the settlement may treat the land as jointly owned and refuse to permit an individual member to appropriate any part of the land to himself as individual property. However, the individual could acquire occupancy rights in perpetuity. Fadil v. Abiri (1959) WRNLR 186; Adewoyin v. Adeyeye (1963) 1 All NLR 421. This right often amounts to ownership.

CONQUEST

Community ownership of land may also arise from conquest; when a community is conquered in war its lands passes to the conqueror by right of conquest. Mora v. Nwalus (1962) 1 A NLR 681.

Community or village ownership of land is of a relatively limited scope. Except for communities with strong central authority e.g. Ife, Benin, Ibadan, Ijebu, Itsekri etc, where ownership of land is vested in the community or Oba. Community land is often limited to strips of communally held land e.g. public pathways, meeting grounds markets, ancestral shrines, riverbanks, and specifically designated community land. Amachree v Kalio (1913) 2 NLR 108.

Note that the complete denial of individual tenure by Lord Heldene in Amodu Tijani case has been held to be bad law. In Otogbolu v Okeluwa & Ors (1981) 6-7 SC 99 (supra) where Obaseki JSC held that"..... under customary law an individual could still own land. See the following line of cases. Eze v Igilegbe (1952) 14 WACA 61; Ovie v Onoriobokinhe (1957) WRNLR 1 69 at 170; Tongi v. Khalil (1953) 14 WACA 331.

MANAGEMENT OF COMMUNAL LAND

The general theory is that land held by the community is managed and controlled by the headman or chief of the community, assisted by elders, chiefs, and minor chiefs depending on the traditional political structure of the community. The principle was simply stated by Heldene in Amodu Tijani v. Secretary, Southern Nigeria (1921) 2 AC 399 (supra) ". . .In every case the chief or headman of the village or community has charge of the land and in loose mode of speech, he is sometimes referred to as the owner. He is to some extent in the position of a trustee and as such holds the land for the benefit of the community."

This principle has been reaffirmed in a number of cases. See Alao v Ajani (1989) 4 NWLR (Pt 116) . The headman or chief is not the owner of the communal land because at all times the title to communal land rests in the community as a corporate entity distinct from its members. He is not a trustee in the English conventional sense as communal land lacks the attribute of a trust property; namely the separation of interests in trust property into equitable and legal ownership. In Alli v. Ikusebiala (1985) 1 NWLR 630, made the observation that the head of the family in relation to the family is not a trustee because the legal title to the land is vested in the family in the same way the headman is not a trustee of the community because the legal title is vested in the community as a corporate entity.

The headman of a community is the representative of the community. He can be regarded as the alter ego of the community. In Ekwuno v Ifejiaka (1960) 5 FSC 156 at 160 per Hubbard "the Obosi, a community in Eastern Nigeria is not a legal entity, they are a large number of natural persons". Although it "... describes a large number of people having common relationship. It is neither a natural nor legal person capable of suing or being sued in our courts of law. There being no representative, no process can be served on it and it cannot itself issue any process."

pledge the land for security for a loan to the community, defend the territorial integrity of the land and revoke an allocation to a member for overriding public purpose, recover land from misbehaving tenants. Uwani v Akom (1928) 8 NLR 19.

By the Lands Right Vesting in Trustees Law of the former Western Region, each of the states carved from this region apply the provision of the law by transferring the title of communal land to either the headman or chief or any other person it may appoint and in that situation the headman/chief becomes a statutory trustee in the convention sense.

The exercise of the chief's power is however subject to the individual's right. Adewoyin v. Adeyeye (1963) 1 All NLR 421.; Oragbade v. Onitiju (1962) 1 ANLR 32; Fadire v. Abire (1959) WNLR 186.

The implication of this is that in respect of land allocation to members the ownership of the community is displaced or postponed (where he had a mere possessory right). A member or an allocatee will enjoy such right not only for life, it would transmit to his children at his death. The chief cannot revoke an allocation made to a member unless such land is required for public purpose. The chief cannot make an inconsistent grant of the same land to someone else. Asiyanbi v. Adeniji (1966) NMLR 106.

In that case the supreme court held that the Oni of Ife could not make a grant of land over which a family enjoyed hunting rights to another person without consulting the family.

Apart from the description as a trustee, the community head has been described as caretaker; which he is not, for a caretaker is only a licencee without the amplitude of rights and power of the community head over community land, making the description a misnormer.

He has been described as an agent which he is not as his authority is inherent in the position and does not derive from any agency or mandate and the community members are incompetent to abrogate or restrict the chief's rights and powers in relation to communal land without his consent. Gbenebichie u Awoshika (1952) 14 WACA 101.

MEMBER'S RIGHT

Members of a community have definite rights in communal land, which vary from locality to locality. Generally, every member of the community have equal rights to a portion of the communal land to build upon and farm. The member allocatee does not become the absolute owner of the land. He enjoys exclusive possession while the title remains in the community. Consequently, while the allocation subsists the chief cannot make an inconsistent grant of the same land to another person without consultation with and agreement of the original allocatee. Adewoyin v. Adeyeye (1963) 1 All NLR 421.. The Ooni of Ife testified in this case that once an Ooni has allocated a portion of the community land to a native of Ife for farming, the allocatee enjoyed ownership rights to the exclusion of the community.

In Asiyanbi v. Adeniji (1966) NMLR 106, the supreme court held that the Ooni could not make a grant of land over which a family has hunting rights to another person without consulting the family and that any rule of customary law to the contrary will be rejected as repugnant to natural justice, equity and good conscience.

The rule has been explained by the principle that communal land does not admit anyone but the communal user and consequently a subsisting allotment cannot be derogated by the grantor.

In certain communities, a grant of land by the traditional authority exhausts in the allocatee member is permanent right to the land akin to ownership. In such a case the community holds a right of reversion which is exercisable upon abandonment. The Benin land tenure system is an example of this. Arase v Arase (1981) 5 SC 33 at 58; Otogbolu v Okeluwa & Ors (1981) 6-7 SC 99.

The member's right to share in the communal land is not dependent on the pleasure of the community head. It is a right inherent in every member by virtue of his or her membership of the community. This right can be enforced by a member against the community head or other members who unlawfully deprive him of his right therein. Ajobi v Oloko (1959) LLR 152.

A member who converts communal land to his use without a proper allotment could be liable in trespass. Banigo v Banigo (1942) 8 WACA 148. However, in some segmentary communities e.g. the Ibos in Nigeria, a member can without permission from the community head or elders, clear and occupy vacant bush land belonging to the community as a whole.

It must be remembered that a member who has had community land allocated to him does not become the absolute owner although he enjoys exclusive possession and the land is transmissible on his death to his heirs. Oragbade V Onitiju (1962) 1 ANLR 32. The onus lies on him who claims m individual ownership of such land to prove: Eze v Igilegbe (1952) 14 WACA 61; Ovie v Onoriobokinhe (1957) WRNLR 1 69

The allocation confers no property but possession and the occupier cannot alienate the land. Thus, he lacks a cardinal attribute of ownership: Oshodi v Balogun (1936) 4 WACA 1; Lewis v. Bankole. An attempt to alienate would amount to bad behaviour and would make him liable to forfeit allocation and earn an eviction.

Right To Share In Income

All the members of the community and not the chief alone have a right to share in whatever income accrues from communal or family property. This could be: rents, mensal profit, proceeds from sale, compensation from government for compulsory acquisition etc, though the first charge on this sum is the cost of maintenance and management of the property. The courts have however held community heads to account as a fiduciary of the power of management and control of community property. Archibong v Archibong (1947) 18 NLR 117; Aromire v. Oresanya (1938) 14 NLR 116.

In Archibong v Archibong (1947) 18 NLR 117 the Judge noted:

"It seems to me that he must be regarded as a kind of trustee and that each member of Archibong's house has some kind of interest in the trust money. His obligation to the cestuis que trust are not nearly so high as those of a trustee known to English law. He is given considerable latitude, but his actions must be capable of reasonable satisfaction of the members of a sub-branch of his house."

An order for account would only be made where a member demands for it and the chief refused to render it. Ajobi v Oloko (1959) LLR 152. His duty to account differs from that of an English trustee or a caretaker or agent appointed by the community. It is a quasi-fiduciary duty. Adedire v. Ife Divisional Council (1963) 1 ANLR 39. In that case the council granted a lumbering concession over a forest reserve to a company where the Ooni was a director and major shareholder. The concession was held to be a breach of the Ooni's quasi-fiduciary duty and was set aside. In a case such as this the chief must account for profit and advantages received.

Right To Participate In The Management Of Communal Land

The chief is required by customary law to consult and obtain the concurrence of the prominent members before concluding any transaction affecting land. This particularly relates to alienation of land. Where the chief alienates land without the necessary consultation, the transaction may be void or voidable depending on the circumstances of the case. Where the chief refuses or neglects to act where he is required i.e. to bring or defend an action in relation to communal land a member can do so on behalf of the community. Bassey v Cobham (1924) 5 NLR 92.

Status Of Strangers

Unlike a member whose interest is inherent in his being a blood member of the community, a stranger is not entitled as of right to a portion of communal land. Where he is an immigrant or refugee he might be granted a portion of communal land as customary tenant subject to good behaviour and he in return acknowledges the title of the community by the payment of tributes. Lasisi v. Tubi & Anor (1974) IANLR (Part 11) 4 38; Onotaire v. Onakpasa 1984 12 SC 19; Asani Taiwo v. Akinwunmi (1975) 1 ANLR.

In some jurisdictions where the custom permits it a stranger may acquire title to land by purchase. Omonfonmwan v Okweguate (1986) 1 NWLR (Pt. 40) 179; Oshodi v. Balogun 4 WACA 1. The stranger does not have the right to appropriate virgin land to himself. The stranger cannot acquire ownership right as at all times he acknowledges his overlords title by the payment of tributes. The stranger's right to the land may be in perpetuity and devisal at death yet he cannot alienate the land under any condition. He can only use the land for the purpose for which the grant is made.

Position Of Strangers

1. The right to appropriate vacant virgin land is the exclusive preserve of members of the community. Strangers cannot appropriate virgin common land.

2. Strangers can only acquire title to land by grant from the traditional authority or family in whom ownership has been granted.

3. A stranger cannot acquire ownership right. It may be permanent and transmissible at death yet he cannot transfer it.

ox1pr m 9n1T use the land for purposes for which the rent has been made.

An Overview Of The Land Use Act

Before the Land Use Act, ownership was considered as the largest interest any body, family or community could have in land, and his interest was not subject to the superior right of another person. His/her claim of the title to land was absolute. However, by virtue of Section 1 of the LUA 1978 "All lands comprised in the territory of each state in the federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act."

Thus this section of the Act has limited the amplitude of ownership of land in Nigeria. In the case of Nkwocha v Gov. of Anambra State (1984) 6 SC p. 362, the Supreme Court stated that after the LUA, ownership of land in the absolute sense cannot be asserted by individuals because the effect of Section 1 is to vest land in the absolute sense in the governor of the state within which the land is comprised. And in Yakubu v. Abioye (1991) 5 NWLR (Pt. 100) p.130 it was held that the Land Use Act 1978 has removed the radical title in land from individual Nigerians and vested the land in the military governor of each state in trust for the use and benefit of Nigerians . It has vested the management and control of land in urban areas of each state in the Governor and those in non urban areas in the local government. The only interest in land the Governor and local government can lawfully grant are rights of occupancy which fall into 2 categories; (a) statutory right of occupancy (b) customary right of occupancy. There cannot be a grant of absolute interest or fee simple

absolute to any person. In Savannah Bank of Nigeria Ltd v. Ajilo (1989) I NWLR (Pt. 57) pg. 305 at 421 the Supreme Court held that "with the promulgation of the LUA 1978 all the unlimited rights and interest Nigerians had in their lands were swept away and substituted with very limited right and rigid control of the use of their limited right by military Governors and local government." Section 49 of the Act preserves the title of the Federal Government and all its agencies in the land held by them before the Act.

After the promulgation of the Act the right of a Nigerian to land is limited to a right of occupancy. This could arise by express grant of a statutory right of occupancy by the Governors by virtue of Section 5 of the Act as under Section 6 which authorises the local government to grant customary right of occupancy to any person in a non-urban area for residential or agricultural purpose.

A deemed grant of a right of occupancy may arise by virtue of Section 34 (2) and 34(5); also by virtue of Section 36 (2) and 36 (4). Section 34 (2) provides that where the land is in urban area and it is developed, the person in whom it was vested immediately before the commencement of the Act shall continue to hold it as if he is a holder of a statutory right of occupancy issued by the Governor. While Section 34 (5) limits the quantum of land a person can hold where the land is in an urban area and undeveloped. The person in whom it was vested immediately before the commencement of the Act shall be entitled to one plot or half a hectare as if he is a holder of a statutory right of occupancy granted by the Governor and the excess if any shall be extinguished and vested in the Governor in accordance with Section 1 of the Act.

Section 36 relates to the power of the local government land in non-urban areas. Section 36 (2) where the land is in a non-urban area and was immediately before the commencement of the Act being used for agricultural purpose, the occupier or the holder who was using it for agricultural purpose shall continue to be entitled to possession and use of the same land for agricultural purpose as if he is a holder of a customary right of occupancy granted by the appropriate local government. Note that the land must (1) be in a non-urban area, must have been used for agricultural purpose (2) the occupier or holder is the person who was using it for agricultural purpose. The person is entitled to continue to hold the land as ifhe is a holder of a customary right ofoccupancy.

Section 51 defines occupier to mean aperson who was lawfully using or occupying the land in accordance with customary law. The significance of this is that the occupier/ holder may not be the owner or the person in whom the land was vested before the commencement of the Act. However, he must have come into possession of land lawfully i.e. be grant

Section 36 (4) provides that where the land is in a non-urban and it is developed the person in whom it was vested before the commencement of the Act shall continue to hold it as if he were a holder of a customary right of occupancy granted by the appropriate local government.

What the individual now claims is a right of occupancy which may be by express grant by virtue of Section 5 and 6 LUA or a deemed grant by the governor or local government under Section 34 (2) 34 (5) 36 (2) and 36(4).

Communal land holding is on a gradual but steady decrease. This is because of a combination of the powers of compulsory acquisition under the various enabling statutes e.g. Minerals Act.

By section I of the LUA 1978 there is a dramatic vesting of all lands in the Governor of the state to hold in trust for the use and benefit of all Nigerians. The effect of the statute is that the community only holds a right of occupancy whether actual grant of it by virtue of Section 5 and 6 of the Act or a deemed grant as in Sections 34 and 36. Nevertheless, Section 4 of the Act preserves pre existing customary land tenure rules as they apply in the different parts of the country. But they will only apply in respect of the administration of such lands and shall be so modified as to bring them in conformity with the provision of the Act.

FAMILY PROPERTY

Family

The Term "Family" in relation to family property means a group of persons bound by blood who are entitled to succeed jointly to the property of a deceased founder of the family. Such persons are usually the children of the deceased founder of the family. Children, generally refers to both sexes. However, in certain customs e.g. the lbo societies, female children have been held not entitled to inherit property of their late father. In Lopez v. Lopez (1924) 5NLR 5, female children were regarded as members. As a general rule a widow is not a member of the family and therefore has no right to inherit the property of her late husband. Nezianya v Okagbue (1963) 1 All NLR 352. Similarly the collaterals i.e. brothers, sisters, cousins, etc, of the family do not constitute members of the family in the sense.

However, the deceased founder may by his own declaration in a Will choose to enlarge the ambit of the word family to include relations, other than his children. In Sogbesan v. Adebiyi (1941) 16 NLR 26 the deceased founder of the family devised his property to his heirs as "family house." In the Will he appointed his brother as the head of the family, with further directives to act in family matters under the directive and control and advice of the testator's mother and aunt. The question that arose was whether the term "family" included the testator's brothers and sisters as well as their children. It was held that the Will made it clear that the testator intended the word "family" to include his brothers and sisters and their descendants as well as his own children. Thus this extended meaning of family would include a man and his children, brothers, uncles, aunts, nephews, cousins etc. There is no mathematical limit to the extent of the extended family either in number of members or in the degree to which relationship may be traced either upwards or downwards. The extended meaning of family becomes relevant where the family property is created by deed or where there are circumstances which show that relatives are intended to be included. In George v Fajore (1939) 15 NLR 1. The children who were intended to benefit were specifically mentioned by name in the Will creating the family property. In such a situation the `family' would embrace for the purpose of family property only those children and their descendants in their stead, where the circumstances of the family admits, the family may include slaves and domestics, including their descendants. Dabiri v Gbajumo (1961) ANLR 255 at 231.

On the other hand, a grandchild is not a member of the family for the purpose of succession to family property. But he will become one where his own parent who is a member of the family dies. Thus, a grandchild cannot demand a portion of family land as of right to build a house or farm. Lewis v Bankole (1908) 1 NLR 82, nor can he challenge a disposition of family property by his own parents.

Family Property

Family land or family property is property vested in a family as a corporate entity. The individual member of the family has no separate claim to the ownership to any part or the whole of the property. The established rule of customary law is that no member of a land owning family has a separate individual title of ownership to the whole or any part of the family land. Therefore a member has no disposable interest in family property either during his lifetime or under his Will. This means that it is only the family that can transfer its title to any person. A purported transfer of family land by a member of the family is therefore void and of no effect. In the case of Solomon v Mogaji (1982) 11 SCI the family head purported to alienate a portion of family land as his own. The purported alienation was held to be void. As he had no separate individual interest to transfer. Similarly, a member cannot dispose of family property by Will. Ogunmefun v Ogunmefun (1931)10 NLR 82-testatrix devised family property to certain relations, it was held that she had no such right.

Creation Of Family Property Family property may arise by:

1. Operation of law

2. Act of parties

Acts Of Parties

Allotment: Where land is given to a person with the intention that such a person should have permanent title over the piece of land, where the person dies intestate (or he makes a Will to that effect) the land will devolve on his children as family property. The community out of whose land the piece of land is allotted has a right escheat in a family property so created. This means that on the extinction of the grantee family, the land will revert to the community and once again form part of community land.

First Settlement: family property can also arise where a family, through their ancestors, was the first to settle on a virgin land and exercised acts of ownership over sufficient length of time to create inference of exclusive owners. Idundun v Daniel Okunmagba & Ors (1976) NMLR 200; Ajala v. Awodele & Ors (1991) NMLR 127.

Purchase: Family property may also arise where family funds are used to purchase land. In Nelson v. Nelson (1953) 13 WACA 248, family funds were used to purchase land the conveyance of which was executed in favour of the members. It was held that the property was family property.

Gift Where a family is a donee of an unconditional gift of land, family property will arise. This follows the rule that a donor of an unconditional gift to a donee cannot recall his title.

Operation Of Law: Wills and Deeds inter vivos are very common methods by which an owner of land can create family property; Yinusa v Adesubokan (1971) ANLR 55; George v Fajore (1939) NLR 1.

USE OF FAMILY FUNDS TO ACQUIRE FAMILY LAND

(a) Where money collected from family is used to buy another property. Subject to contrary intention the bought property is family property or where members of the family contribute money to buy property, the property is family property Tse Tse Wa v. Acquah (1941) 7 WACA 216.

(b) Contribution to build on family land: where all members of a family contribute money to build a house on family land.

Where a member improves family land without consent. Bassey v Cobham (1924) 5 NLR 92

(d)where a member used his own money to reclaim family land and built on it. It was held that both the land and the building belong to the family. Amisah Abatoo v Abafoo (1974) 1 GLR 110 a member of the family erected a house on a family land. It was held that he had possessory right over the house and not over the land, even after his death his children could not inherit the house.

(e)Redemption Of Pledge Or Mortgage Of Family Land: Where the family land under a pledge or mortgage is redeemed by one or more members of the family with money from his/their own private resources, the redeemed land does not become private property of the person or persons who redeemed it. It continues to retain the character of family land, note that any debt owed by the family is owed by every member of the family, a member of the family is a stranger to the transaction that affects the family as a whole - (privity) - This rule is however subject to any prior agreement within the family. In Ofondu v Onuoha (1964) NMLR 170 consent was obtained from members of the family to redeem a piece of land. It was redeemed and the land became individual property.

Conquest - where a family conquers a people. It could appropriate the land of the conquered people.

Management Of Family Property

The power of management and control of family property is vested in the head of the family. He is strictly enjoined to exercise their power only in the interest of the family. The family head is the guardian and representative for all purposes of the family property. To him therefore belongs the right of general land. He takes custody of all documents affecting the title or other interest of the family management and control of family property. He negotiates transactions affecting the family in the family land. He is the competent authority to allocate portions of family land or rooms in a family house to members or to strangers. The family head requires no consent of the members of the family in order to make grants of the family land to strangers for purposes of temporary stay or farming. Furthermore, unless he is guilty of an abuse of power, the court will not interfere with his general management of family property. Once a person becomes a family head, he ipso facto entitled to exercise all the rights and powers which are by customary law attached to that office. His authority is not a mandated or delegated authority which members can while the family head remains head withdraw or restrict at their pleasure. Odunsi v Ojora. His powers include:

1. To preserve family property from unlawful interference

2. Keep family property in good state of repair

3. Allocate portion of family law to needing members

4. Collect rent and pay for the outgoings

5. Take part in transfer or alienation of family property in order for a valid title to pass.

In Akano v Ajuwon (1982) 11 SC I at 72, the supreme court referred to him as manager and he had been given several other descriptions like "representative", "agent"'caretaker", fiduciary." All these descriptions fit the family head with respect to management of family property, because he is a donee of power.

The trusteeship of the family head signifies only that he is expected to exercise his powers not for his own private advantage but for the benefit of the family. In the case of Alabi v Rufai (1964) WNLR 14. The family head sold family property in order to acquire a chieftaincy title. The sale was held to be void as he could not deal in family property for his self-aggrandizement. Solomon v Mogaji (1982) 11 SC 1. See also **Achilihu v. Anyatonwu [2013] All FWLR (Pt. 696) 483 SC**

The family head does not enjoy absolute powers in the management of the family property. He is required to consult other principal members of the family in cases of alienation of family property such as sale, long lease or mortgage, he is required to obtain consent of the principal members of the family in order to give a valid title. Ekpendu v. Erika (1959) 4 FSC 79; Oyebanji v. Okunola (1968) NMLR 221; Akerele v. Atunrase (1968) 1 All NLR 201

This principle was reiterated in Jiaza v Bamgbose (1999) 5 SC (Part 1) 58 at 64.

Family Head

Under most customs in Nigeria the family head is the eldest surviving male member of the family. In some cultures the headship of a female member has been recognised. Taiwo v. Sarumi (1913) 2 NLR 106; Lewis v Bankole. (1908) 1 NLR 82. This is not true in customs where the rule of primogeniture obtains. The Edo and the Igbo cultures enunciate this. Under the customary law of these tribes the family headship devolves on the eldest son and his male sons on the principle of Ngwo v Onyejena (1964) 1 All NLR 352.

The family head can arise by operation of law or by express appointment:

Operation of Law

1. On the death of the founder of the family the eldest surviving son automatically without ceremony becomes the family head. Lewis v Bankole (supra).

2. Where the family is a tittled one, the person entitled to occupy the stool, e.g. Kabiyesi, becomes the family head. Amodu Tijani v. Secretary, Southern Nigeria (1921) 2 AC 399; Adeyinka Oyekan v Adele 14 WACA 209; Adesanoye v. Akinwale (1997) 3 NWLR (Pt. 496) 664.

3. If the eldest surviving child is a female, the eldest male child next to her will succeed as family head. In such a case the female child would retain her priority of choice in the event of a partition of family property. Ricardo v. Abal (1927) 7 NLR 58.

4. If the founder has not left a son who is sui juris, it has been held that the nearest male relation in the extended family to which the founder's family comes could act for the infant until he reaches the majority. Uzomah v Uzomah (1965-66) NMLR 88.

Appointment By Members Of Family

The senior male members of the family can by popular vote choose their own family head. If they choose a member other than the eldest male member, their choice is decisive and the eldest male member cannot challenge the choice. Inyang v. Ita (1929) 9 NLR 86.

The founder of a family may expressly indicate before his death or in his Will the person to act as family head. Sogbesan v Adebiyi (supra). Similarly the members of the family have the right to appoint one of their member as family head in preference to the oldest surviving male member if they are dissatisfied with him. The court leaves this as the internal affairs of the family. There is no formal requirement for such appointment.

Note that the head of a family who is not a founder of the family cannot appoint his own successor in such away as to displace the person who would otherwise be the family head by the operation of law. Ajoke v. Olateju (1962) LLR 127.

Note must be taken that a caretaker is not a family head. A caretaker is anyone who has not been appointed family head either expressly or by operation of law but who manages the family property on his own initiative by common consent of the family. The general rule is that such a person does not enjoy the same rights and immunities as the family head. Nelson v. Nelson (1953) 13 WACA 248; in that case the deceased on his sick bed appointed a member of the family to look after the family. Later the others brought an action against him to account. He refused. It was held that he was only a caretaker and not the head. Therefore he was held to account. Aromire v Oresanya (1938) 14 NLR 116.

Members' Right

A member has no general right to use any portion of the family property. He is only entitled to use and occupation of the portion the family head has allocated to him. In Lewis v Bankole (1908) 1 NLR 81 it was held that a member of a family has no right of ingress or egress in respect of any portion of the family property not allocated to him. Can a member allocatee maintain an action in trespass against another member? Yes. Tresspass is an offence against possession and not against ownership. Okoli u Olotu -where it was held that a member rightfully in occupation of a partition of family property could maintain an action in trespass against other members of the family. The individual has a right of user. This right is a life interest. In his death that interest reverts to the whole family. Where the circumstance of the family and the property permit it, his right of user can be extended to his children by the family.

A member cannot dispose of family property since it is not his alone. He cannot even dispose of his own share to a third party as he holds jointly with others; (unless there is a partition). Akeju v Suenu (1925) 6 NLR 87. A portion of family land was allocated to a

member for occupation with his family. Subsequently without the knowledge of the family a son of the alottee purported to convey the portion to one Kuti in fee sample who in turn mortgaged it. The court without much ado held that both the conveyance to Kuti and the mortgage were void on the ground that the property was part of family property.

The interest of a member in family land cannot be attached for the payment of personal debt. Jacobs v. Oladunni Bros. (1935) 12 NLR 1.

A members' right over the partition of land allocated to him does not devolve on his heir at law. Where his heir is not a member of the family, no interest in the family land whatsoever devolves on him. Caulrick v. Harding &Anor v (1926) 7 NLR-a husband claims his wife's one-third portion of family property without success. George v. Rajore (supra). Where the widow of a member of the family sued to recover land to her son who died, could not succeed as she did acquire any interest upon the death of her husband failure of his issue.

A member cannot dispose of his interest in family property by Will. Ogunmefun v. Ogunmefun (1931) 10 NLR 82 a testatrix devised her share in family property to certain relations. It was held that the disposition was void. Johnson v. Macaulay (1961) 1 All NLR 743.

Until partition, the individual member has no right of disposition of any part of family property However, a member of the family can lend family land occupied by him to strangers or with the consent of the family head he could put tenant or lodgers there. He may even pledge it to secure a loan. But he cannot mortgage it because inherent in a mortgage is the mortgagor's power of sale.

Where a member uses his money to improve family property or reclaim family land, the land does not become his property. Where land is allocated to a member for the purpose of being built upon or for the cultivation of cash crops, the improvement thus made does not accede to the land. Though the land still remains family land. Salako v Oshunlami (1961) WNLR 189, where it was held that a purchaser of family land which had been built uponby a tamely member "could only acquire the right to demolish the house and remove the materials. The purchaser could not as against the family assert a right to use and occupy the house which was on family land."

Accountability Of Family Head

The duty of the family head is account for a controversial topic in relation to family property. There are two views; the traditional view is that the family head is not accountable while the modern view is that the family head is accountable, Kosoko v. Kosoko. (1936) 13 NLR 131. It was held that a member who has been absent at family meeting could not sue the family head for account on his return.

J.A.B Coker opined in Property Law Among The Yoruba that the family head is not liable to account to other members of his family for rents and profits derived from family property. According to him the non-liability of the family head to account is one of the important incidents attaching to his office.

To the contrary there is the view that the family head is accountable under the Nigerian customary, land law. In the case of Osuro v Anjorin (1946) 18 NLR 85 it was held that the

family head was accountable to the members. Archibong v Archibong (1947) 18 NLR 117; Aromire v Oresanya (1938) 14 NLR 116; Gbenebiche v. Awosika (1952) 14 WACA 101; Taiwo v. Dosumu (1958) NMLR; **[1965] ANLR 417** and Uzomah v Uzomah (1965) NMLR 88 at 116.

In the case of Uzomah v Uzoma (supra) the Bendel State High Court held that the Diokpa of a family was a trustee and was therefore liable to account. It would seem that the judiciary leans towards holding the family head to account.

Basis of liability to account.

The basis will depend on his true position in relation to family property under customary law. The position of the family head has been described as a trustee in Amodu Tijani v. Secretary, Southern Nigeria (1921) 2 AC 399 and also in the following cases, Oyekan v. Adele (1952) 14 WACA 16; Archibong v. Archibong (1947) 18 NLR 114; Uzomah v Uzomah (1965/66) NMLR 88.

It must be noted that the trustee analogy is erroneous because the trustee in the English sense is the owner of the property while the equitable interest is vested in the cest tui qui trust. The family head is not the legal owner of family property. The ownership of family property is vested in the family as a corporate entity, quite distinct from any member thereof. Thus any attempt to cloak the family head with the garb of a trustee is to say that the legal ownership of family property is vested in him.

Principal Members

The principal members of the family are the respective heads of the various branches of the family. Their composition would depend on the structure of the family. In the case of a polygamous family, the children born of each wife of the founder constitute one branch, the oldest member of the branch is the person delegated to act in that capacity by other members of that branch, he is the principal member of the family. The rule as to who is a principal member of a family is flexible. It could depend on the family and how individual members stand in relation to the family Esan v Faro (1947) 12 WACA 135. Where the court rejected the contention that one of the appellants was not a principal member of the family for he had at one time been the secretary to the family etc.

In the case of a monogamous family where the founder is a woman each of her children constitutes a branch and thereby a principal member. Where a principal member dies the head of his own branch of the family becomes a principal member in his place.

Distinction Between Family Property and Individual Holding: Contrary to the views expressed in Amodu Tijani Nig. Individual tenure is a feature of customary land law throughout Nigeria. It would seem that the basis of the concept of family property is the recognition of individual ownership for when a founder of a family dies, this self-acquired property devolves on his children as family property. In Balogun v Balogun (1943) 9 WACA 78; Aganran v. Olushi, (1907) 1 NLR 66, it was held that where a family sold its land to a member or stranger, the purchaser becomes an absolute owner of the property. Similarly in Jegede v Eyinogun (1959) 4 FSC 270, a donee of land became an absolute owner thereof and the donor cannot recall the title.

In Otogbolu v Okeluwa & Ors (1981) 6-7 SC 99; per Obaseki JSC, "The knowledge of the customary land tenure of each locality is within the member of the community generally with his economic capacity does acquire as he desires in a piece or parcel of communal land which he can transit to his off spring and which he is entitled to protect by action, a claim to his right against another member who trespasses. To that extent the interest of the community in the land is displaced or postponed. Arase v Arase (1981) 5 SC 33 at 58;; Idigbe Eze v. Igiliegbe (1962) 1 ANLR 619.

Alienation Of Family Property

Alienation here is the transfer of land or interest in land from a land owning family to another person either temporarily or permanently so as to destroy permanently or postpone indefinitely or for a defined period the interest of the family in favour of that other person.

Permanent transfer will include sale, absolute gift or partition. While a temporary transfer includes transactions such as a lease, a pledge, and customary tenancy: Alienation destroys the right of the family-to-family property.

The Machinery Of Alienation

The accepted rule for the alienation of family property is that the family head with the consent of the principal members are legal essential to effect a valid alienation of family property. This principle was laid down in the Ghanaian case of Agbloe v. Sappor (1947) 12 WACA 107. In that case 4 out of 6 principal members made a gift of family land to another member of family in appreciation for redeeming family land, which was pledged. The family head did not join in the purported transfer. The question that arose was whether the purported gift was valid, it was held that for the transfer to be valid it must be made by the family head with the consent of the principal members and since the purported gift was not so sanctioned was void ab intio.

The case was approved in the case of Ekpendu v Erika (1969) 4 FSC 79. In that case the family land leased out without the consent of the family head the court held on the authority of Agbloe v. Sappor (1947) 12 WACA 107 that the lease being without the consent of the family head was void ab initio. This principle was reaffirmed in the case of Solomon v. Mogaji (1982) 11 SCI. Here the family head sold the property as his own. The court held that the purported sale was void ab initio. See Bello judgment.

Where an alienation is done by the family head without the requisite consent of the principal members of the family such a sale is voidable and can be voided at the instance of the non consenting principal members of the family Esan v Faro (1947) 12 WACA 135. There, a sale was set aside at the instance of two principal members who opposed the sale. This was notwithstanding that it was with the consent of the family head and principal members of the family.

Effect Of Lack Of Consent

The basic rule for alienation of family land is that it requires the family head concurrence of and the principal members. The effect of a missing consent depends on the rank or status of the person whose consent is missing. Where the consent of the family head is missing, the purported alienation is void ab initio. The rule is memo dat quod non habet. Ekpendu v Erika

(1969) 4 FSC 79 (supra); Menko v Banso (1936) 3 WACA 66; Esan v Faro (1947) 12 WACA 135 (supra); Lukan u Oguns li nu (1973) UILR 389; Babarefu & Ors v. Ashamu (1980) 7-9 CCHCJ8.

Where the missing consent is that of the principal member, the alienation may be void or voidable depending on whether the head of the family sold the land on behalf of the family or purportedly sold the land as his own. Where the family head alienates the land without the consent of principal members but on behalf of the family, the alienation is voidable. Esan v Faro (1947) 12 WACA 135; Mogaji v Naga (1965) 5 FSC 107; Coker v Animashaun (1960) LLR 71. **Achilihu v. Anyatonwu (supra); Tijani v. Akinpelu [2013] All FWLR (Pt. 682) 1763 CA**

Where the family head makes a gift of family land, the gift is void ab initio. Similarly where the family head unilaterally partitions family property, the deed of partition is void absolutely.

Distinction Between Void And Voidable Transaction

A void disposition carried with it nothing. It is devoid of any proprietory interest. On the other hand avoidable disposition is valid until it is set aside at the instance of the non-consenting members. The implication is that avoidable disposition may become valid through the process of ratification of the nonconsenting members. Ratification may be express or implied from the conduct of the members. Aganran v Olushi (1907) 1 NLR 66, where a non-consenting member demanded and received £5 out of the proceed of sale. It was held that this amounted to ratification by conduct. Johnson v Onisiwo (1939) 9 WACA 189 where ratification was inferred from the process of a non-consenting member suing for and recovery of her share of the rent.

On the other hand, a void disposition cannot be ratified. Ajose v. Hayworth (1925) 6 NLR 98; Onasanya v. Siwoniku (1960) WNLR 116. A further distinction to be drawn in terms of void and voidable disposition is in the remedy available to the aggrieved non consenting members. Where a disposition is void, the remedy of the aggrieved member is to seek an action for declaration of title. Atunrase v Sunmola (1985) 1 NWLR 1 On the other hand where the title is voidable. The action available is an action to set aside the transaction.

Modification To The Consent Provision

The unanimity rule may be modified in certain circumstances.

Power Of Attorney

As a general rule, the family head with the concurrence of principal members can alienate family property. However, a strict adherence to this rule could cause hardship to the family if for of several reasons it is difficult to come together or the family head neglects to manage the family land as required by customary riles.

In such cases the family head and the principal members can execute a power of attorney in favour of one of their members or an outsider authorising him to deal in the family land. The power must spell out the extent and limit of the donee's power. Ashade v Arugbo & Ors,

(1975) 11 CCH CJ 197. See the 2015 Property Law of Lagos state which makes such power of attorney a registrable instrument.

(2) The family head and principal members may appoint an agent to deal in the family property. Such an agent would validly exercise the power of the family head and principal members to effect alienation. Such appointment may be express-i.e. power of Attorney or implied.

(2b) Implied Authority: this may be inferred from the conduct of the family e.g. where a person had purportedly dealt with family property over a period of time to the knowledge of the family head and principal members, he is deemed to be an agent of the family Sule v Aromire (1939) 15 NLR 72.

Management Committee: the family may decide to set up a committee charged with the management and control of family property. Where this is so the committee can validly execute a transfer of title.

Defences To Action To Recover Family Property

Under strict customary law a member of the family or the family can institute an action to challenge the validity of the alienation of family property at any time. Put simply; time does not run against an action to recover possession of family land. Mora v Nwalusi (1962) 1 ANLR 681, 684. This principle has been affirmed in several cases. Atunrase v Sunmola (1985) 1 NWLR 1. This notwithstanding, it has been recognised that certain defences if properly pleaded can bar the claim of the family to the land or the right of the member to have the transaction set aside. These defences include:

Laches

Acquiescence

The doctrine of standing by

Waiver or the rule in Akpan Awo v Cookey GAM

Limitation Act

Usually these various defences are pleaded together.

Laches: This ordinarily means delay for the purpose of the defence. It is a delay for which equity will refuse to grant to the plaintiff the remedy which he is seeking against the defendant. Usually such a delay is coupled with the knowledge of the plaintiff that the defendant had been on his/their land unlawfully. Thus the delay that will constitute laches is a question of fact and varies from case to case, Agaran v. Olushi (supra). A delay of 3 years was held sufficient to constitute laches. In Mogaji v Nuga (1960) 5 FSC 107 it was a delay of 10 years and in Manko v Bansu it was a delay of 20 years.

Acquiescence Or Doctrine Of Standing By: In Atunrase v. Sunmola, this interpreted in its legal sense to imply the abstinence of a person from interfering when a violation of his right is in process. Justice Oputa described it in the same case as a specie of estoppel or quasi

estoppel. A conduct from which may be inferred assent with a consequent estoppel or quasi estoppel. See **Balogun v.Adunmi [2013] All FWLR (Pt. 666) 539 CA**

The classical statement of acquiescence is to be found in the words of Lord Gramworth in Ramsden v Dyson (1866) 1 RH 129, 140, according to him "if you find a stranger building on your land with the belief that the land belongs to him and you fail to warn him of your adverse title in the hope that on the completion of the building you will assert your right and claim the benefit of his labour, equity will not assist you" Note a delay will not amount to acquiescence unless it amounts to fraud on the part of the rightful owner. Kajola & Ors v Egbuja (1974) 1 ANLR 426, 434, rules in Akpan Awo v Cookey GAM (1913) 2 NLR 100 or Waver.

Under Nigerian customary law there is no corresponding law to the English rule of prescription for conferring title to land, Mora v Nwalusi. There no length of squatting possession that can ever suffice to bar an owner's title under customary law. In order to temper the rigours of this rule of customary law, the court laid it down that it would protect in its exercise of its equitable jurisdiction the person who has been in continuous and undisturbed possession for many years in the belief that he has a valid title thereto. This rule was first formulated in Akpan Awo v Cookey Gam. The rule runs thus "It will be wholly inequitable to deprive a person of property to which he has held undisputed possession to the knowledge and acquiescence of those who now dispute his title. Even if it were as clear as crystal upon the evidence that he entered into possession contrary to the principle ofNative law.

In Akpan Awo v. Cookey Gam the plaintiff failed to recover possession of the property from the defendant who had been in undisturbed possession for 21 years exercising acts of ownership to the knowledge and acquiescence of the plaintiffs. The rule will not be defeated by notice on the part of the defendant of plaintiff's title. This rule is to prevent the entertainment of stale claims by a strict adherence to native law.

Statutory Defences - Limitation Law

The received English statute of limitation exempted customary title from the provision of the Act. Thus limitation law never applied to customary law. Dede v The African Associated Ltd (1910) 1 NLR 130. The subsequent Nigerian limitation laws followed the English limitation laws and excluded the application of the law.

This trend seems to have changed. The purpose of the statutory provisions is to bar a person's right to bring an action for recovery of land after the expiration of the stipulated period.

Under the various limitation laws of the States the statutory period within which to bring an action to recover land is specified.

(a) The State: The State is given 20 years and 30 years in certain jurisdictions within which to bring an action to recover land.

(h) Private individuals: He has 12 years within which to bring an action to recover land. Time begins to run from the moment the plaintiff has knowledge of the infraction or after the plaintiff's disability, if he was under one.

When the plaintiff's claim is statute barred in accordance with the limitation laws, his ownership of the land becomes extinguished.

Determination Of Family Property

Family property would come to an end in one of the following ways:

1. By absolute conveyance of the family property on a single individual e.g. by sale gift.

2. By partition between several individual of the family entitled to share.

3. By devolution on a single individual Okelola v Boyle.

PARTITION

Partition or sale of family property may be either at the instance of the family or by order of court by partition, the family property is split into several individual properties each portion vesting absolutely in the member to whom it has been apportioned. Kadiri Balogun v. Tijani Balogun (1943) 9 WACA 78; Olorunfemi v Asho (2000) 1 SC 15, see page 20.

In this case, each partitionee becomes an absolute owner of his/her share. The partition may be among constituent branches of the family, where this is the case, a new family ownership results. The partition could be voluntary in which case a deed of partition is made to effect it. On the other hand partition may be ordered by a court where the interest of justice and peace demands Lopez v Lopez (supra).

A member cannot ask for partition merely because he intends to deal in his share. The court would not interfere with the management of family property unless reasons for such interference is alleged and proved Bajulaiye v Akapo (1938) 14 NLR 10 at 11. In that case the plaintiff did not express any desire to live in the family property and the defendants were unwilling to have the plaintiff share in the occupation of the premises or alternatively in the rents derived there from. The court said there, that the court would not order a sale of family property merely because some interested parties desire to turn the property into cash. It was held that the plaintiffs had not made a case for an order of partition. In Ajobi v Oloko (1959) LLR 105, the plaintiffs were not allowed to participate in the occupation of the property, partition was ordered. Salvador v Salvador (1959) LLR 52. However, in Ajibabi v Jura (1948) 19 NLR 27, sale was ordered because the family property consisted of two rooms and seven members of the family were entitled to reside in it, as the property was incapable of fulfilling its role as family house. This should not be seen as authority that the court would order a sale where court would take into cognisance the needs of the members of the family in occupation and the effect which a sale of the property would have on them, this especially where the member(s) asking for sale can well provide for themselves. This is in consonance with the view that the family house is a type of social security for needy members of the family.

Partition should be distinguished from allotment. Allotment does not determine the family ownership of the land so as to make the allottee an absolute owner. Allotment can be effected by the head of the family alone Onisiwo & Ors v Bamgboye & Ors 7 WACA 69.

Partition, which does not make provision for all of the constituent branches of the family is void. Whether there was partition or allotment is a question of fact. The mere use of the word "Partition" does not necessarily mean what the family has done is a partition that would determine the family property. In Dosumu v Adodo (1961) LLR at 49. Where the members do not generally understand the fact as determinative partition, then the mere use of the term "Partition" may not be taken by court as conclusive fact that the property has ceased to be family property Majekodunmi v. Tijani 11 NLR 74. See generally, **Sogbamu v. Odunaiya [2013] All FWLR (Pt 700) 1274 CA; Ojo v. Akinsanoye [2014] All FWLR (Pt. 754) 18 CA**

SUCCESSION

When a man dies, the devolution of his self acquired property depends upon whether or not he has made a Will. Where he has a Will the property will devolve according to the directions contained in the Will and succession is described as testate. Where he has made no Will or he has one which has become inoperative, he is said to have died intestate and the devolution of his property will be governed by the law prescribing the order of succession upon intestacy.

The applicable law of succession is the personal law of the deceased and not the customary law of the locality where his property is situate Tappa v Kukah (1945) 18 NLR 5. However a person can opt-out of his personal law for the application of another customary law of his choice during his life time. Olowu v Olowu (1985) 3 NWLR 372. An exception to this rule is in respect to landed property. The applicable law is the Lex Situs. See Section 24 Land Use Act 1978.

The most prevalent mode of succession of an intestate under customary law is that his or her real property devolves upon all his or her surviving issues jointly as family property with the eldest son as head and having all the powers of family head. The deceased's parents, brothers and collaterals have no right of succession. Where the children are minors the eldest surviving brother of the deceased will act as caretaker of the property.

Where there is no issue the order is (1) Brothers (Sister) of the whole blood, (2) Parents (3) Half-Brothers (Half Sister), in default of these groups the next nearest relation. Maternal relatives are usually excluded even uterine brothers and sisters. Since succession is confined to the Para lineal line a grandson has no right of succession because a son who dies in his father's lifetime has no right of succession in his father's estate. The deceased's son's children have a right of inheritance as members of their grandfather's family not by virtue of an estate left behind by their father. Sogunro-Davis Sogunro (1929) 9 NLR 79.

Among most communities, succession to land is restricted to male issues. Among the Hausa-Fulani, the Maliki code permits inheritance by female but in these communities, land tenure and inheritance are governed largely by custom under which females can not in general inherit.

The notable exception to this rule is among the Yoruba; in Yoruba customary law, females are as entitled as males to inherit. These rights extend to the headship of the family subject to the prior right of the eldest son. A daughter's share in such a case is transmissible by inheritance to her children but upon failure of a daughter's issue her share of her father's land cannot be inherited by her husband or his family but reverts to her family. Caule Crick v Harding (1926) 7 NLR 48; Suberu v Sunmonu (1957) 2 FSC 33. The rule is that when a

man dies interstate without issue, leaving property he had himself inherited, the property will devolve on the members of the family from which it came. If the deceased inherited if from a maternal ancestor, it goes to his maternal relations and if he inherited if from his paternal ancestor if reverts back to his paternal relations. Suberu v Sunmonu (1957) 2 FSC 33. (supra)

Children

Issue means primarily legitimate children. The status of illegitimacy is not lipidly defined in customary law. This is because of the principle of legitimating by acknowledgment. However, note should be taken that a child bon out of wedlock during the subsistence of marriage under the act is illegitimate whether or not he is acknowledged by the father's descent.

Principle Of Division

Property of an in testate under customary law is usually held, preserved and enjoyed together as family property. Each member is entitled to an allotment of farmland or an apartment in the family house and to a share in the Lents and projects let out to tenant's division of the estate, which is called partition, follows upon one of abroad principles viz; division per capital according to the number of children, in Yoruba called Ori Ojori and Division per stripes (according to stock /the number of mother's with children in Yoruba called Idi-Igi among the children of each mother inter se division is per capital, but grand children share with them per stripes. See **Sogbamu v. Odunaiya [2013] All FWLR (Pt. 700) 1274 CA**

Right Of Surviving Spouse

A wife cannot inherit or administer her husband's estate in her own right Suberu v Sunmonu (1957) 2 FSC 33.; Aileru u Anibi (1952) 2 NLR 46. This is because devolution of property on intestacy under native law and custom follow the blood therefore a widow not being of the blood has no claim to any share. A widow who chooses to remain in the husband's house and remain unmarried is entitled in her own right whether she has children or not to go on occupying the matrimonial home and to be given a share of his farmland to cultivate. Her interest in the house and farmland is merely possessory and not proprietary. Property acquired by a wife during the marriage devolves upon her children subject to her husband right of use during his lifetime failure of any issue of the woman the husband takes. The wife's family has no claim to property, which she acquired during the marriage. Where a wife is predeceased by her husband and all the children, the property will go to husband's relatives. See **Anekwe v. Nweke [2014] All FWLR (Pt. 739) 1154 S.C.**

Succession By A Sole Heir

This is usually based on the principle of primo geniture. The right of inheritance enures to the eldest surviving son. Primo genitive in relation to inheritance of land is found principally among the Edo tribes. In these tribes the eldest son is said to be the hair to heir to his father's land provided he has performed all the customary burial rites of his father. The eldest son's right of inheritance gives the responsibility for the cave of his father's household his responsibility for the guardianship and maintenance of his father's dependants does not mean that he holds the estate as a customary trustee for himself and his brothers and sister. His title is an individual beneficial one where he dies without

performing all the funeral ceremonies. The right of inheritance passes to the next-eldest surviving son. Ehigie v Ehigie (1961) 1 ANLR 842. See the dictums of Sir Adetokunbo Ademoola FCJ in Ogianmen v. Ogiamen (1967) NMLR 245 at 24 if that 'It is common ground that according to Benin custom the eldest son succeeds to all the property of the father to the exclusion of all other children. See **Osemwingie v. Osemwingie [2014] All FWLR (Pt.710) 1322 CA; Igori v. Igori [2014] All FWLR (Pt. 729) 1154 CA**

Among the Ibo's, succession to family property cannot be described as based on the principle of prime genitive. The eldest son has a right of exclusive occupation and possession of the Obi. He also succeeds to be headship of the family. The ownership of the property belongs to all the male issues; jointly as family property. Ngwo v. Onyejena (1964) 1 ANLR 352. The other children have a beneficial interest in the land and have a right to farm it.

Ouster Of Rules Of Intestacy

A person's customary law rule of succession may be ousted where a person contracted a monogamous marriage. His intestacy would be regulated by English law or by statute. See Section 35 of the Marriage Act and Section 49 (5) of the Administration of estates law 1959. I n respect of intestacy to such people, the property of a deceased devolves on his/her surviving spouse and the offspring of such a marriage to the exclusion of persons who would have been otherwise entitled. This comes to be known as the rule in Cole v Cole (1898) 1 NLR 15.

CUSTOMARY LAND LAW RELATIONSHIP

Certain customary land law relationships are recognised and protected under customary law. These relationships usually arise when a landowner transfers possession of his land to a grantee upon certain conditions. These relationships are:

1. Customary Tenancy 2. Kola Tenancy 3. Pledges

Customary Tenancy

Customary tenancy is created where a land-owning individual, family or community grants a right of occupation of land to another person or group of persons who are usually strangers or immigrants to live in or persons in unilateral for which they acknowledge the title of their grantor by the payment of customary tribute. Lasisi and Anor v Tubi & Amos (1974) 12 SC 71 at 74; In **AGHENGHEN V WAGHEROGHOR [1974] NSCC 20** the Supreme Court tried to define the true nature of the interest of the customary tenant. The customary tenant is neither a donee of the land, a borrower of it, a lessee, a tenant at will, nor a yearly tenant. He is not a licensee either but a customary grantee of possessory interest, which endures in perpetuity subject to abandonment or misbehavior which will attract forfeiture. However payment of customary tribute is not a condition precedent for the creation of a valid customary tenancy. Nwosu v Uche(2005) 17 NWLR pt 955, p.574. Customary Tenancy has no equivalent in English tenure for it is neither a lease nor a tenancy. The customary tenant is a grantee of land under customary law Ejanemonya

v. Omiobuike (1974) 2SC 33 and full rights of possession are transferred to him and the only right remaining in the overlord is that of reversion. Martindale J. observed in Chief Etim v Chief Eke (1941) 16 NLR "It is now settled law that once land is granted to a tenant in accordance with native law & custom, whatever be the consideration, full rights of possession are conveyed to the grantee. The only right remaining in the grantor is that of reversion should the tenant deny title or abandon or attempt to alienate. The grantor cannot convey to strangers without the grantee's permission any right in respect of the land."

This interest is transmissible to his heir, although the interest of a customary tenant is devisable to his hens, he cannot alienate the land without the consent of his overlord Ojomu v Ajao (1983) 9 SC 22. Similarly his overlord cannot make a subsequent grant of the same property while the tenancy subsists without his consent Isibor v Tanson (1968) NMLR 76.

Duties Of A Customary Tenant

The most important duty is the payment of customary tribute to his overlord. This customary tribute has developed to payment of rent. Ojomu v Ajao (1983) 9 SC 22.. The purpose of the payment of the tribute is to acknowledge the title of the overlord. Onisiwo v Bamgboye (1941) 7 WACA69. Also the tenant must not change the use for which the land was granted without the consent of the overlord. He must not commit waste on the land Asani Taiwo Akinwunmi (1951) ANLR 202 and at all times to be of good behaviour. However any disturbance to his possession without his consent would amount to trespass. See Shell BP v Jacob Abedi & ORS (1974-75) 9 NSCC 1. The rights of the customary tenants includes e**xclusive possessory right over the land -**. **Akinkuowo v Fajimoju** (1965) NMLR 349, The customary tenant is entitled to a portion of the compensation amount where the land subject to customary tenancy is compulsory acquired by the government. See **Itsekiri Communal Land Trustee v Warri Divisional Planning Authority (1973) 11 SC 253, rights to have no derogation from his grant -** The overlord cannot grant the same right over the land to a 3rd party while the customary tenancy subsists**. Chief Sam Wam Essi v Itsekiri Communal Land Trustee & Ors (1961) WRNLR 15**

Determination

Customary tenancy may be determined by:

1. Abandonment

2.Accomplishment of purpose

3. Forfeiture

Abandonment: A customary tenant may vacate the land without the intention of returning to it. When this happens, he is said to have extinguished his interest by abandonment, Lasisi v Tubi (supra) note that vacation of land by the customary tenant with the intention to resume possession does not amount to abandonment, Bassey v Cobham (1924) 24 NLR 92.

2. Accomplishment of purpose: Where customary tenancy is granted for a particular purpose, the accomplishment of that purpose determines it. Similarly if the tenancy is granted for a particular period the defluxion of the time determines it. Ochonma v Unosi (1965) 1 ANLR

3. Forfeiture: This is a judicial declaration or order that the tenancy is determined. The act would usually declare a forfeiture at the instance of the overlord where there is a proven allegation of acts of misbehaviour on the past of the tenant. The fundamental principle on which the court would decree this is where the customary tenant consistently commits acts of denial of his overlord's title. This may be acts of attempted alienation. Onisiwo v. Bamgbose (1941) 7 WACA 69.

Asani Taiwo v. Akinwunmi (supra); Onotaire v. Onokpasa (1983) SC 88 the court would also order a forfeiture where the customary tenant denies his overlord's title. It would also be decreed where he commits wantom destruction of the overlord's property in the land. Asani Taiwo u Bamgboye; Onotaire v Onaokpasa; Asogbon v Oduntan 12 NLR by consistently refusing to pay customary tribute.

Relief Forfeiture is not automatic Chief Etim v Chief Eke (1941) 16 NLR 50, the court will impose a fine as relief instead of forfeiture Asigebu v Njoku 5 UILR 332.

KOLA TENANCY

Kola tenancy is a specie of tenancy prevalent in parts of Anambra State especially around Onitsha. Kola Tenancy is created when a land owner grants possession of his land in return for a token gift of Kola. This is paid once and for all. This is where it is different from customary tenancy. The Kola tenant enjoys absolute interest of an owner unless that of alienation of the land. He can put the land into productive use. He can grant leases on it but he cannot make an outright transfer. His interest is transmissible to his heirs Daniel v. Daniel 1956 IFSC 50. He is not accountable to his overlord for the benefits that accrue to him from the land Ngbelekeke v. Madam Iyayi; Romaine v Romaine (1992) 5 SCNJ 25.

A Kola tenancy when granted enures in perpetuity. Where the original grantee dies, his interest devolves on his heir who has to acknowledge the overlord's title of the grantor by the giving of a fresh token of Kola to him. See Mojekwu v Iwuchukwu (2004) AFWLR pt 341, 1200. Kola tenancy is now created by the Kola tenancy ordinance of 1935. Section 2 of the law gives the landlord the right to call for the determination of the relationship where the Kola tenant puts the land into more advantageous use than contemplated. When this happens there are two options:

l .The tenant can buy out the interest of the grantor i.e buy the land. This frees the land from Kola tenancy.

The grantor can redeem the land, freeing the land from the incidences of Kola tenancy. Where this option is agreed upon the improvement made by the Kola tenant is assessed and the grantor is made to pay compensation for them.

Pledge

A pledge is created when an owner of land grants possession of the land to any person with the common intention of using the land as security for a loan or debt from that person. There is usually a common intention on the part of the grantor and grantee that the land will be redeemed upon the payment of the debt or loan. Thus a pledge is purely a customary security transaction.

Incidents Of Pledge:

A pledgee goes into possession of the land. He enjoys exclusive possession and has a right to put the land to some productive use. The pledgee retaining the possession of the land and enjoys the benefits of the exploration of the land until the loan or debt is paid and land redeemed.

A pledged land is perpetually redeemable no matter the lapse in time and the amount and extent of permanent improvements the pledgee may have made on the land during the period of use of the land. Ebevuhe v. Ukpakara (1996) 7 SCNJ 192; 194, Leragun v Funlayo (1956) WRNLR 167; Okpowagha v Ewhedoma (1970) 1 ANLR 203; Okoiko & Anor v. Esedalue & Anor (1974) 3 SC 15, Nwagwu v Okonkwo (1987) 7 SC 32.

The pledgee is not an absolute owner of the land because the pledgor has a reversionary interest. And he is not liable to pay compensation on improvements on the land on redemption. There is also the view that a pledge may be redeemed from the money realized by the pledgee by his use of the land. By this view a pledge is therefore self redeeming. This principle was recognized in Kuashen v Ajose (1889) and recongised in Amao v. Adigun (1957) WRNLR 55; Okoiko & Anor v. Esedalue & Anor (1974) 3 SC 15 affirmed the decision that a pledge is self-redeeming.

VESTING OF TITLE IN THE GOVERNOR

Objective of the Land Use Act Cap 202 L.F.N. 1990:

To vest all land comprised in the territory of each state in the Governor of that State to hold in trust and to administer for the use and common benefit of all Nigerians: Section 1 thus, the legal but not the absolute ownership is vested in the Governor Two Classes of Land: Land in urban area and land not in Urban areas. Land in urban area is under the control and management of the Governor of each State and non-urban land is under the control and management of the Local Government, within the area of jurisdiction of which the land is situated: section 2

Designation Of Urban Areas

Section 3 empowers the Governor to designate parts of the state as urban

areas, see Designation of Urban areas Order 1981 (Lagos)

The Land Use and Allocation Committee

Established in each State to: (a) advise the Governor on any matter connected with the management of urban land; (b) advise the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest and (c) determine disputes as to the amount of compensation payable for improvements on land: section 2 (2)

Composition

The Governor determines the composition of this body but must (a) not be less than two persons who are estate surveyors or land officers and who have had such qualification for not less the five years; and a legal practitioner, section 3. The chairman of the committee is designated as such by the Governor and is empowered to regulate the committee's proceedings. See the Land Use Allocation Committee Regulation No.38 of 1981 (Lagos)

The Land Allocation Advisory Committee

Established in non urban areas foreach local government in each State to: (a) advise the Local Government on any matter connected with the management of non urban land. It is constituted by the Governor after consultation with the local government: see section 5.

STATUTORY AND CUSTOMARY RIGHTS OF OCCUPANCY: POWERS OF THE GOVERNOR

Definition: Section 50, there are two types of right of occupancy namely, Statutory and Customary.

Statutory Right Of Occupancy

A statutory right of occupancy maybe acquired expressly or by operation of the Act otherwise known as deemed grant.

Express Grant:`

The Governor is empowered by section 5(1)

(a) to grant statutory rights of occupancy to any person for all purposes;

(b) to grant easements appurtenant to statutory tights occupancy;

(c) to demand rent for any such land granted to any person.

(d) to revise the said rent -

(i) at such intervals as maybe specified in the certificate of occupancy; or

(ii) where no intervals are specified in the certificate or occupancy at any time during the term of the statutory rights of occupancy;

to impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to revise such penal rent as provided in section 19; (f) to impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of or any part thereof by sale, mortgage, transfer or possession, sub-lease or request or otherwise however without the prior consent of the Governor;

to waive. wholly or partially, except as otherwise prescribed; all or any of the covenant or conditions of which a statutory right of occupancy is subject, where owing to special circumstances, compliance therewith would be impossible or great hardship would be imposed upon the holder;

(h) to extend except as otherwise prescribed, the time to the holder of a statutory right of occupancy for performing any of the conditions of the right of occupancy upon such terns and conditions as he may think fit.

Upon the grant of a statutory right of occupancy all existing rights to the use and occupation of the land which is the subject of the statutory right 9f 9ccupancy shall be extinguished: section 5(21

For a grant of a statutory right of occupancy to be valid, there must not be in existence at the time of the grant, a statutory or customary owner of the land in issue who was not divested of his legal interest to the land prior to the grant. Dzungwe v. Gbishe & Anor (1985) 2 N.WL.R.(Part 8)528.

An actual grant of a statutory right of occupancy under the provision of section 5(1) shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Governor

Minors

The Governor shall not grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of twenty-one years; except

(a) Where a guardian or trustee has been duly appointed on behalf of such person under age; for such purpose and

(b) A minor upon whom a statutory right of occupancy devolves on the death of the holder shall have the same liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.

Deemed Grant

By virtue of section 34(1) all land in urban areas vested in any person prior to the commencement of the Land Use Act shall, subject to the provisions of the Act, continue to be held by such person as if a statutory right of occupancy had been issued by the Governor.

Land in urban areas is classified into 'developed' and 'undeveloped' land for purposes of the section. 'Developed land is defined by section 51 of the Act

as follows: "Land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes." Any other land outside the ambit of the foregoing definition is undeveloped for purposes of the Act. Where the land is developed, section 34(2) provides that it shall continue to be held by the person in whom it was vested immediately before the commencement of the Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under the Act. The holder of the land before the commencement of the Act is the person who hitherto had absolute interest on the land in question and it is with reference to that person that the word `vested' is used in the Act. It does not include, for instance, a tenant at common law or under customary law nor a mortgagee or pledgee of land. This view is reinforced by the provision of section 34(4) which provides that: "where the land to which subsection (2) of this section applies was subject to any mortgage, legal or equitable, or any encumbrance or interest valid in law such land shall continue to be so subject and the certificate of occupancy issued, shall indicate that the land is so subject, unless the continued operation of the encumbrance or interest would in the opinion of the Governor be inconsistent with the provisions, or general intendment of this [Act]."

As the foregoing provision suggests, the recognition of any encumbrance or interest on land does not ipso facto entitle the encumbrances or such owner of interest to a statutory right of occupancy evidenced by a certificate of occupancy. While section 34(2) recognises the holder of absolute interest prior to the commencement of the Act as the person entitled to a statutory right of occupancy, lesser interests are only endorsed on a certificate of occupancy pursuant to section 34(2). In the case of undeveloped land, section 34(5) provides that the person in whom the land was vested prior to the commencement of the Act shall only be entitled to a statutory right of occupancy over one plot or portion of land not exceeding half hectare while rights formerly vested in respect of the excess shall be extinguished and taken over by the Governor and administered as provided in the Act. Where the holder in question has more than one

undeveloped plot in different urban areas of the state, the whole shall be considered together for purposes of the application of the half hectare rule while the remainder so considered together

in excess of half hectare shall be taken over by the Governor and administered as provided in the Act.

Customary right of occupancy

The Act empowers the Local Government to **Right of Occup**ary right of Occupancy over land in non-urban areas only: Adene v. Dantubu [1994]12 NWLR (PART 328) PG 509. A customary right of occupancy may be acquired expressly or by operation of law otherwise known as deemed grant definition: section 50.

Actual Grants

The local government is empowered: section 6 (a) to grant customary rights of occupancy to any person or organisation for the use of land in the local government areas for agricultural, residential and other purposes. (b) to grant customary right of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned. But section 6 (2) limits the extent of land granted by the local government to 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor. It shall be lawful for a local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not (a) land within an area declared to be an urban area pursuant to section 3 of the Act; (b) the subject of a statutory right of occupancy; (c) within any area compulsorily acquired by the government of the federal or of the state concerned; (d) the subject of any laws relating to minerals or mineral oils and for the purpose to revoke any customary right of occupancy on any such land: section 6(3). The local government shall have exclusive rights to the lands so occupied against all persons except the Governor. section 6 (4) Unlike the case of revocation of a statutory right of occupancy, the holder and the occupier according to their respective interests of any customary right of occupancy revoked shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements: section 6 (5). Where land in respect of which a customary right of occupancy is revoked under the Act was used for agricultural purposes by the holder, the local government shall allocate to such holder alternative land for use for the same purpose: section 6 (6). If a local government refuses or neglects within a reasonable time to pay compensation to a holder, the Governor may proceed to the assessment of compensation under section 29 and direct the local government to pay the amount of such compensation to the holder and occupier according to their respective interests: section 6 (7).

Deemed Grants

If the non urban land was immediately before the commencement of the Act being used for agricultural purposes, then the person in possession (not necessarily the owner) can continue in occupation as if a customary right had been granted to him by the local government. He is

entitled, on application to the local government, to be registered as one to whom a customary right of occupancy had been issued in respect of the land in question. Section 36 (2), Abioye v Yakubu (1991) 5 NWLR (PT. 190) 130

However if the non-urban land is developed, it is the owner of the land that is entitled to the customary right of occupancy: section 36(4). Family/customary land tenure subsists so long as it does not contradict the Land Use Act: Ojo v Eguntase (1994) 6 NWLR (Pt. 352) 62.

No land to which this section applies shall be sub-divided or laid out in plots and shall be transferred to any person by the person in whom the land was vested as aforesaid.

(6) Any instrument purporting to transfer any land to which this section relates shall be void and of no effect whatsoever in law and every party to any such instrument shall be guilty of an offence and shall on conviction be liable to a fine of N5,000 or to imprisonment for 1 year.

POWER OF GOVERNOR TO GRANT LICENCES

The Governor may grant licences to any person to enter any land which is not the subject of a statutory right of occupancy, a mining lease, mining right or exclusive prospecting licence granted under the Mineral Act or any other enactment, for the purpose of extracting building materials or other substances meant for manufacturing of building materials. The licence maybe granted for such period and subject to such conditions as the Governor may think proper or as may be prescribed, over an area not exceeding 400 hectares. The

licensee cannot transfer the licence in any manner howsoever without the consent of the Governor fast, otherwise such transfer shall be void. The licence shall be revocable by the Governor upon failure by the licensee to comply with any of the conditions of the licence. Notice is prescribed by the Act for such revocation but in practice, reasonable notice is given. A breach of any of the conditions of the licence by the licensee makes him liable in damages to the licensor/Governor for the period of the breach and the licensor may recover such damages in lieu of revocation of the licence.

DUTY OF OCCUPIER OF A STATUTORY RIGHT OF OCCUPANCY

The occupier of a statutory right of occupancy shall at all times maintain in good and substantial repair all beacons or other land marks by which boundaries of the land comprised in the statutory right of occupancy are defined and in default of his so doing the Governor may by notice in writing require the occupier to define the boundaries in the manner and within the time specified in such notice.

(2) If the occupier of a statutory right of occupancy fails to comply with a notice served on him, he shall be liable to pay the expenses (if any) incurred by the military governor in defining the boundaries, which the occupier has neglected to define: section 13

EXCLUSIVE RIGHTS OF OCCUPIERS.

Subject to the other provision of this Decree and of any laws relating to way leaves, to prospecting for minerals or mineral oils orto mining orto oil pipelines and subject to the terms and conditions of any contract made under the section, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Governor: section 14.

THE RIGHT TO IMPROVEMENTS

During the term of a statutory right of occupancy the holder;

(a) shall have the sole right to and absolute possession of all the improvements of the land;

(b) may, subject to the prior consent of the Military Governor, transferor, assign or mortgage any improvements on the land which have been effected pursuant to the terms and conditions of the certificate of occupancy relating to the land. Section 15

CERTIFICATE OF OCCUPANCY (C-OF-O)

Section 9(1) empowers the Governor when making actual grant of a statutory right of occupancy under section 5(1) to issue a certificate under his hand in evidence of such right of occupancy. In practice, a grant of statutory right of occupancy on land is usually conveyed through a letter of allocation which identifies the location and the size of land over which the right of occupancy is held and stipulates other conditions of grant. Upon fulfillment of the conditions, the statutory right of occupancy becomes vested in the allottee. A certificate of occupancy issued subsequently merely evidences the title; the main conveyance of the interest being the right of occupancy: Section 9(1)

A Governor is required to be satisfied that the applicant for a certificate of occupancy is entitled to a right of occupancy in the land before issuing a certificate to him in evidence of that right. Under section 37 of the Land Use Act, making false claim in order to obtain a certificate of occupancy is an offence and a certificate obtained by fraud may be voided. The certificate of title is, therefore, not a conclusive evidence that the holder is entitled to the land in respect of which it was granted: Sanusi v Makinde (1994) 3 NWLR (Pt. 343) 214.

If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses or neglects to accept and pay for the certificate, the Governor may cancel the certificate and recover from such person any expenses incidental thereto: section 9(3)

CONDITIONS AND PROVISIONS IMPLIED IN CERTIFICATE OF OCCUPANCY

Every certificate of occupancy shall be deemed to contain provisions to the following effect:

(a) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;

(b) that the holder binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16. Section 10

PROCEDURE FOR ISSUING C-OF-O

1. Filling of Application Form

2. Attaching the following documents:

(a) Copy of Purchase receipt duly stamped.

(b) 6 copies of survey plan of the parcel of land and where land is fully within government acquisition, a copy of holder's ratification must accompany the plan. 3 copies of the plan must be cloth made.

(c) 2 copies of building plan if the land is fully built

(d) Receipts of levies requested by the state to be paid if any (e.g. Development and Education Levy in Lagos State).

(e) 3 years current tax clearance certificate.

(1) Copy of land information from the Survey Department of the Ministry of Lands.

(g) 6 passport size photographs.

3. Payment of the necessary fees as prescribed and copy of receipt attached to application.

Processing of Application

Publication

Upon submission of the necessary documents and receipts, a publication is placed in the newspaper circulating in that locality and 21 days fixed for possibility of objection.

Land Inspection.

Where there is no objection to the title of the applicant, an inspection of the land is carried out by the lands officer or his representative in order to ascertain the land in question as well as the existence and extent of any physical development and location of the necessary beacons.

Issuance and registration of Certificate of Occupancy

A certificate of occupancy is usually issued under the hand of the Governor or a person duly authorised by him. The certificate is duly registered in a register meant for it and not in the register of land instruments.

RENTS

Power To Impose Rent

Statutory Rights Of Occupancy

Actual Grant

Section 5(1)(a) states:, It shall be lawful for the Governor in respect of land, whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes, and s.5(1)(c) states that he may also demand rent for any such land granted to any person. Ss 34 and 36 which deal with deemed grant do not contain any- such power. This has prompted Professor Omotola to forcefully argue that the holder of a deemed grant is not expected to pay rent.

Note that a certificate of occupancy issued by the Governor in evidence of a right of occupancy in a non-urban area is statutory, so this will enable the Governor to demand rent in accordance with s.5. See also s.9.

Deemed Grant

No specific power is conferred on the governor to impose rent except; the holder obtains a Certificate of Occupancy, see s. 9(4), see also Otunba Bola Adewumni v Ogunbowale ID/115181. It is however important to note that If a holder of a deemed grant over developed can if he chooses to apply for and is granted a certificate of occupancy, he shall be bound by its terms, which includes the liability to pay rent.

Customary Rights Of Occupancy

Actual Grant

There is no specific power conferred on the Local Government: section 6. See however section 42(2) which suggests that such power exists as said, that proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the local government concerned in the area court or customary court or any court of equivalent jurisdiction.

Deemed Grant

There is no specific power conferred on the local government except; the holder applies for a certificate of occupancy, or applies to the local government for a re-grant of a customary right of occupancy, the conditions of such grant will inevitably include the liability to pay rents

Types Of Rents

The Governor can impose and revise original rent: section 5(I)(c) and (d), impose original penal rent and revised penal rent for breach of covenant to effect improvements on the land and to impose penal rent in lieu of revocation as a result of alienation.

Original Rents

In determining the amounts payable as original rents, section 16 states that the Governor;

(i) In determining the amount of the original rent to be fixed for any particular land and the amount of the revised rent to be fixed on any subsequent revision of rent, the Governor;

(a) Shall take into consideration rent previously fixed in respect of any other like land in the immediate neighborhood, and shall have regard to all the circumstances of the case;

(b) Shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rent of which is under consideration, due to the employment of such capital.

Power Of Governor To Grant Rights Of Occupancy Free Of Rent Or At Reduced Rent

The Governor may grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so. E.g. grant to charitable or religious organizations: section 17

Penal Rents: Section 19

Penal rents are imposed when the holder is in default of covenant to develop the land. The Governor may;

(a) at the time of such breach or at any time thereafter so long as the breach remains unremedied, fix a penal rent which shall be payable for twelve months from the date of such breach; and

(b) on the expiration of twelve months from the date of such breach and on the expiration of every subsequent twelve months so long as the breach continues, revise the penal rent to be paid.

Such penal rent or any revision thereof shall be in addition to the rent reserved by the certificate of occupancy and shall be recoverable as rent:

Provided that the first penal rent fixed shall not exceed the rent so reserved and any revised penal rent shall not exceed double the penal rent payable in respect of the twelve months preceding the date of revision.

Procedure In Case Of Breach

The Governor shall cause a notice in writing to be sent to the holder informing him of the amount of the rent fixed or revised

The holder is given one calendar month from the receipt of the notice to pay e.g. if notice is received on October 10, 1990, the penal rent is payable from November 30, 1990, if the notice is received on November 1, 1990, it is still payable on November 30,1990.

If the breach for which a penal rent has been imposed is remedied before the expiration of the period for which such rent has been paid, the Governor may in his discretion refund such portion of the penal rent paid for such period as he may think fit.

The fact that a penal rent or a revised penal rent has been imposed shall not preclude the Governor, in lieu of fixing a subsequent penal rent, from revoking the statutory right of occupancy.

Provided that the statutory right of occupancy shall not be revoked during the period for which a penal rent has been paid: section 19(5)

Additional And Penal Rent For Unlawful Alienation Under Sections 22 And 23

Section 20 states that if there has been any unlawful alienation without the requisite consent, the Governor may in lieu of revoking the statutory right of occupancy concerned demand that the holder shall pay an additional and penal rent for and in respect of each day during which the land is under the control of the grantee from the holder.

The acceptance by or on behalf of the Governor of any such additional and penal rent shall not operate as a waiver by the Governor of any breach of section 22 or 23 which may continue after the date of such payment.

GOVERNOR'S CONSENT

Under the Land Use Act 1978 (now Cap. 202, Laws of the Federation of Nigeria, 1990) consent of a state governor is required for the validity of any form of alienation whatsoever, either wholly or partly, of any customary right of occupancy (in cases where the property is to be sold by or pursuant to the order of a court under the provisions of the applicable Sheriffs and Civil Process Law) and a statutory right of occupancy, whether granted by the Governor under section 5 of the Act, or as decided by the Supreme Court of Nigeria in the case of Savannah Bank (Nig.) Ltd v. Ajilo (1989)1 N. W L.R. (Part 97) 305 deemed granted by him under Section 34 of the Act. Failure to obtain Governor's consent in respect of any alienation renders such alienation

void under section 26 of the Act. See generally sections 21; 22, 26 34 and 36 of the Act. However, it is not up to the holder whose responsibility it is to obtain the consent to raise the issue as a defence Adedeji v. National Bank of Nigeria Limited & Anor (1989)1 N.W.L.R. (Pt.96) 212

Consent is not required.

(a) to the creation of a legal mortgage over a statutory r for the following:ght ooccupancy in favor of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor:

(b) to the reconveyance or release by a mortgage to a holder or cupier of a statutory right of occupancy which that holder or occupier has mortgaged and that mortgage with the consent of the Governor:

Note that the consent of the Governor to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sublease containing an option to renew the same.

1. Lasis Adetuyi v. Thomas Agbojo; Co-operative Bank (Nig.) Ltd. [19971 1 NWLR (Part 484) Pg 705.

2. Ogunsola v Nicon [1991] 4 NWLR (Pt. 188) 305.

3. Awojugbagbe Light Industries Ltd. u P.N. Chinukwe; Nigerian Industrial Development Bank Ltd. [1993] 1 NWLR (Part 270) Pg

CONSENT PROCEDURE (LAGOS STATE)

Procedure For Obtaining Cod (under the Stamp Duties Act, Cap. 411, Laws of the Federation of Nigeria, 1990). The documents are then taken to the lands registry of the state in which the property is situated for registration. Since the deed of legal mortgage is an instrument, registration is effected under the Land Instrument Registration Act 1924 (now State [Lagos] Law). After registration, the mortgage becomes valid and the mortgagee can advance the amount agreed. Failure to register the document makes it inadmissible in evidence to prove existence of the security. “though it may be evidence of payment and receipt of money”.

DEVOLUTION OF RIGHTS OF OCCUPANCY ON DEATH

Section 24 of the Act makes provisions for the applicable law to regulate the devolution of a right of occupancy upon the death of the occupier.

In the case of a customary right of occupancy, (unless non-customary law or any other customary law applies) be regulated by the customary law existing in the locality in which the land is situated so the devolution of a right of occupancy of an Ibo man (subject to customary law) who dies in a part designated by the Governor of Oyo State to be non-urban will be in accordance with Yoruba customary law

And

In the case of a statutory right of occupancy (unless any non-customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:

So the devolution of a right of occupancy of an Ibo man (subject to customary law) who dies in a part designIgbod by the Governor of Oyo State to be urban will be in accordance with Ibo customary law

Provided that -

(a) No customary law prohiIgboing, restricting or regulating the devolution on death to any particular class of persons or the right to occupy and land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he maybe entitled under the rule of inheritance of any other customary law;

(b) A statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor. Distinguish between claims for possession of land (instituted in the high courts if land is in an urban area) and inheritance upon intestacy under customary law (instituted in the customary courts or courts of equivalent jurisdiction): Adegoke v. Adesina (2001) 9 NWLR (Pt. 718) 494.

In GladysAda Ukeje v. Mrs Lois Chituru Ukeje, Ca/L/174/93 delivered on 26th February, 2001, the Court of Appeal, Lagos Division, held that the Igbo native law and custom disentitlina a female from sharing in her deceased

father's estate is ug onstitutional.

"In the case of the de olution or transfer of rights to which non-customary law applies, no deed or Will shall operate to create any proprietary right over land except that of a plain transfer of the whole of the rights of occupation over the whole of the land."

The effect of the foregoing provision is to defeat any attempt to create successive ownership by way of settlement but any existing strict settlement is not affected by it. The provision does not interfere with the right to grant a lease or sublease or to mortgage the title with requisite consent. Also, the phrase "the whole of the land" does not mean that the holder of a statutory right of

occupancy in effecting a transfer of such right must necessarily do so over his entire land but only the whole of the land which is the subject matter of the conveyance.

REVOCATION OF RIGHTS OF OCCUPANCY

The Governor may revoke a right of occupancy under section 28 of the Act on various grounds.

Grounds for Revocation

(i) Overriding Public Interest

Secti See C.S.S Bookshops Ltd v R.T.M.C.R.S (2006) NWLR (pt. 992) 538 at 582on 28 (2) defines overriding public interest in the case of a statutory right of occupancy to mean unlawful alienation, requirement of land by the Local, State or Federal Government for public purpose, or the requirement of the land for mining purpose or oil pipelines or any purpose connected therewith. In the case of a customary right of occupancy, overriding public interest is defined in section 28(3) almost the same way as in the case of a statutory right of occupancy; the only difference being the addition of the requirement of the land for extraction of building materials.

Where the purpose of revocation is requirement of land by the Local, State or Federal Government for public purpose, any of the purposes stated in section 51 of the Land Use Act is implied, namely:

(a) for exclusive Government use or for general public use;

(b) for use by any body corporate directly established by law or by any body corporate registered under the Companies Decree 1968 [now Companies and Allied Matters Decree 1990] in respects of which the Government owns shares, stocks or debentures;

(c) for or in connection with sanitary improvements of any kind

(d) for obtaining control over land contiguous to any part or over land the value which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government;

(e) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity;

(f) for obtaining control over land required for or in connection with mining purposes;

for obtaining control over land required for or in connection with

planned urban or rural development or settlement;

for obtaining control over land required for or in connection with economic, industrial or agricultural development;

for educational and other social services.

The foregoing public purposes were not meant to be exhaustive for section 51 provides that public purposes "include": a preamble which qualifies the specified purposes to be anything but exhaustive. The natural implication therefore is that a right of occupancy may be revoked for any other public purpose not specified in section 51 provided that it does not violate the `ejusdem generis' rule of construction in the sense that the purpose must fall within the class of the public purposes already specified.

If the reason for revocation is breach; for example unlawful alienation, fair hearing must be accorded the person in breach in accordance with section 36 1999 Constitution. Non-compliance with the procedure laid down by the enabling statute for the compulsory acquisition of a person's property renders such acquisition invalid.

See C.S.S. BOOKSHOPS LIMITED V THE REGISTERED TRUSTEES OF THE MUSLIM COMMUNITY IN RIVERS [2006] VOL. 8 MJSC 169.; Nitel and Others v. Chief Ogunbiyi (1992) 7 NWLR (Pt. 255) 543. See also A.G. of Bendel v Aideyan (1989) 4 NWLR (Pt. 118); Sule Adukwu And 4 Ors. vs. Commissioner for Works, Lands and Transport, Enugu State & 3 Others [1997] 2 N.WL.R. (Pt. 489) pg.588 and **FOREIGN FINANCE V L.S.D.P.C**[1991] 4N.WL.R. (Pt. 184) p. 157.

No revocation can be upheld if the purpose is to grant the land to someone else: **FOREIGN FINANCE V L.S.D.P.C**

There is need to spell out the public purpose in the notice supra of revocation: **FOREIGN FINANCE V L.S.D.P.C**

Public purpose is as stated in the Land Use Act and cannot be extended beyond those provisions in sections 50 and 51: Dahiru Saude v Halliru Abdallahi [1989] 7 S.C. (Pt. 11)116.

Procedure for valid revocation

The revocation of a right of

See also **Osho v Foreign Finance Corporation (1991) 4 NWLR (pt. 184) p.157** occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder. Section 28(6).

Thus, the notice of revocation must be issued in the name of the Governor or by his authority and not in any other name: Majiyagbe v A.G. (1957) NNLR 158; Ugochukwu v. COOP & Commerce Bank [1996] 6 NWLR (Pt. 48) 524 and Nigerian Eng. Works v A.G. of Rivers State [2001] 12 S.C.N.J. 251.

The Governor is required to notify the holder of the right of occupancy stating the reason for revocation as prescribed by the Land Use Act.

By section 44, any notice required by the Act to be served on any person shall be effectively served on him

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or

(c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending to in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.

(e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some persons the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Non-compliance e.g. publication in newspaper makes the revocation void: Osho v. Foreign Finance [1991] 4 NWLR (Pt. 184) p. 157.

Notice must be proved to have come to the knowledge of the holder of the right of occupancy: A. G. of Lagos State v. Sowande [1992] 8 NWLR (Pt. 261). p. 601.

Upon the receipt of the notice of revocation, the title of the holder of a right of occupancy shall be extinguished: section 28(7).

COMPENSATION

Compensation is only payable where the revocation is not penal.

Assessment of Compensation

Land

As regards the land the amount of compensation is an amount equal to the 43(xxiii)

rent, if any, paid by the occupier during the year in which the right of occupancy was revoked: section 29 (4).

Unexhausted Improvements on land

The replacement cost of the building, installation or improvement less any depreciation, together with interest at the bank rate for delayed payment of, and in respect of, any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence. Where the revocation is for requirement of the land by the government of the state or by a local government in the state, in either case for public purposes within the state, or the requirement of the land by the government of the federation for public purposes of the federation or the requirement of the land by the government of the state or by a local government in the state, in either case for public purposes within the state, or the requirement of the land by the government of the federation for public purposes of the federation.

The holder and the occupier shall be entitled to compensation for the value at the date or revocation of their unexhausted improvements: section 29.

"Unexhausted improvements" defined in section 51 as anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof includes buildings, plantations of long lived crops or trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce.

If the purpose of revocation i s the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith, the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Actor the Mineral Oils Actor any legislation replacing the same. See Mineral and Mining Decree No.34 of 1999.

If the holder or the occupier entitled to compensation under this section is a community, the governor may direct that any compensation payable to it shall be paid

(a) to the community; or

(b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or

(c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.

Where the land in respect of which a right of occupancy has been revoked forms part of a larger area, the compensation payable shall be computed less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.

Where a right of occupancy in respect of any developed land on which a residential building has been erected is revoked under the Act, the Governor or the local government, as the case may be, may in his or its discretion offer in lieu of compensation payable resettlement in any other place or area by way of a reasonable alternative accommodation: section 33 (1).

REFERENCE OF DISPUTE AS TO COMPENSATION

30. Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

By section 47 no court shall have jurisdiction to inquire into:

(a) (b)

any question concerning or pertaining to the vesting of land in the governor or

any question concerning or pertaining to the right of the go(b) vernor to grant a statutory right of occupancy or

(c) any question concerning or pertaining to the right of a local government to grant a customary right of occupancy, furthermore, subsection (2) provides that no court shall have jurisdiction to inquire into any question

concerning or pertaining to the amount or adequacy of any c cpensation paid or to be paid.

Notwithstanding the above, this is inconsistent with the Constitution

Federal Republic Of Nigeria (Promulgation) Decree 24 of 199of the , so it is void.

SeeNigeria0) 6 (as amended) NWLR (Pt. 155) 10.

Jurisdiction Of Courts Under The Land Use Act

The High Court

The high court shall have exclusive original jurisdiction in respect:

(a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the governor or deemed to be granted by him including proceedings for a declaration of title to a statutory right of occupancy.

(b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under the Act.

Section 39 (1): see Alhaji Karimu Adisa v Emmanuel Oyinwola (2000) 10 N.W. L. R. (Pt. 674)116; the supreme court held that having expressly employed the word "exclusive" to qualify jurisdiction in section 39(1) of the Act but omitted the use of the same word in section 41, the obvious intention of the law makers was not to confer exclusive jurisdiction on the area and customary courts under the said section 41 of the Land Use Act. It is erroneous on point of law to import the word "exclusive" into section 41 of the Act. Section 41 of the Land Use Act does not in any way whittle down the unlimited jurisdiction of the state high courts in land matters whether situated in urban or rural areas. This case was decided under the 1979 Constitution; under the 1999 Constitution, the high court no longer enjoys unlimited jurisdiction so the decision may not be the same if decided under the 1999 Constitution: Salati v. Shehu (1986) All NLR 53, 76; Oyeniran & Ors. v. Egbetola & Anor (1997) 5 SCNJ 94; (1997) 5 NWLR (Pt. 504)122. section 41 of the Act provides that:

"An area court or a customary court or other court of equivalent jurisdiction in a state shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a local government under this Act; and for the purpose of this paragraph proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section."

In Salati v. Shehu (1986) All NLR 53 (supra) the real issue before the court was straight forward and clear. This was whether the area court or customary court had jurisdiction over a dispute concerning land situated in the urban area of Benue State and therefore subject of statutory right of occupancy. There was no question whether in that case as to whether the high court had jurisdiction to entertain suits in respect of land subject to a customary right of occupancy.

The supreme court held that the land in dispute being one held under a statutory right of occupancy and not under customary right of occupancy, it was the high court that had jurisdiction to entertain the suit and not the area court.

PROCEEDINGS FOR RECOVERY OF RENT IN RESPECT OF CERTIFICATE OF OCCUPANCY ETC.

Proceedings for the recovery of rent payable in respect of any certificate of occupancy may be taken before a magistrate court of competent jurisdiction by and in the name of the chief lands officer or by and in the name of any other officer appointed by the governor in that behalf: section 42(l).

(2). Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the Local Government concerned in the area court or customary court or any court of equivalent jurisdiction.

SPECIAL PROVISIONS IN RESPECT OF PENDING PROCEEDINGS

Where on the commencement of the Act proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any land or interest therein, such proceedings may be continued and be finally disposed of by the court concerned, but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provided in the Act: section 40.

PROHIBITION OF AND PENALTIES FOR UNAUTHORISED USE OF LAND

Save as permitted under section 34 of the Act, no person shall in an urban area -

(a) Erect any building, wall, fence or other structure upon; or

(b) Enclose, obstruct, cultivate or do any act on or in relation to, any land which is not the subject of a right of occupancy or licence lawfully held by him or in respect of which he has not received the permission of the governor to enter and erect improvements prior to the grant to him of a right of occupancy.

(2) Any person who contravenes any of the provisions of subsection (1) shall on being required by the governor to do any within the period of obstruction, structure or thing which he may have caused to be placed on the land and he shall put the land in the same condition as nearly as may be in which it was before such contravention.

(3) Any person who contravenes any of these provisions shall be guilty of an offence and liable on conviction to imprisonment for one year or to a fine of N5,000: section 43.

43(xxviii)

DELEGATION OF POWERS

The governo0.te commissioner all or any of the powers conferred on him, subject to such restrictions, conditions and qualification, not being inconsistent with the provisions, or general intendment, of the Land Use Act where the power to grant certificates has been delegated to the state commissioner, such certificates shall be expressed to be granted on behalf of the governor: section 45 (1).

POWER W MAKE REGULATIONS

The (National Council of States) may makeTOregulations for the purpose of carrying the Act into effect and particularly with regard to the following matters:

(a) the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians;

the terms and conditions upon which special contracts may be made under section 8;

(c) the grant of certificates of occupancy under section 9;

(d) the grant of temporary rights of occupancy;

(e) the method of assessment of compensation for the purposes of section 29 (2). The governor may also make regulations with regard to the following matters:

(a) the method of application for any licence or permit and the terms and conditions under which licences may be granted;

(b) the procedure to be observed in revising rents; (c) the fees to be paid for any matter or thing done; (d) the forms to be used for any document or purposes: section 46. 43(xxix)

MODIFICATION OF EXISTING LAWS

All existing laws relating to the registration of title to, or interest in, land or the

transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with the Actor its general intendment: section

48. See Dahiru Saude u HalliruAbdullahi (1989)7 S.C. (Pt. 1) 116

EXEMPTION WITH RESPECT TO FEDERAL GOVERNMENT LAND, ETC.

Noth

ing in the Act shall affect any title to land whether developed or undeveloped held by the federal government or any agency of the federal government at the commencement of the Act and, accordingly, any such land shall continue to vest in the federal government or the agency concerned: Section 49 (1). “Agency” includes any statutory corporation or any other statutory body (whether corporate or unincorporated) or any company wholly owned by the federal government: section 49 (2).

INTERPRETATION OF TERMS: section 50

“Agricultural purposes” include the planting of any crops of economic value; “appropriate officer” means the Chief Lands Officer of a state and in the case of the federal capital territory, means the Chief Federal Lands Officer; “customary right of occupancy” means the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a local government.

“Developed land” means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural orresidential purposes.

“Easement” means a right annexed to land to utilize other land in different holding in a particular manner (not involving the taking of any part of the natural produce of that land or of any part of its soil) or to prevent the holder

of the other land from utilizing his land in a particular nner.

“Government” means the Government of the Federation or the Government of a State; “grazing purposes” includes only such agricultural operations as are required for growing fodder for livestockon the grazing area.

“High Court” means the High Court of the State concerned.

“Holder” in relation to a right of occupancy, means a person entitled to aright of occupancy and includes any person to whom a right of occupancy has been validly assigned orhas validly passed on the death of a holderbut does not include any person to whom arightof occupancy has been sold or transferred withouta valid assignment nor a mortgagee, sublesseeorsub-underlessee; “improvements” or “unexhausted improvements” means anything of any quality permanently attached tothe land, directly resulting fromthe expenditure of capital orlabourby an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof, and includes buildings, plantations of long livedcrops ortrees, fencing, wells, roads and irrigation orreclamation works, but does not include the result of ordinary cultivation other than growing produce.

“Interest at the bank rate” means a simple interest payable at the rate percentage per annum at which the Central Bank of Nigeria will rediscount bills of exchange;

“Local Government” means the appropriate local government or any other body having or exercising the powers of a local government as provided by law in respect of the area where the land in question is situated.

“Governor” means the Governor of the State concerned;

“Mortgage” includes a second and subsequent mortgage and equitable mortgage; “occupier” means any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-underleassee of a holder.

“Public purposes” include:

(a) for exclusive government use or for general public use; 43(xxxi)

(b) for use by any body corporate directly established by law or by any body corporate registered under the Companies Decree 1968 as respects which the government owns shares, stocks or debentures;

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(c) for or in connection with sanitary improvements of ankind;

(d) for obtaining control overland contiguous to any part or overland the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government;

for obtaining control over land required for or in connection with mining purposes;

for obtaining control over land required for or in connection with planned urban or rural development or settlement;

for obtaining control over land required for or in connection with economic, industrial or agricultural development.

“Statutory right of occupancy” means a right of occupancy granted by the Governor under the Act;

“Urban area” means such area of the state as may be designated as such by the Governor pursuant to section 3;

“Sub-lease” includes sub-underlease.

LAND COMPRISED IN THE FEDERAL CAPITAL TERRITORY

(2) The powers of a governor shall, in respect of land comprised in the Federal Capital Territory or any land held or vested in the federal government in any state, be exercisable by the head of the federal government or any federal commissioner designated by him in that behalf and references in the Act to governor shall be construed accordingly.