

The Concept of Dualism of Title to Land in Nigeria

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Introduction

There is no doubt from all spheres of human endeavour, that land is the most important and perhaps the only imperishable heritage of man. It is bequeathed to him by the sovereign God,¹ he is made of it.² All the food he eats is grown on it, he lives on it, his abode is constructed on it, all materials required for construction works are derivative of land, all materials required for human technological advancement are extractions of land. It is indeed an axiom of absolute reality, that land and man are two indivisible entities. This respected view is so hold, on the sound premise that man finally rest in it.³ The truth of the matter is there wouldn't have been man but for land. This is predicated on the fact that all human activities are concentrated on land and nothing else, indeed a sacrosanct and most revered virtue of man, the nerve centre of all human activities.

Sequel to the streams portrayed above, this paper is geared towards the evaluation and interpolation on how this 'all in all' most important virtue of human existence is held, controlled, and used by man for all intents and purposes.

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¹Genesis, Chapter one, verse one (1:1), of the Holy Bible.

² Genesis, Chapter three, verse nineteen, (3: 19), of the Holy Bible.

³J. F. Fekuma, Principles of Nigerian Customary Land Law, (2002 F&F Publishers Nigeria Limited, Port Harcourt), Rivers State, Nigeria.

The paper therefore schematically analyse the meaning of land, how land is held in Nigeria, the dualistic postulation of title to land in Nigeria, its applicability in terrestrial jurisprudence of Nigeria, its assessment, synthesis and finally berth on an evaluative and logical conclusion.

The paper shall proffer some instructive and objective recommendations which could be potent resource materials in the academia and the practice of property law in Nigeria. The paper shall utilize in maximum capacity case law, statutory enactments, and several other printed materials, especially the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended, the Land Use Act, the Interpretation Act, and many other resource materials to support its analytical assessment and evaluation.

The Meaning of Land

It is very difficult, if not near impossible to have a universally accepted definition of any term. Sequel thereto, we humbly aligned with the jurisprudential inclination that terms, especially legal terms are better described or identified whenever they are mentioned for discussion and deliberation. Howbeit, for the purpose of this paper, it shall be pertinent to have a working definition of the entity referred to as land. This shall be done in its natural constituent, and in its legal and statutory perspectives. For the rationale thereof, land is categorized into three broad spectrums, namely natural, artificial and statutory states.

Land in its natural state and component means the soil and the soil alone.⁴The solid parts of the earth's surface on which plants grow.

This definition was tersely adopted by the Supreme Court of Nigeria per **Adio, JSC.**, in the case of **Salami vs Gbodoolu**,⁵ where the Learned Justice observed:

“The word “land” in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface as distinguished from the sea,”

Land in its artificial or legal connotation implies the soil, the solid part of the earth's surface including water bodies and everything that is permanently affixed thereto, hence the maxim, *quicquid plantatur solo solo cedit*,⁶ meaning anything permanently affixed to the soil or attached to anything permanently affixed to the soil belongs to the soil. The English common law conception of land, according to **Edward Coke**⁷

“Land in its restrained sense, means soil, but in its legal acceptance, it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath: it includes also houses, mills, castles and other buildings for which the conveyance of land, the structures upon it pass also. Besides an indefinite extent upwards and it extends downwards to the globe's centre, hence the maxim, *cujusest solum, ejusestusque ad coelum est ad inferos*.”⁸

The English common law version of the meaning of land appears to be more comprehensive in text and content. This is in resonance with the singular fact that it engulfs almost all species of land including water bodies which is a species of land covered with water. The above definition was succinctly adopted by the Court of Appeal per **Macauley, JCA** in the case of **Madam Ibrahim vs Alhaji Bappa Yola**⁹, where he opined as follows:

“According to the principles of inherited English Common Law, land includes everything up to the sky and down to the centre of the earth. The presumption is therefore that a transfer or ownership of a particular piece of land includes not only the physical soil, but all building(s) permanently attached to the soil or permanently fastened to anything which is so attached to the soil.”

⁴ J. F, Fekuma, Principles of Nigerian Customary Land Law, (2002 F&F Publishers Nigeria Limited, Port Harcourt), Rivers State, Nigeria.

⁵ [1997] 4 NWLR (Part 499) 277, 286.

⁶ Bryan A Garner, (Editor-in-Chief), Black's Law Dictionary, Eighth (8th) Edition (2004 Thompson West USA), 1750.

⁷ Edward Coke, On Littleton, 4a – quoted from Jowitt's Dictionary of English Law, (1977 Second Edition), Vol. 2, 1058 – 1059.

⁸ The maxim, “*cujusest solum...*”, means whoever owns the soil owns everything up to the sky and down to the centre of the earth's crust; Black's Law Dictionary, Eighth (8th) Edition (2004 Thompson West USA), 1712.

⁹ [1986] 4 CA (Part 1) 98, 119.

Land in its statutory perspective; the statutory meaning of land is almost on all fours with the legal implications, save some specific qualifications, for instance **section 318 (4)**¹⁰, adopts by reference the definition of land as enshrined in **section 18**¹¹, which *inter-alia* provides:

“Land” includes any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals.”

Section 18 of the Interpretation Act also defines land as an immovable property. Order 1, Rule 2,¹² defines immovable property as meaning:

“Immovable Property” means land, buildings, and everything attached to the earth, including leaseholds, and other interests in land, but not including minerals, mineral oils, standing crops, and fruits of trees of economic value.”

Furthermore, section 191¹³ of the Property Law of Bayelsa State of Nigeria defines land as:

“Land” includes land under a right of occupancy or any other tenure (other than under customary law), things growing or attached to the land including buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other tangible property; also a rent and other non-tangible property, and an easement, right, privilege or benefit in or over derived from land.”

From the foregoing as espoused there above, it is our humble submission to hold that, land is an agglomeration of the lithosphere,¹⁴ the hydrosphere,¹⁵ and all other fixtures and fittings¹⁶ firmly affixed therein, it then follows that the entire earth’s surface is land, the hydrosphere being land covered by water.

Title to Land in Nigeria

Anyone who is claiming a genuine and sincere right to possession and use of land must have a good and valid title to the land he is claiming; without which an action for declaration of title to land must fail. What then is title to land? According to the (Black’s Law Dictionary Eighth (8th) Edition at page 1522), defines title as:

“The union of all elements (as ownership, possession, custody) constituting the legal right to control and dispose of property, or legal evidence of a person’s ownership right in a property, an instrument such as deed that constitutes such evidence. Title is generally used to describe either the manner in which a right to property is acquired, or the right itself. It refers also to the conditions necessary to acquire a valid claim to land.”

From the streams of consciousness exploited above, it is our considered submission that, title to land is the legitimate right an individual or group of individuals has to exclusive possession and use of land to the exclusion of all others in this wide world.

Modes of Acquisition of Title to Land in Nigeria

For one to succeed in an action for declaration of title to land, the claimant must legally prove and deduce his title to the satisfaction of the court. Title to land can be deduced and proven from the following roots of title namely: by first settlement, by conquest, by customary and traditional history, by long possession (prescription), by statutory provisions, and by transfer of interest in land. Same as highlighted herein shall be discussed in seriatim:

By First Settlement

This mode of acquisition of title to land is also called original settlement. This mode of acquisition of title to land was practically possible in the pre-historic and historical periods of man’s developmental evolution when few people existed on the globe and the availability of abundance of unoccupied expanse of land.

¹⁰ The Constitution of the Federal Republic of Nigeria (CFRN), 1999, amended.

¹¹ The Interpretation Act, 1964.

¹² Area Courts, (Civil Procedure), Rules, applicable to all the Northern States of the Federation.

¹³ The Property Law, Cap P.12, Laws of Bayelsa State of Nigeria, 2006.

¹⁴ Means the crustal earth that is, the solid parts of the earth’s crust on which all plants grow.

¹⁵ Refers to all water bodies including the oceans, seas, lakes, rivers, creeks, streams, oases, ponds, and brooks.

¹⁶ Fixtures & Fittings, means the structured environment, that is, the man made environment including houses, bridges, mills, castles, tarred roads, rail ways, telecommunication masts, wooden, concrete & metallic electric poles, concrete & metallic fences, dams, culverts, churches, mosques, and all other forms of buildings and constructed works done by man.

Man in his wandering and gathering stages, wherever he settles and expands his gathering activities belong to him for exclusive possession and use. First settlement is one of the most reliable modes of acquisition of good and valid title to land when proven. First settlement has gained strong recognition in our legal system. This is because in the case of **Odofin vs Ayoola**¹⁷, the Supreme Court of Nigeria per **Oputa, JSC.**, held thus:

“First settlement seems to be the oldest method of acquiring title to land. If the traditional evidence of such first settlement is accepted, title can be declared purely on such evidence.”

In the case of *Owoniyin vs Omotosho*,¹⁸ it was held that:

“Ownership or title must go to the first settler in the absence of any evidence that they jointly settled on the land or that a grant of joint ownership was made to the later arrival by the first.”

First settlement as a means of ownership of land was summarised by the adept Law Lord, Karibi-Whyte, JSC, in the case of *Odofin vs Ayoola*,¹⁹ where he held thus:

“This court has accepted original settlement on land as evidence of title and ownership to such land. Again where such land has been acquired it passed on death as family land to the children of the original settler.”

Furthermore, it is instructive to hold here that, incidents of first settlement is the basis of royal stools and families in most traditional and ancient societies in Africa which has lasted up to date in modern societies. Wherever the eyes and powers of the ancient man can see belongs to him for absolute possession and use thereto. The only limitation was where another stronger man had possessed, hence negotiations for boundaries delineation using natural features and marks such as rivers, lakes, streams, swamps, mountains, rocks, forbidden forests, and many more for the singular reason of peaceful and harmonious co-existence between them.

By Conquest

At a point in time in man’s historical evolution and development might was wealth, when it was believed that the weak should and must be ruled and governed by the strong in order to have an absolute obedience.²⁰ The property jurisprudence of Nigeria recognises a title to land acquired where a stronger person or community over runs a weaker one in a real fierce battle with the clear intention of acquiring everything therein. This doctrine of title to land was incorporated into the corpus juris of Nigeria through the British Committee of the Privy Council in the case of **Nwuba Mora vs H.E Nwalusi**,²¹ per **Lord Evershed**, where he held:

“There is in Nigeria no law corresponding to the English rule of prescription for conferring title to land. It is however not in doubt that proof of possession following conquest will suffice to establish ownership.”

The principle of law laid down above by the Privy Council was adopted by the Supreme Court of Nigeria per the Law Lord of great profundity, **Karibi-Whyte, JSC.**, in **Echi vs Nnamani**,²² where he held as follows:

“In plain terms, proof of conquest by a community followed by effective occupation or possession of the land in dispute is sufficient to confer title to land under customary law.”

Further exposition, in the Selected Judgement of Rivers State of Nigeria, in the matter between Chief Maya Bekebo & ORS vs Chief Koluamawei Edu & 5 ORS,²³ where the Court held:

“Contrary to the submission of the learned counsel for the plaintiffs, their claim could only succeed if they successfully established that their title to the land they now claim was derived from actual conquest; for the law as established in the case of *Mora vs Nwalusi* (1962) All NLR 161, 684; per Lord Evershed” It is however not in doubt that proof of possession following conquest will suffice to establish ownership.” This is a Privy Council decision by which I am bound, and which I find to have stated the correct position in law. This is because, the effect of conquest in law, is clearly to transfer to the conqueror, the proprietary rights of the conquered people.”

¹⁷ (1984) 11 S.C 72, 114.

¹⁸ (1962) WNLR 1, 3.

¹⁹ (1984) 11 S. C 72, 114. See also per Iguh, JSC, in *AllivsAlesinloye* [2000] FWLR (Part 15) 2610 S.C, 2639-2640.

²⁰ The Fascist and Nazi teachings and philosophies of BenitoMusilini and Sir Adolf Hitler and as well the teaching and philosophy of Machiavelli Niccolo, (1469-1527).

²¹ (1962) 1 ALL NLR 161 (PC).

²² [200] 8 NWLR (Part 668) 1, 18.

²³ (2002) 1 RHCR 83, 122.

As scrutinized above, it is firmly established that conquest is one of the modes of acquisition of good and valid title to land. Howbeit, this mode of acquisition of title to land is no more practicable in today's contemporary society; as it is highly prohibited by law, especially, section 42 of the Criminal Code Act²⁴, and sections 341 & 350 of the Penal Code Law.²⁵

By Customary and Traditional History

The modern man in all communities and societies today, especially those in rural and traditional setting in Nigeria deduces their title to land through oral literature and history. The land he possesses and occupies absolutely devolves to him through customary inheritance from his fore fathers and ancestors who first settled and occupied the land from time immemorial. It is significance to hold here that, first settlement and conquest have a very close nexus of connectivity with customary and traditional history as a mode of acquisition of title to land. The claimant who is relying solely on customary history, as a means of deducing and proving title to land must make sure his evidence and line of argument are straight, logical, consistence, coherence and legally convincing to reflect the current realities in order to have the preponderance of evidence and balance of probability skewed towards him. Customary devolution of title to land is brazenly recognised in **section 24 (a),²⁶ of the Land Use Act**, which states inter-alia that:

“The devolution of the rights of an occupier upon death shall-

In the case of 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.”

Due to the strong traditional inertia and attachment of the people of Nigeria in particular and Africa in general to customary and traditional history derived from oral literature, same is tactfully excluded in Nigeria's corpus juris as hearsay evidence, section 66²⁷ of the Evidence Act, 2011, provides:

“Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is admissible.”

From the provisions of the Evidence Act, 2011, customary history as a means of proving title to land shall only arise whenever such title is the fact in issue before a court of law or any other legally constituted tribunal or panel, see section 43 (2)²⁸ of the Evidence Act, 2011. Besides, statutory provisions, in **Idundun & Ors vs Okumagba & Ors²⁹**, the apex Court per *Fatai-williams, JSC.*, held:

“It is now settled law that there are five ways in which ownership of land may be proved., ..., Firstly, ownership of land may be proved by traditional evidence as has been done in the case in hand. See also section 66 of the Evidence Act, 2011.”

Long Possession (Prescription)

An undisturbed, quiet and peaceful possession and use of a piece of land for a very long period of time by an individual or group of individuals could smoothly transcends to a good and valid title to land, either in equity or in law. Prescription is a mode of acquisition of title to land as a result of peaceful and undisturbed possession and use of a piece of land by an individual or a group of persons for a very long period of time, it is described in some quarters as an adverse title to land³⁰.

Although some colonial legal authorities claimed, there is no equivalent Nigerian traditional practice to that of English rule of prescription to confer title to land, however the court in its equitable jurisdiction shall not interfere with an undisturbed, quiet and peaceful possession and use of land by someone or a group of people for a very long period of time; **Akpan Awo vs Cookey Gam.³¹** What's then does the court grant? In our considered opinion prescriptive title to land is not an alien ethos to both pre and post-colonial Nigeria.

²⁴ CAP C38, Laws of the Federation of Nigeria (LFN), 2004; applicable to all the Southern States of the Federation.

²⁵ CAP C30, Laws of the Federation of Nigeria (LFN), 2004; applicable to all the Northern States of the Federation.

²⁶ The Land Use Act, CAP L5, Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

²⁷ The Evidence Act, 2011; See also sections 43 (1) and (2); and 73 (1) and (2) of the Evidence Act, 2011.

²⁸ Section 43 (2) of the Evidence Act, 2011.

²⁹ (1976) 10 NSCC 445, 453.

³⁰ J. F. Fekuma, Principles of Nigerian Customary Land Law (2002 F & F Publishers Nigeria Limited Port Harcourt), 117.

³¹ (1913) 2 NLR, 100, 101- per Webber, J.,

The colonial legal position in **Awo vs Gam**,³² with all sense of humility and honesty is erroneous and misleading, and we think properly should be expunged from the legal records of Nigeria. This informed decision and conclusion is procured from the plethora of sound declarations of possessory titles and rights based on long possession by our courts even against the true owner and the *hauzi* practice of Northern Nigeria. In the case of **Kwachtaver Kaan vs Kpanko Igyuse**³³ where the Court Appeal, accordingly held:

“There are evidence that the respondent and his father have farms on the land. It would appear that the respondent and his father before him, were never disturbed on the land....., He, the appellant added that he used to visit the land in dispute. He must have noticed the respondent farming on the land during such visits, yet he raised no objection; at least he did not say so. It must, therefore, be presumed that he acquiesced in the respondent remaining in possession of the land. It followed from these facts that the respondent’s adverse possession is for a considered period of over 40 years, ... In the light of all these facts it is my view that the appellant’s conduct not only excludes his right to possession on the principle laid down in *Cookey Gam’s* case, it will be inequitable to hold that he is now entitled to any right of ownership over the land, ... It is my judgement that the appellate High Court is right in granting the whole land to the respondent.”

Furthermore, in the case of *Suleiman & Anor vs Johnson*³⁴, the court held:

“In the exercise of its equitable powers the court will not disturb long and undisturbed possession even in favour of the real owner by native law and custom.”

The *Hauzi* practice of Northern Nigeria is that good and valid title to land passes to a person or group of persons who has been in peaceful possession of a piece of land undisturbed for a very long period of time. The primacy of the practice is that a valid title to land passes to a family member who is in peaceful possession of a piece of land undisturbed for a period of forty (40) years and a good and valid title to land passes to a none family member who is in peaceful possession of a piece of land undisturbed for a period of ten (10) years. See illustrations from *Ihkamul-Ahkam*, at page 260 and *Dasuki*, Vol. iv, at pages 233-234 (*Commentaries on Mulktasat el Khalil*). In the case of *Hakimi Boyi Ummaruvs Aisa Bakoshi*,³⁵ where the court per Muntaka-Coomassie, JCA (as he then was)held:

“It is trite in Islamic law that where a person has been in peaceful enjoyment or possession of land without challenge for 10 years he thereby acquires title by *Hauzi* against any person who claims to be the true owner of such land during that period.”

Furthermore, the apex Court in *Idundun & Ors vs Okumagba & Ors*³⁶, per *Fatai-Williams, JSC.*, held:

“It is now settled law that there are five ways in which ownership of land may be proved., ..., Fourthly, acts of long possession and enjoyment of the land may also be prima facie evidence of ownership of the particular piece or quantity of land with reference to which such acts are done (See section 35 of the Evidence Act 2011)³⁷.”

Based on the practical instructive illustrations expatiated above, it is prowess enough to hold that long possession (prescription) as a mode of acquisition of title to land is known to Nigerian traditional and customary land holding and usage which has been applied in our judicial system. Therefore the colonial legal qualification restricting such exercise of declaration to only the court’s equitable jurisdiction is unfounded and baseless. This is against the background that, even the true owner cannot regain possession of the land due to another’s long possession. Hence the legal projection that actual possession is nine-tenth ($\frac{9}{10}$)³⁸ of the law, that is, to say, in an action for declaration of title to land the party in actual possession has ninety percent (90%) probability of success in the action.

³² Ibedem, at 101.

³³ Unreported Court of Appeal Jos Division, Appeal No: FCA/J/70/83, delivered on March 20, 1985, at the Federal Court of Appeal Jos, Nigeria.

³⁴ 13 WACA 213.

³⁵ [2000] 2 NWLR (Part 646) 692, 701-702.

³⁶ (1976) 10 NSCC 445, [454, Lines 30-40].

³⁷ “Acts of possession and enjoyment of land may be evidence of ownership or of right of occupancy,...”.

³⁸ J. F. Fekuma, *Principles of Nigerian Customary Land Law* (2002 F & F Publishers Nigeria Limited Port Harcourt), Nigeria.

Consequently, the colonial legal authority in **Awo vs Gam**³⁹ supra, in my humble view is a colonial stigmatization and scam which should be ignored with great ignominy and accordingly, we hold that such should be spurned from forming part of the *corpus juris* of Nigeria.

Statutory Enactment

A statute is a law enacted by a competent legislative body. Acts of competent legislative bodies in Nigeria are among other things include: Acts passed by the National Assembly, laws passed by the States' Houses of Assembly, bye-laws passed by the Legislative Arm of a Local Government Council, including all delegated legislations, official pronouncements, official gazettes, and standing orders. Whereas in military era were: Decrees made by the Federal Military Government, Edicts made by the Military Governor or Administrator of a state.

A statute can confer title to land on some institutions or bodies. A case at hand is the Land Use Act⁴⁰, of 1978, section 1 of that law vests all land in the territory of a State on the Governor. The section inter-alia provides as:

“Subject to the provisions of this Act, all land 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.”

A title to land created *ad modum* (in this manner) described above is referred to as statutory title, that is, one created by a statute. By virtue of the same enactment, the Governor can grant statutory right of occupancy to any Nigerian. The Governor is then hearkened to the lord paramount in ancient English feudal system. By the synergies of the statutory provisions of **section 9 (1) (a) & (2) of the Act**,⁴¹ the Governor can issue under his own hand a certificate of occupancy (C of O) to any contracting party as an evidence of transaction between the parties.

By Transfer of Interest in Land

Valid and good title to land can be acquired by two consenting parties through a simple contract, furnished by financial consideration or not, but must be evidenced with a valid deed of transfer of interest in land executed by the contracting parties. Evidence of transfer of interest in land that constitutes good title to land include: Deed of Assignment, Deed of Mortgage, Deed of Lease, Deed of Sub-Lease, Deed of Gift, Assent, and perhaps Tenancy Agreement.⁴² All the means afore mentioned transfer interest in land from one person to another by way of simple contract thereby forming good and valid title or possessory right to the holder. Such transfer of interest in land must be consented to by the Governor of the State in order to be in consonance with the provisions of section 21 of the Land Use Act⁴³ of 1978.

This mode of acquisition of title to land was given judicial verve, when the Supreme Court in the case of *Idundun vs Okumagba*,⁴⁴ per Fatai-Williams, JSC., held:

“Secondly, ownership of land may be proved by the production of documents of title which must, of course be duly authenticated in the sense that their due execution must be proved, unless they are produced from proper custody in circumstances giving rise to the presumption in favour of due execution in the case of documents twenty years old or more at the date of the contract (See section 162 of the Evidence Act, 2011 and *Johnson vs Lawanson* (1971) 1 ALL NLR 56).”

The Concept of Dualism of Title to Land in Nigeria

The imperium idea of dual title to land in Nigeria is developed from the critical evaluation and assessment of the discrete current land holding and management in Nigeria. Prior to the enactment of the Land Use Act in 1978,⁴⁵ every piece of land in Nigeria was possessed and used by an individual or group of individuals through any of the modes described above save statutory enactment. The conception of statutory title to land in Nigeria was born out of the enactment of the Land Use Act in 1978.

³⁹ (1913) 2 NLR 100, 101-Webber, J.,

⁴⁰ CAP L5, Vol. 8, Laws of the Federation of Nigeria (LFN), 2004.

⁴¹ The Land Use Act, CAP L5, Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

⁴² Section 191, The Property Law, CAP P12, Laws of Bayelsa State of Nigeria, 2006.

⁴³ CAP L5, Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

⁴⁴ *Ibidem* (*supra*).

⁴⁵ CAP L5 Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

It is worthy to state categorically here that, the Land Use Act which is a constitutional provision by virtue of section 315 (5)⁴⁶ of the Constitution of the Federal Republic of Nigeria, (CFRN), 1999, as amended, does not appropriate or nationalise land in Nigeria, neither does it revoke the existing land tenures and holdings in the country.

Yet section 1⁴⁷ of the Land Use Act vests the ownership, control, management and administration of all land in the territory of each State of the Federation on the Governor. Hence the imperative conceptualisation of dual title to land in Nigeria, dual means two and in our considered opinion every piece of land in Nigeria has two title holders, who are:

1. The person in actual possession and use of the land; and
2. Statutory title holder by virtue of section 1⁴⁸ of the Land Use Act, held by the Governor of each State.

The concept of dualism of title to land in Nigeria can be better appreciated by responding to the following posers:

- i. Does customary title to land exist in present day Nigeria?
- ii. Is there any law in Nigeria that confers title to land on any institution?
- iii. Is there any land in Nigeria that is not customarily affiliated?

Same as constructed above shall be discussed in seriatim:

Customary title to land was the one widely known and practiced in Nigeria before the advent of the Land Use Act in 1978. Sequel thereto, the fundamental poser one may present is, does the Land Use Act abrogate or alter customary possession and use of land in Nigeria? Or does it revoke customary title to land in Nigeria? Our humble response to the posers posed above, are in the negative, and if in the negative then customary title and use of land exist in pre and post 1978, property law practice and jurisprudence in Nigeria. To substantiate this proposition is the case of **Garuba Abioye vs Sa'adu Yakubu**,⁴⁹ where the full Bench of the Supreme Court of Nigeria while interpreting the provisions of the Land Use Act with respect to customary right of occupancy unanimously held as follows:

“A 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 under this Act; A person with customary right of occupancy is entitled to use the land in accordance with customary law. A customary right of occupancy predates the Land Use Act and is intimately linked with the custom of the people of the area. It is a creation of customary law and the fact that it can now be granted by the local government has not taken it out of the realm of customary law.”

Further substantiation is procured in the judicial decision, *N.N.P.C vs Sele & Ors*⁵⁰, where the Court held:

“It settled law that the right of use of the land by the community is intact before and after the promulgation of the Land Use Act. The Land Use Act, I agree, does not alter vested customary rights of the holder of the land. See also *The Dagaci of Dere & 9 Ors vs The Dagaci of Ebwa & 9 Ors* [2001] 7 NWLR (Part 712) 365, 408.”

From the foregoing canvassed above, customary title and customary possession and use of land exist in pre and post 1978 Nigeria. Similar provisions are enshrined in sections 24 (a) & (b) and 51 (1) of the Land Use Act.⁵¹ Therefore, there is customary title to land in Nigeria which is never disturbed by enactment.

⁴⁶ Nothing in this Constitution shall invalidate the following enactments, that is to say- the provisions of the (Land Use Act) shall continue to apply and have full effect in accordance with [its] tenor and to the like extent as any provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this Constitution.

⁴⁷ Subject to the provisions of this Act, all land 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.

⁴⁸ Ibidem, (*supra*) section 1 of the Act, (CAP L5 Vol.8, Laws of the Federation of Nigeria (LFN), 2004).

⁴⁹ [1991] 5 NWLR (Part 190) 130, 225.

⁵⁰ [2004] 5 NWLR (Part 866) 379 CA [428-429, paras H-A].

⁵¹ CAP L5, Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

Is there any law in Nigeria that confers ownership, control, management and administration of land on any institution? Our reaction to this puzzle is rather very simple, it is firmly in the affirmative. This is in consonance with the provisions of section 1 of the Land Use Act, which is a constitutional provision by virtue section 315 (5)⁵² of the Constitution of the Federal Republic of Nigeria, (CFRN), 1999, as amended, in fact section 1⁵³ of the Act provides:

“Subject to the provisions of this Act, all land 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.”

Therefore, there is a law in Nigeria that confers ownership and administration of all land in each State of the Federation of Nigeria on an institution, and that is the Land Use Act of 1978, that does so on the Governor of each State. The Land Use Act, is an Act of the National Assembly that covers the entire field of legislation in Nigeria. The last poser goes as thus, is there any land in Nigeria without customary affiliation? The answer to this question is simple and straight, there is none, it is in the negative. All the land marked, designated and used as Government Reserved Area (GRA) and urban area in all capital cities and some other urban centres in Nigeria were once held and controlled by customary means by the aborigines of those localities. The respective Governments acquired the land from the natives who, through genuine negotiations alienated such land via customary practice of the people, the land were never marked and designated as municipal or urban land from the initial original position.⁵⁴ It is worthy to hold at this stem that, there is no land in Nigeria without customary affiliations.

Therefore, at this premise as succinctly canvassed above, to firmly conclude that, if customary title and possession of land exist in Nigeria and all land are customarily affiliated and the same are not revoked, yet same are vested on the Governor of each State. It then follows that two titles exist on every piece of land in Nigeria, the one held by the person in actual possession and use of the land (customary title holder) and the other title held by the Governor by virtue of section 1 of the Land Use Act; hence the sound and logical conclusion of the concept of dualism of title to land in Nigeria.

The Operation of the Two Titles in Property Law Jurisprudence and Practice in Nigeria

By the statutory synergies of the provisions of section 44⁵⁵ of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended and sections 28⁵⁶ and 29⁵⁷ of the Land Use Act⁵⁸. The Government through the Governor can compulsorily acquire any land within the territorial jurisdiction of each State in Nigeria for the sole purpose of overriding public interest and the person in actual possession and use of the land (the customary title holder) cannot exert even the microscopic or infinitesimal resistance, but however entitles to only payment of commensurate and prompt compensation and perhaps relocation or both.

⁵² Nothing in this Constitution shall shall invalidate the following enactments, that is to say- the provisions of the (Land Use Act) shall continue to apply and have full effect in accordance with [its] tenor and to the like extent as any provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this Constitution.

⁵³ Ibidem, (*supra*) section 1 of the Act, (CAP L5 Vol.8, Laws of the Federation of Nigeria (LFN), 2004).

⁵⁴ John Rawls, A Theory of Justice, (1972 Oxford University Press Limited, London).

⁵⁵ No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-

- (a) Requires the prompt payment of compensation therefore; and
- (b) Given to any person claiming such compensation a right to access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

⁵⁶ *Supra*, (CAP L5 Vol.8, Laws of the Federation of Nigeria (LFN), 2004).

⁵⁷ Ibidem.

⁵⁸ The Land Use Act, CAP L5, Vol.8, Laws of the Federation of Nigeria (LFN), 2004.

The modus-operandi of the dual title holders in Nigeria interfaces as follows: The Government through the Governor has the absolute power to compulsorily acquire any land within the enclave of the State by virtue of sections 1 and 28⁵⁹, of the Land Use Act⁶⁰ and as well section 44 (1)⁶¹, of the Constitution of the Federal Republic of Nigeria; whereas the person in actual possession and use of the land or (the customary title holder) cannot give up his title until commensurate compensation or relocation is made by the government.

It appears, this kind of transaction could be equated to a normal simple commercial transaction between two contracting parties where consideration has been passed by the parties. Particularly, as section 29 (1) of the Land Use Act provides that the compensation to be paid must be equal to the market and economic value of the property as at the time of acquisition. Howbeit, it is not a simple contractual commercial transaction against the background that, the person in actual possession and use of the land is not given the option to accept or refuse the offer made by government, save negotiation on quantum of compensation in certain circumstances. This is indeed, a peculiar species of land handling and management in Nigeria created by statutes.

Conclusion

It is indeed, an aphorism of no controversy that the property jurisprudence in Nigeria is a unique species of land holding as it admits dual title to every expense of land in the federation. The two titles run concurrently, which are; the title held statutorily by the Governor of each State of the federation by virtue of section 1 of the Land Use Act of 1978 and the second title held by the person in actual possession and use of the land (the customary title holder). This special land holding in Nigeria is made possible in that the enactments do not revoke or appropriate the original titles of the indigenous people before placing same on the Governor. This is no doubt, a peculiar system of ownership and management of land in Nigeria which is obtainable by statutory entrenchment that operates side by side with the already existing orthodox and traditional land holdings in Nigeria.

Recommendations

The following reformative measures are recommended:

- a) Section 315 (5) of the Constitution of the Federal Republic of Nigeria, (CFRN),1999, as amended needs to be altered by removing the Land Use Act from forming parts of the Constitution of the Federal Republic of Nigeria, so that it could be treated as any other enactment in Nigeria.
- b) The Land Use Act, as it is today is a scalar quantity having neither magnitude nor direction, at best the Act is a gynandromorph in nature that is, sharing the characteristics of both male and female at the same time. Thus we aligned ourselves with the jurisprudential school of thought that holds, if a law is not obeyed such should be totally disdained, and accordingly we submit that the Land Use Act be expunged, from the corpus juris of Nigeria. This informed decision is reached on the sound premise that the advent of the Land Use Act has no significant effect on land holdings in the rural areas where more than ninety percent (90%) of land in each state are found. The effect of sections 21 and 28 of the Land Use Act are greatly felt within the threshold of the capital city of each state. In our view invocation of section 28 of the Act, referring to compulsory acquisition of land within a state's territory is an outright purchase, since section 29 (1) of the Act stipulates that compensation must be equal to the market value of the land as of the date of revocation and acquisition.
- c) Conversely, should the Land Use Act be? The paper strongly recommends a complete overhauling of the Act to equivocally and discretely appropriate and nationalize all land within the state and vest same on the Governor or any other institution to solely control, manage and administer all land. This shall be facilitated by inaugurating Land Management and Administration Committee (LMAC) for each ward in every state on behalf of the Governor or any other institution, for revenue creation to reflect the linchpin and the real tenet of the Act. This recommendation shall be so apt now that the clarion call for true federalism, the panacea for Nigeria is on top gear by almost all facets of the Nation and fervently pray for the National Assembly to adhere firmly to such genuine agitation of the people of Nigeria in her alteration process of the 1999, Constitution of the Federal Republic of Nigeria.

⁵⁹ Supra.

⁶⁰ Ibidem, (*supra*) section 1 of the Act, (CAP L5 Vol.8, Laws of the Federation of Nigeria (LFN), 2004).

⁶¹ Ibidem.

Bibliography

Case Law

AbioyevsYakubu [1991] 5 NWLR (Part 190) 130.
AkpanAwovsCookey Gam (1913) 2 All NLR 100 (PC).
AllivsAlesinloye [2002] FWLR (Part 13) 2610 S.C.
BekebuvsEdu (2002) 1 RHCR 83.
EchivsNnamani [2000] 8 NWLR (Part 667) 1.
Ibrahim vsYola [1986] 4 C.A (Part 1) 98.
KwachtaverKaanvsKpankoIgyuse, unreported AP NO: FCA/70/83, delivered on March 20,1985.
Mora vsNwalusi (1962) 1 All NLR 161 (P.C).
OdofinvsAyoola (1984) 11 S.C 72.
OwoniyivsOmotosho (WNLR) 1.
Salami vsGbodoolu [1997] 4 NWLR (Part 499) 277.
Suleiman vs Johnson 13, WACA 213.
UmmaruvsBakoshi [200] 5 FWLR (Part 646) 691.
Idundun & Ors vs Okumagba & Ors (1976) 10 NSCC 445.
The Dagaci of Dere & 9 Ors vs The Dagaci of Ebwa & 9 Ors [2001] 7 NWLR (Part 712) 365.
N.N.P.C vs Sele & Ors [2004] 5 NWLR (Part 866) 379 CA.

Statutes

The Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended.
The Evidence Act, 2011.
The Land Use Act, Cap L .5 Laws of the Federation of Nigeria (LFN), 2004.
The Criminal Code Act, Cap C 38, Laws of the Federation of Nigeria (LFN),2004.
The Interpretation Act, 1964.
The Area Courts (Civil Procedure) Rules, 1959.
The Penal Code Act, applicable to all Northern States of the Federation.
The Property Law, Cap P.12, Laws of Bayelsa State of Nigeria, 2006.

Text Books

Bryan A Garner, (Editor-in-Chief), Black's Law Dictionary, Eighth (8th) Edition (2004 Thompson West USA).
Edward Coke, on Littleton, 4a – quoted from Jowitt's Dictionary of English Law, (1977 Second Edition), Vol. 2.
Prof J.F. Fekumo, Principles of Nigerian Customary Land Law (2002 F&F Publishers Nigeria Limited PortHarcourt).
John Rawls, A Theory of Justice, (1972 Oxford University Press Limited, London).
Okolo, P. O (2008). Ethnic Relations and Violent Conflicts in the Niger Delta: The case of Urhobo, Itsekiri and Ijaws of Delta State, Nigeria, Journal of Social and Policy Issues, Vol. 7 No. 3, Pp. 86 - 92
Okolo, P. O. (2012). "External Sources of Ethnic Conflict in Africa". African Conflict Profile, Journal of the Centre for Ethnic and Conflict Studies (CENTECS) University of Port-Harcourt. Vol. 2. No. 1 Nov. 2012. ISSN: 0795 – 2880. Pp. 61 – 72.
Etekepe, A. & Okolo, P.O. (2012). International Court of Justice (ICJ) Judgement on the Bakasi Peninsula and Lake Chard: Litmus Test for Peace and Integration in Africa. In Albert, I. O; Eselobor, W. A. & Danjibo, N.D. (eds) (2012). Peace, Security and Development in Nigeria. Ibadan. John Archers Publishers Ltd. Pp. 509 – 524.
The Holy Bible.