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JURISDICTION OF HIGH COURTS IN LAND IN NON-URBAN AREAS: A REFLECTION

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The supreme Court in *Odetayo V. Bamidele*¹ finally put to rest the controversy surrounding the jurisdiction of the High Court of a State on Land in a non-urban area of the state. Prior to this decision, the Supreme Court in a revolutionary judgment in the case of *Adisa V. Oyinwola*², held that the High Court and Area Courts have concurrent jurisdiction in land situated in non-urban Areas. In *Odetayo V. Bamidele*³, the Court of Appeal unaware of the decision in *Adisa V. Oyinwola*⁴, held, relying on earlier Supreme Court's decisions that a High Court of a state had jurisdiction to entertain dispute in respect of developed land situated only in the urban part of a state⁵. The court further held that Area Courts only had jurisdiction over land matters which were the subject matter of Customary Right of Occupancy⁶.

The Court of Appeal in *Odetayo V. Bamidele* relied on the supreme Courts decision in *Salati V. Shehu*⁷, and *Sadikwu V. Dalori*⁸, to hold that the High Court of a state had jurisdiction only in land in an urban area. In *Oyeniran V. Egbetola*⁹, the Supreme Court held that only Area Courts could determine all disputes that arose from land in a non urban area, however, in *Odetayo V. Bamidele*¹⁰ the Supreme Court, after referring to the earlier decisions on the issue of jurisdiction, held as follows:

"In this case there are compelling reasons why the decision in *Oyeniran V. Egbetola* should be overruled and departed from first, the decision was given without regard to section 236 (1) of the 1979 Constitution ... In my judgment the decision of this court in *Oyeniran V. Egbetola* (supra) was erroneous and made per incuriam. This court should not be bound by that decision which would create much unnecessary problems and difficulties in states where Area Courts or Customary Courts or Courts of equivalent jurisdiction do not exist..."

- 1 (2007) 17 NWLR (pt 1062) 77
- 2 *Adisa V. Oyinwola* (2000) 10 aWLR (pt 674) 116
- 3 Supra
- 4 Supra
- 5 *Salati V. shehu* (1986) iNWLR (pt 15) 198
- 6 *Sadikwu V. Dalori* (1996) 5 NWLR (pt 447) 151
- 7 Supra
- 8 Supra
- 9 *Oyeniran V. Egbetola* (1997) 5 NWLR (pt 404) 122
- 10 Supra
- 11 Lead judgment of Ayoola JSCp172

This decision is the crux of our presentation... The great controversies the issue of jurisdiction over land in urban or non urban areas of the state would not have occurred if the courts concerned have averted their minds to section 236 (1) of the 1979 Constitution which conferred unlimited Jurisdiction to the High Courts in civil matters¹²

Jurisdiction Under The Land Use Act, 1978.

Section 39 of the Land Use Act, 1978¹³ Provides that the High Court shall have exclusive original jurisdiction in respect of land subject to a Statutory Right of Occupancy. Section 41 of the same Act, vests jurisdiction in proceedings relating to land subject to customary Right of Occupancy, in the Area or Customary Courts. Considering the position of the above sections, of the Act, one may be tempted, like the courts in *Salati V. Shehu*, *Sadikwu V Dalori*, *Oyeniran V. Egbetola* and the Court of Appeal in *Odetayo V. Bamidele* to state that, the Land Use Act, having expressly provided for the courts that have jurisdiction, in land matters, it would not have been proper to read other meanings into such clear sections of the Act,¹⁴. After all, the scheme of judicial pronouncements on the provisions of the Land Use Act is not to, read others meanings into the clear provisions of the Act¹⁵ It is also forbidden under the canons of interpretation of statutes to read into a statute a requirement that is not contained therein

In view of the above, is the supreme Court right in stating, in the case of *Odetayo V. Bamidele* that their previous decision, particularly in *Oyeniran V. Egbetola* was delivered per incuriam? It seems, from a cursory analysis of sections 39 and 41 of the Land Use Act, 1978 that the said decision and the previous ones on jurisdiction under the Act had

12 see also section 236 (1) of the 1999 constitution to the same affect.

13 CAP 202 L.F.N. 2004

14 section 39 & 41

15 For example the pronouncement of the Supreme Court on the need not to read into section 28 of the land Use Act other requirement of revocation of a Right of Occupancy not contained therein

basis in the sections. Is it therefore proper to describe the earlier decisions of the Act on the necessity, those sections in aid of a stronger reasoning does not mean that the previous decisions were made per incuriam. They had legal basis, jettisoning them for a stronger argument does not justify the lack of Legal basis clothed with earlier decisions on the point.

NEED FOR ANOTHER REVIEW:

When the Court of Appeal decided the case of Odetayo V. Bamidele, the Case of Adisa V. Oyinwola was just delivered and unreported. Certainly the Court of Appeal was not aware of the decision. When Odetayo V. Bamidele was therefore, decided, there were legal basis for the decision if one should consider sections 39 & 41 of the Land Use Act and the previous decisions of the Supreme Court on Jurisdiction earlier referred to particularly Oyeniran V. Egbetola. This case also had basis in sections 39 and 41 of the Land Use Act when it was decided. The reasoning behind the change of mind by the Supreme Court was informed by the fact that Courts are not in every nook and crannies of Nigeria when the be otherwise litigants would be placed in great difficulties filling suits in land matters in appropriate Courts.

CONCLUSION

It is clear that there was a basis for describing the decision in Oyeniran V. Egbetola, with due respect, the decision had basis under the Land Use Act and was not delivered per incuriam renewing it for a much great argument which did not provide a basis for such a position assuming Courts with jurisdiction are all over the place in Nigeria, and litigants do not take problems filling suits on land disputes, The probability of the decision being reviewed would have been nil.

16 Section-236(1) of the 199 Constitution

CURRENT ISSUES ON TRANSFER OF LAND UNDER NATIVE LAW AND CUSTOM

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Introduction.

The title of this presentation looks restrictive. The reason is that reference is made to transfer of land instead of transfer of interest in land. This position is informed by the general import of the Land Use Act, 1978¹ Section 1 of This Act vest all Land comprised within the territory of a state in the Governor of that state² The Governor is however, not a beneficial owner of the land, the vesting is for mere administrative and management convenience, in trust for all Nigerians.³ In view of this, the Governor can grant a Right of Occupancy in land to a citizen of Nigeria for all purposes⁴ The Act generally recognizes a Right of Occupancy scheme. This is divided into two: Statutory Right of Occupancy⁵ and Customary Right of Occupancy⁶ Our intention is not to elaborate on the Right of Occupancy scheme but to posit that in view of the sections relating to Right of Occupancy under the Act, what can be transferred is interest in land. This may be for a definite period⁷ The Right of Occupancy scheme does not however bring to an end holding and management of land under Native Law and Custom. "Land is still held under customary tenure even though dominion is in the Governor"⁸ If this is then the case, it is still customary to refer to land as a subject of transfer under native of Law and Custom. Reference to interest broadens the scope of transfer from land to all other interests affecting land such as leases, licenses, mortgages easement and profit etc. Instrument of transfer will also be a major focus of the transaction⁹

1CAP 202, LFN 1990

2Nwocha v. Governor of Anambra State (1984) 6S.C 36

3 see Bal gore J.S.C. in Savannah Bank of Niog. Ltd v. Ajilo (1989) IN. W.L.r. (pt. 97) 305 at pp. 352353.

4Sections 5 of LUA 1978

5Sections 5 & 34 of the Act.

6Sections 6 & 36 of the Act.

7in respect of statutory Right of Occupancy see section 8 of the Act

8 Karibi- Whyte JSC (as he then was) in Ogunmola V. Eiyekole (1990) 4 NWLR (pt 146) 632 at 653.

9This includes, Deed of transfer, Deed of Sale, Deed of Mortgages Deed of lease, power of Attorney etc.

An instrument of transfer such as a Deed of Sale as known to English Law is however not an essential feature of sale of land under native law and custom. This is the centre theme of the presentation particularly if one should consider the issue of consent to alienate and the methodology of obtaining consent.¹¹ Section 22 (2) of Land Use Act requires the holder of a Right of Occupancy to submit an instrument executed in evidence of the transfer in order to assist the Governor on the issue of consent. If the transaction is under native law and custom which may not be evidenced in writing or by an instrument, how would a person obtain consent to alienate? This is the crux of our presentation of the require uniformity as regards the procedure of obtaining consent in view of the recognized different ways of transferring interest in Land under the Nigerian Property Law.

Nature of Transfer Under Native Law of Custom.

Sale of Land under native law and custom, particularly, among the Yoruba of Western Nigeria does not require any formality as we have under English Law.. Transfer of possession by the family in the presence of named witnesses to the purchaser, coupled with the payment of the purchaser price in full constitute a valid sale of land under native of land and custom. An instrument evidencing the sale is not necessary.¹² Such a transfer is not inferior to other modes of sale particularly under *English conveyancing practices*.¹³ It cannot be over-ridden by a legal estate¹⁴

The Real Problem

Notwithstanding the nature of sale of Land under native law and custom, we can not ignore the application of provisions of the Land Use Act, 1978 to transfer of interest in land particularly with regard to the issue of consent to alienate¹⁵ The import of the consent provisions is explicit in the case of *Ogunmola V. Eiyekole*.¹⁶ Where *Karibi-Whyte JSC*) as he then was held as follows:

11 Etazata v. Ologbo (2007) 16 NWLR (pt 1061) 554

12 Ibid p. 602

13 Ibid pp. 604. See also R.J. Ijaodola on problem judicial attitude to consent alienate interest in Land under the Nigeria Property Law. Igbinedion University Okada. 2009

14 see section 21-25 of the Act.

15 (1990) 4 NWLR (pt 146) 632 at 635.

Thus the owner of customary land remains owner all the same even though he no longer is the ultimate owner. The owner of land now requires the consent of the Governor to alienate interests hither to, he could do without such consent.¹⁶

A sale transaction under native law and custom that is not evidence in writing that is not evidenced by an instrument will pose a major problem as regards the issue of consent. What instrument or agreement should be placed before the Governor in line with section 22 (2) of the Land Use Act while applying for consent to transfer land under native law and custom? Certainly an oral application for consent cannot be made. Formality is no doubt required.

THE WAY OUT

There seems to be contraction in the nature of transfer of Land under native of Law and custom which does not require formality with the method of obtaining consent under the Land Use Act. Section 22 (2) requires the procedure to be Formal. There is need to therefore streamline this seemingly Contradictory nature of alienation of Land under the Nigeria property Law. The best approach is to ensure that every transaction affecting Land under native Law and customs evidenced by an instrument. This will not distort its nature but would confirm it.

It is clear from the foregoing that the application of the provisions of the Land Use Act, 1978 alongside with the requirement of sale of Land under native Law and Custom has its Problems and it is essential that the problems and should be tackled in order to ensure Uniformity for all transaction affecting Land in Nigeria. it will ease Conveyancing practices it should be followed in transferring interests in Land in Nigeria regardless of the nature of the transfer.

16 Ibid

CONCLUSION.

It is apparent from our brief examination of the nature of transfer of land under Native Law and Custom and the procedure for obtaining consent under the Land Use Act, 1978 that different procedures are required. While the former may not be formal, the latter requires formality. A contradictory scenario is therefore presented in respect of the procedure for ensuring acquisition of a valid title to land in Nigeria. This partly, informs the need why the necessary reforms of our property laws should be effected.