



OKADA LAW JOURNAL

Volume 1 Number 1 August 2009

OKADA LAW JOURNAL

Volume 1 Number 1 August 2009



Dee-Root, Lagos
deeroot11@yahoo.com

EDITORIAL COMMITTEE

Prof. Rasheed J. Ijaodola - Editor-In-Chief
Prof. Durebo Narebo - Editor
Onyeakagbu A. Ikedinma (Reader) - Editor
Ibe D. U. Esq. - Editor
Izevbuwa Osaretin George - Editor

EDITORIAL ADVISORY BOARD

Prof (Mrs.) J.N. Nasri
Hon. Justice Fola Gbadeyan
Hon. Justice P. O. Isibor
Ade-Ojo O. O.

EDITORIAL COMMENT

This is the first edition of this journal. It is intended to complement Igbinedion University Law Journal which is an annual publication by The College of Law. Several topical and good papers from Colleges in the College of Law, Okada and from other colleagues in Nigerian universities are received on yearly basis for publication by The College of Law. In order to create space for such papers, a second journal was suggested in order to complement the existing one. In this maiden issue papers from colleagues in different Universities are contained in this publication. The intention is to give the journal a very wide coverage.

The articles in this publication have been found to be good, current and topical; readers will find them interesting and educative in the areas of law covered.

We hereby thank all those who have contributed in any way for the success of this publication

Resheed Jimoh Ijaodola
Editor in Chief

CONTENTS

PAGES

ISLAMIC LAW OF DIVORCE IN ITS TRUE PERSPECTIVE. Rasheed Ijaodola, Faculty of Law, University of Ilorin, Nigeria. April 2006	1
HISTORICAL DEVELOPMENT OF NIGERIAN LAND LAW FROM 1861- 2009. Onyeakagbu A. Ikedinma, Dept. of Business Law, Igbinedion University, Okada, Edo State Nigeria.	14
POVERTY AND CRIME: A CRITIQUE Hon. Justice (Prof.) Dorubo Narebor (Rtd)	26
A CRITIQUE OF THE PROVISIONS OF LAND USE ACT 1978* S.M. Abdulmalik Esq. College of Law, Igbinedion University, Okada, Edo State	31
ADMINISTRATION OF JUSTICE: PERJURY A POTENT INCHOATE LAW. Philip Osarobo Odiase, Igbinedion University Okada	43
AN OVERVIEW OF THE CORPORATE INVESTIGATIVE POWERS OF THE CORPORATE AFFAIRS COMMISSION IN THE PROMOTION OF CORPORATE GOVERNANCE AND MANAGEMENT IN NIGERIA Dominic Asada Esq, Public Law, University of Jos	51
AN EXAMINATION OF THE REQUIREMENT OF CORROBORATION OF THE EVIDENCE OF AN ACCOMPLICE IN NIGERIA Joash O. Amupitan Public Law, University of Jos	66
ALLOCATION OF RISKS IN PRE-INCORPORATION CONTRACTS IN COMPANY LAW B.M. O Osgehale Esq. Igbinedion University Okada, Edo State	79
NON-CONSIDERATION OF THE DEFENCE OF AN ACCUSED PERSON AS A BASIS FOR ACQUITTAL: THE NEED FOR CAUTION Rasheed Ijaodola, Faculty of Law, University of Ilorin.	93
THE INTERNATIONAL COURT OF JUSTICE (ICJ): A DIAGNOSTIC APPRAISAL OF ITS LAW, PRACTICE AND MACHINERY Olokooba S. M Faculty of Law, University of Ilorin.	106
THE REQUIREMENTS OF STANDARD OF PROOF IN MATRIMONIAL PROCEEDINGS: A CRITICAL ANALYSIS S. M. Abdulmalik Esq. College of Law, Igbinedion University, Okada, Edo State.	121
A NOTE ON THE UNDEFENDED LIST Femi Weve, Esq. College of Law, Igbinedion University, Okada, Edo State, Nigeria.	143

DISTINGUISHING HIRE-PURCHASE TRANSACTIONS FROM OTHER COMMERCIAL TRANSACTIONS: THE TEN PS' TEST

Nat Ofo College of Law, Igbinedion University, Okada, Edo State, Nigeria. 155

Litigating Reproductive Health Rights Cases in Nigeria: Prospects and Challenges

Olaide Gbadamosi Faculty of Law, Benson Idahosa University, Benin city, Nigeria. 175

A CRITICAL APPRAISAL OF ADMINISTRATION OF JUSTICE IN NIGERIA

Daniel U. Ibe, Public Law , Igbinedion University, Okada, Nigeria 194

IMPEACHMENT PROCEEDINGS UNDER THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA: PANACEA TO DEMOCRATIZATION IN NIGERIA?

Anya K Anya and Barr. (Mrs) Helynn Oriafio. 215

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

F. F AbdulRasaq, Faculty of law, University of Ilorin, Ilorin 225

CURRENT ISSUES ON TRANSFER OF LAND UNDER NATIVE LAW AND CUSTOM

O. S Afolabi, Faculty of Law, University of Ilorin, Ilorin 228

JUDGMENTS AND ORDERS OF ELECTION TRIBUNALS

Hon. Justice (Dr.) Dorubo Narebor, Igbinedion University, College of Law, Okada, Edo State

Rita Okpeahior, College of Law, Igbinedion University, Okada, Edo State. 232

A CRITICAL APPRAISAL OF THE PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS AND THEIR STAFF: THE NIGERIA EXPERIENCE

Ochem, Charles Emeka, Igbinedion University, Okada, Edo State, Nigeria. 244

CURRENT ISSUES ON TRANSFER OF LAND UNDER NATIVE LAW AND CUSTOM

O.S Afolabi, Lecturer, Faculty of Law, University of Ilorin, Ilorin

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 land 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. ¹⁰ 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. ¹¹ Such a transfer is not inferior to other modes of sale particularly under English conveyancing practices. ¹² It cannot be over-ridden by a legal estate ¹³

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 alienate ¹⁴ The import of the consent provisions is explicit in the case of Ogunmola V. Eiyekole. ¹⁵ 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.

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.