

The rule though applies under customary law, but depends on the circumstances of the case. Where a person builds a house on a land without the consent of the owner, and after the owner has protested severally, he will ultimately lose the property to the owner of the land at the suit of the owner as the maxim applies. This principle of law was enunciated in the cases of *Oshov Olayioye*,¹⁸ *Ezoniv Ejodike*,¹⁹. However, under Customary Law, where the structure or building was erected with the permission of the owner of the land, the improvements remains the property of the person that constructed the building or structure in fact customary law allows the maker to continue using the building or structure as long as they remain on the land: *Adebiyi v Ogunbiyi*²⁰

Incorporeal hereditament is that thing which has no physical existence, but capable of being owned or possessed. Land is a physical object, capable of being possessed; this could be done in terms of building, trees, crops or other physical fixtures on it. A corporeal hereditament is the thing itself which is the subject of the right; an incorporeal hereditament is not the subject of the right, but the right itself. Ownership of land, including the ramifications of its possession "an incorporeal right to the corporeal use and profit of some corporeal thing" Therefore, incorporeal hereditaments will include rights on land though not capable of physical existence or possession but actually existing and capable of being enforced in law. Such rights like easements, profit or rents will qualify under this. Incorporeal rights can also be classified into two, those which gave right to possess them as right of a reversion or reminder and those like easements which are current enforceable rights.

Land means different things to different people. The definition given to land therefore depends on the culture and custom of the people: Customary Law defines land to suit the culture of the people. While, we tried to examine the definition we realized that the legislations which defined land only defined it for the purpose of such legislations and is not capable of any general application.

¹⁸(1966) N.M.L.R 329,

¹⁹(1964) All N.L.R 402

²⁰(1965) N.M.L.R 395.

AN APPRAISAL OF THE APPLICABILITY OF THE MAXIM OF QUIC QUID PLANTATUR SOLO SOLO CEDIT TO BIODIVERSITY CONSERVATION IN NIGERIA

BY

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Abstract

The Land Use Act² confers government with mandatory powers over land in Nigeria. The previous owners, communities, families or individuals are divested of the ownership of their land. However, the Act does not abrogate private interest in land by vesting all lands in the State Governor, rather, citizens are allowed to hold an interest called a right of occupancy. Biodiversity is one of the components of land with which mankind depends on for their survival. Many of the species of biodiversity are under the control and management of government so as to safeguard it from annihilation and destruction. In many developing and developed jurisdictions, regulations are put in place to regulate the acquisition and ownership of land. In Nigeria for example, land can be acquired through first settlement, conquest, inheritance, grant and purchase. Notwithstanding the afore-stated modes, the ownership of land generally is vested by law on the Governor of each State of the Federation³. There are also various legislations vesting the management and control of land and its resources on the government⁴. The aim of this paper is to examine the acquisition of land by individual through any of the afore-stated modes of acquisition vis-à-vis the management and control of the government on all lands on which lie natural resources. To this end, it is suggested that, the regulation is made to recognize the payment of compensation to individuals on whose land natural resources are found. Also, allocation of alternative land to individuals should be made available to individuals affected

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²Section 1 of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004

³Ibid

⁴Nigerian Minerals and Mining Act, 2007; Petroleum Act 2007; Nigerian Oil and Gas Content Development Act, 2010

Key Words: Acquisition, Ownership, *Quic quid Plantatur solo solocedit*, Biodiversity, Conservation

1. Introduction

Biodiversity consists of variety of plant and animal life in the world or in a particular habitat which is usually considered to be important and desirable to the survival of mankind. Biodiversity refers to the variety and variability of life on earth. It is also typically a measure of variation at the genetic, species, and ecosystem level. The components of biodiversity are enormous as it consists of variability among living organisms from all sources, including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems¹. The need to preserve and conserve biodiversity from incessant annihilation through the activities of human beings cannot be underestimated. Thus, the control and management of biodiversity from being degraded rest squarely on the government. Legislations are put in place to achieve the desired goal of conserving biodiversity. Areas are demarcated and marked as buffer zone or reserved area so as to protect biodiversity from extinction. The question that requires an answer is what happens to a land legally acquired by an individual upon which natural resources are subsequently discovered in view of the maxim "quic quid plantatur solo solocedit" vis-à-vis the position of the law that vests absolute control and management of land on the government through various legislations. It is an attempt to proffer an answer to that question that calls for this paper.

Against the backdrop of the above, this paper is divided into five parts. The first part which is an introduction focuses on the components of biodiversity and its importance which vests its control and management in government. Part two deals the meaning and components of land which includes biodiversity and its species. Part three focuses on the description and legal position of the maxim of *quic quid plantatur solo solocedit* as it relates to land. Part four examines the applicability of the maxim *quic quid plantatur solo solocedit* to biodiversity conservation particularly on an individual legally acquired land. Lastly, part five deals with the conclusion and recommendations.

¹Encyclopedia Britannica- Accessed on 24/5/2019

2.0. The Definition and Constituents Of Land

It is generally agreed that land does not just mean the ground and its subsoil, It also includes all other objects attached to the earth surface. This includes Trees, Rocks, Buildings, and other structures whether naturally attached or constructed by man. However, land in law even extends more than this, and it includes further abstract, rights and interests like incorporeal hereditaments, right of way, easements and profits enjoyed by persons over the property or ground belonging to other persons. Where the transaction is regulated by a statute or law, the definition used in the statute will govern the transaction, but where there is no such definition, then the definition in the Interpretation Act⁶ is applicable.

Land has been defined in the Interpretation Act as “including, any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals”. The definition seems to be incomplete. This is because, it starts by stating that land includes, the others not stated in the definition and, therefore, affords as many inclusion as possible. This may therefore permit addition of incorporeal hereditaments like profits, rents and easements. Temporary structures may not qualify as land, but permanent Trees may be regarded as part of land.

The statutory definition that has adopted the common definition of land and seems to be extensive and all inclusive is the one in the property and Conveyancing Law⁷ which gives the definition of land to include, “the earth surface and....everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another”. Land to include. “land at any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land

Lloyd⁸ makes a distinction between land and improvements thereon

⁶Cap 123, Laws of the Federation of Nigeria, 2011

⁷Section 2 of the Property and Conveyancing Law of Western Nigeria 1959

⁸Lloyd, P. C Yoruba Land Law (Sweet & Maxwell, London, 1978) 23

under Yoruba Customary Law, while Coker⁹ states quite clearly that in customary law, land includes buildings thereon. Olawoye¹⁰ describes land as including “the surface of the earth, the subsoil and the airspace above it, as well as all things that are permanently attached to the soil. It includes streams and ponds. On the other hand, things placed on land, whether made of the product of the soil or not, do not constitute land.”

It follows, therefore, that while a crop or tree is planted it forms part of land and is regarded as land, but as soon as it is cut and removed it ceases to be land. In the same vein, where a building is standing it forms part of land, but where the building is demolished it ceases to be land. However, as we have noted above, the fixture must be permanently attached to the land to be regarded as forming part of the land; where the fixture is not of a permanent nature, then it is not land, and can be disposed off without affecting land.

3.0. Quic Quid Plantatur Solo Solo Cedit

From the foregoing definition of land and its constituents, the distinction between natural and artificial content of land is made clearer. Land in its natural sense is the developments like buildings and other structures including trees. The pertinent question has always been the ownership of the developments on land where the development was made by persons who are not the real owners of such land. The English principle is *quic quid plantatur solo solocedit*—that is whatever is affixed to the soil, belongs to the soil, is applicable in these circumstances. The general consensus amongst scholars is that the maxim, though a Roman principle imported into English law, is also applicable under customary land law. Elias¹¹ explained thus, “the Roman law doctrine of *quic quid plantatur solo solocedit* is a principle of English, as of Nigerian property law. Like many other empirical rules of social regulation of a specific legal situation, the concept of the accession of a building or other structure to the land built upon is reasonable, covenant and universal”.

Coker¹² agrees that the maxim applies in Yoruba native law and custom when he said that:

⁹ Coker, G. B. A Family Property among the Yoruba (Sweet & Maxwell, London 1966) 32

¹⁰ Olawoye, C. O. Title to Land (Evans Brothers, Lagos, 1974) 34

¹¹ Elias T. O Nigerian Land Law (Sweet & Maxwell, London 1974) 174

¹² Coker (n 9)

Land is by far the simplest object of property in any system of jurisprudence. In this connection also, land in any application of the term includes buildings thereon. The maxim *quic quid plantatur solo solocedit* which is a maxim of most legal systems, is also a part of Yoruba native law and custom. Olawoye,¹³ clearly agrees with the authorities that, "for the sake of commerce the law does not distinguish between the ownership of the soil and the ownership of the fixtures thereon. The principle, *quic quid plantatur solo solocedit* applies.

Nwabueze¹⁴, in agreeing with the above, explained the application of the principle:

It must not be supposed, however, that the maxim *quic quid plantatur solo solocedit* applies inflexible in all situations. Its application in any particular case depends first upon the circumstances of that case, such as the nature of the subject which it is claimed has become part of the soil by attachment thereto, and secondly, upon any statutory enactments modifying the operation of the maxim.

Lloyd,¹⁵ however, differs on this. He is of the view that Yoruba Customary Law makes a distinction between the physical land and improvements thereon. Obi¹⁶ also agrees with Lloyd that land under African Customary Law does not include developments there on, Niki Tobi¹⁷ summarized the position of the two divergent positions thus:

Although judicial opinion on the issue is not uniform, there is more support of the opinion that the maxim applies in Nigerian Customary Law. It will be inequitable to contend otherwise. It would appear however that the maxim will not apply under customary law if improvements are made on the land with the permission of the owner of the land. In that case, customary law draws a clear distinction between the land and the improvement made thereon

¹³Olawoye C. O. (n 10) 35

¹⁴Nwabueze, B .O. The Nigerian Land Law (Nwamife Publishers, Onitsha 1982) 45

¹⁵ Lloyd (n 8)

¹⁶Obi, S. C Ibo Law of Property (Butterworths, London 1963) 98

¹⁷Niki Tobi Sources of Nigerian Law (MIJ Professional Publishers Ltd, Lagos 1996) 183

Ownership implies a complete and total control a person can exercise over the land. It is that interest in land that is superior to every other existing interest on land. It is unrestricted use and superior to any other. It is a right to possess either mediate or immediate, and it is the right to use the property in any way or manner whatsoever. The court, in the case of *Abraham v Olorunfemi*,²¹ as per Niki Tobi JCA (as he then was) explained the term as follows:

It connotes a complete and total right over a property it is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation or disposition of the property, and he exercises his right of alienation and disposition without seeking the consent of another party because as a matter of law and fact there is no other party's right over the property that is higher than that of his; The court went further to explain some of the incidents of ownership when he observed, that, 'the owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose detrimental to his personal or proprietary interest. In so far as the property is his and inures in him nobody can say anything. He is the Alpha and Omega of the property. The property begins with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the allodial owner

Every legal system has its own special design for ownership. The meaning given to ownership under Common Law is different from that of Customary Law. In England, all land belongs to the crown as the absolute owner. However, the citizens who occupy the land, do so for a period granted by the crown. The right to use and occupy the land is better known as the Estate enjoyed on the land. And this has transformed into ownership, though they do not own the land, they own the Estate on the land exclusively and such right is enforceable against any other person. The position is different under customary law. Elias aptly states the position thus:

²¹(1991) 1 NWLR pt.165) 53

²²Elias, T. O., *Nature of African Customary Law* (Manchester, 1956) 24

What we have said so far, as well as what we shall say later, will show that the land holding recognized by African Customary Law is neither 'communal holding' nor 'ownership (in the strict English sense of the term) the term corporate' would be an apt description of the system of land holding since the relation between the group and the land is invariably complex in that the rights of individual members often co-exist with those of the group in the same parcel of land

Under Customary Law, land is seldom owned by individuals; the custom recognized ownership in the community or family. Communal ownership evolves from land, settled upon by the community from ancient times. This could be by conquest or first settlement, and the entire land is owned by the entire community and managed by the head of the community. The individual members of the community are allocated portions of the land. These individual allottees are not regarded as owners as all land belong to the community, but as against other members of the community; they have superior title. The family ownership of land is similar to this structure. The land belongs to the family, and it evolves from the originator of the family first settling on a particular portion of land and after his death the land as property is inherited by his children and thereupon becomes family property. No individual member can lay claim to it and we cannot sell, dispose, mortgage or transfer ownership of the land. In the case of *Amodu Tijani v Secretary of Southern Nigeria*²³ Lord Haldane explained as follows:

The next fact which it is important to bear in mind in order to understand nature land law is that the notion of individual ownership is quite foreign to native ideas, land belongs to the community, the village or the family never to the individual. This is a popular native custom along the whole length of this coast, and whenever we find, as in Lagos, individual owners; this is again due to introduction of English ideas

Many scholars have criticized the view expressed by Lord Haldane that there is no individual ownership of land under customary law.

²³(1921) AC 39

Olawoye²⁴ and Smith²⁵ agreed that the first settler had always been an individual who later pass title in the property to his family upon his death. Individual ownership may also evolve by act of state e.g. State grants of land to individuals. Currently in Nigeria, the Land Use Act 1978 by virtue of Section 1 thereof, all land in each state is vested in the Governor of the State, who grants right of occupancy to individuals and corporate bodies. In effect, the only right enjoyed on land today is the right of occupancy, and ownership of land today must be viewed in the light of a right of occupancy on the land.

Possession means the effective physical or normal control or occupation of a property. It is a relationship of a person to a thing. Possession of land to be protected by law must be exclusive. A person claiming possession must prove not only his relationship with the land, he must also prove his physical acts showing exclusive control of the land. The act of building, or planting on land are acts of possession. He may not necessarily build on it, he may fence or use some other items to demarcate it, and he will be held to be in possession. This principle of law is stated in the case of *Wuta-Ofei v Danquah*²⁶ where demarcation by wooden pegs was held to be sufficient acts of possession.

The person in possession is not without right; there are two important attributes. The first is that the person in possession has the right to keep away intruders. Even where he does not have any legal title, in so far as he is in physical possession his right is protected by law. He can keep out all those interfering with his possession. Though he may not be able to keep out the person with a better title; even then, if he resists the person with a better title the person with better title may have to go to court to eject him from possession. The secured right flows from the presumption of law is that the person in possession has title to the property until the person with better title is established and declared by a competent court. In fact, if the real owner does not take any step for a period of time, the possessory right may ripen into title for lapse of time or by laches and acquiescence on the part of the real owner.

²⁴Olawoye C. O. (n 10)

²⁵Smith. R. *Introduction to Land Law* (Sweet & Maxwell, London 1976) 28

²⁶(1961) 3 All E.R. 596,

The person who has title to a land is the proper person recognized by law as the true owner of the land. The title depends on the type of right exercisable by the person who is claiming title. Title may be acquired by first settlement or conquest, or inherited; he is known to have a derivative title. The owner of land is the person that has the most superior title to the property, with right to mediate or immediate right to possession, while the person in possession is that person who is in actual physical possession of the land. Title to land may be absolute or unrestricted or it may be limited or restricted. There is a difference between right to occupy a land and the ownership right. The person in possession is not necessarily the owner thereof. The person in possession is assumed by law to be the owner until the contrary is proved. Even, then, he still can enforce his rights of occupation against any other person except the person with superior title or owners.

4. Applicability of *Quic Quid Plantatur Solo Solo Cedit* to Biodiversity Conservation

A natural resource is any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits and other products of nature that have economic value are example of natural resources. The term includes not only timber, gas, oil, coal, minerals, lakes and submerged lands but also features which supply human need and contribute to the health, welfare and benefit of a community and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes.²⁷

Section 1 of the Land Use Act which vests all lands in the States of the Federation in the government also divests citizens of both land and natural resources. There have been constant agitation by communities to have greater share in the revenue accruing to the State from exploitation of the natural resources located in their communities. These have ranged from civil protests, kidnaping to environmental terrorism including blowing up of oil rigs, pipeline vandalization and incineration of vehicles used for transportation of natural resources.

Given this situation, since the control and management of natural resources is vested in the government for and on behalf of the people of

²⁷ The statement was copiously stated in the case of Attorney-General Federation v. Attorney-General Abia State (No. 2) 6 NWLR (Pt. 764) 542)

Nigeria wherein revenues are shared with the oil and mineral producing States under the principle of derivation²⁸. What is the beneficial interest of an individual who having legally acquired parcel of land, developed same and later became make known to the government that on the said parcel of land lie abundant mineral resources in view of the maxim *quic quid plantatur solo cedit*. Does the maxim applies to the land acquired by such individuals?

To answer this question, a cursory look at the position in Nigeria is relevant. Notwithstanding the power vested in the government for the control and management of the mineral resources, the government is empowered to transfer its proprietary interest to any person by whom the mineral resources are lawfully won upon their recovery in accordance with the Minerals Act²⁹. The implication of State control and management of resources is that the government has sole power to exploit or grant or revoke licenses to individuals or corporations to exploit mineral resources. Thus, the communities or any individuals on whose land minerals are found or located have no input whatsoever in the exploitation of the mineral resources since they are mere occupiers under the Land Use Act³⁰. Such communities or individuals may enter into negotiations with the prospecting company to pay rent to them to be granted access to the mineral resources and compensation for damages to crops and other property.

It is important to note that no provision is made for an individual on whose developed land mineral resources are found as the idea of granting him license to exploit the minerals may not be feasible. It is also not feasible that such individual is taken care of in the sharing formula as provided under derivation principle. Thus, the government could employ any of the following methods to ameliorate the damages that may be suffered by such individuals. The land in question is acquired together with the development thereon and compensation is paid to the owner of such land and an alternative land may be provided by the government to such individuals to cushion whatever damages such individuals must have suffered in the event of relocating him to another location

Against the backdrop of the above, it is crystal clear that, the maxim quic

²⁸Section 162 of the 1999 Constitution (as amended)

²⁹Section 3 of the Minerals Act

³⁰Section 1 of the Land Use Act 1978

quid plantatur solo solocedit will not apply to biodiversity found on an individual land this is because the power, control and management of mineral resources is vested and conferred on the government. The conservation of biodiversity species are very significant for the survival of mankind and where it is discovered to be at the mercy of an individual, it is the responsibility of the government to act timeously to take control and management of the same.

5. CONCLUSION AND RECOMMENDATION

Flowing from the above, it is manifestly clear that the control and management of land in Nigeria is vested in the government. The land is held in trust by the Governor of each State of the Federation on behalf of the people. Where individual acquired lawfully and it is later discovered that mineral resources are found therein, the government is empowered to either grant such individual license to exploit the mineral resources. But in a situation where the land has already been developed before the discovery of the mineral resources, the maxim *quic quid plantatur solo solocedit* applies and such land is taken away from such individuals

To this end, it is suggested that the regulation/law is made to recognize the payment of compensation to individuals on whose land natural resources are found. Also, allocation of alternative land to such individuals with similar kind of development thereon provided for such individuals. This will go a long way in conserving biodiversity from extinction as a result of human activities.