

**UNDERSTANDING THE LEGAL DISPARITIES AMONG LEASES, TENANCIES AND OTHER FORMS OF OCCUPATION: THE CONVOLUTIONAL CONCEPTIONS OF TENANCY LAWS\***

**Abstract**

*The need for leases, tenancies and other forms of occupation was borne out of the uneven distribution of resources, lack of adequate housing, inaccessibility of mortgage windows, limited supply of land amongst others. The history of the 'Law of Tenancy' started from England and was based on the doctrine of estate and contract at common law. In modern times, statutory enactments came in to correct certain anomalies in the common law rules of occupancy and they now largely form the basis of tenancies. This research aimed at analyzing the congruities among the various forms of occupation and therefore examined the conceptions of leases, tenancies and other forms of occupancy whose features sometimes overlap as a result of sharing certain similar characteristics, the commonest of which is possession. They are thus, almost always used erroneously interchangeably. Doctrinal methodology was adopted with primary and secondary sources of law, aided by international treaties, textbooks, journal articles, newspapers and online materials. This article accessed the conceptions at common law while evaluating the governing applicable statutes stating the distinctions that avail, the types of tenancies, leases and elements thereof distinguishing and juxtaposing their nature from occupancy rights under the Land Use Act, 1978. The paper finally highlighted the points of departure making conclusions and recommendations towards attaining international best practices goals for a better landlord and tenant relationship law in Nigeria.*

**Keywords:** Tenancy, Lease, Occupation, Doctrine of Estate, Contract, Statutes, License, Trespass, Squatter, Land Use Act 1978

**1. Introduction**

Land is the most valuable physical possession of man. No man can live successfully without mingling with land in one capacity or the other. One can be an owner of landed property and another a seeker of same, thus creating a landlord and tenant relationship once they are at *consensus ad idem*. There is no gainsaying the fact therefore that land being an essential commodity, and landlords being 'Lords' over their land may exercise their lordships to the detriment of not just their vulnerable tenants but also that of the society at large. This will in turn by reason of its essential nature have adverse effect on virtually every other segment of the society. As a matter of fact, the legal regulatory rules on the landlord and tenant relationship were triggered by the inhumane and demeaning attitudes of landlords towards their tenants especially after the Second World War. The development of leases and tenancies began in England and was governed by the common law principles especially as it relates to contract. The leasehold interest at the time was the personal contractual arrangement between the holder of a freehold interest in land and another who wanted a right to occupy and use land for a specific period. This conferred personal contractual rights on the parties to the extent that upon wrongful dispossession of the tenant, either by the landlord or a third party, he cannot maintain a successful action for recovery of land as he is not the land owner but can maintain only a personal action in damages against the wrongful dispossessor<sup>1</sup>. As a result of this kind of inhumanity on poor tenants, leaseholds and tenancies were classified as personality interests which are distinct from other kinds of pure personality interests. This is because land and some landed property are immovable. These are common with real property and chattels, a position that holds in modern times. This concept has however been developed upon in various jurisdictions and the trend is still ongoing. In Nigeria for example, almost every state has its own recovery of premises law all of which are aimed at regulating the landlord and tenant relationships to avoid tyranny by the landlords.

**2. The Concepts of Tenancy and Lease**

The term tenancy connotes a legal relationship between two persons whereby one known as the landlord passes an interest in his property to another known as the tenant, usually for a consideration called 'rent'. The essential features of tenancy are exclusive possession and certainty of duration<sup>2</sup>. For many decades, Nigeria placed reliance on the English concept of tenancy which evolved from the amalgamation of the doctrine of estate and the common law rules governing personality. The concept of tenancy has both the element of contract and that of an interest in land; consequently, privity of contract and privity of estate exist between the parties to a tenancy agreement. As a result of changing trends and socio-economic circumstances evident in the Nigerian landlord and tenant relationships, Nigeria has deviated greatly from the common law concept/principles of tenancy by creating municipal laws which to a large extent now govern her landlord and tenant relationships.

---

\*By Vivian Chinelo ARINZE, LL.M, B.L, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria. Email: arinzevivian7@gmail.com, vc.arinze@unizik.edu.ng

<sup>1</sup> I.O. Smith, *Practical Approach to the Law of Real Property in Nigeria* p. 6

<sup>2</sup> Lord Templeman in *Street v Mountford* (1085) 2 All E.R. 289 stated that crucial to the existence of a tenancy is exclusive possession

### **Tenancy under Common Law**

Tenancy at common law is a legal relationship between a landlord and a tenant whereby the landlord who is possessed of legal estate or interest in a premises, grants a term of that interest for a definite period to the tenant. Common law tenancies are largely contractual and do not fall within any of the statutory security of tenure regimes in our laws. This means that where a fixed tenancy expires, the tenant's right to possession ceases and the landlord immediately becomes entitled to possession. He can therefore forcefully eject the tenant. He needs not serve a notice to quit or obtain an order of court to do so. However, where the tenancy is periodic, notice to terminate will need to be given and must contain the prescribed information required under the Protection from Eviction Act (PEA), 1977<sup>3</sup>. A tenant who remains in occupation after his tenancy has determined and the landlord has demanded possession becomes a trespasser<sup>4</sup>. It should be noted however that residential common law tenants are protected by the PEA, 1977, where a court order is required to eject a tenant who refuses to give up possession. In a nutshell, the elements of a common law tenancy are: Intention to create a tenancy between the landlord and the tenant; Payment of a consideration called rent by tenant to landlord; Tenant's acquisition of legal interest or estate in the premises; Landlord's reversionary interest or right in the premises established<sup>5</sup>

Nigerian courts in giving meaning to a tenant at different times adopted the common law principle<sup>6</sup>. Where a tenant holds over at the expiration of the contractual term of his tenancy, his status at common law is either that of a tenant at will or tenant at sufferance<sup>7</sup>. Tenancy at will is created where the tenant holds over with consent of the landlord, he is therefore protected by law until the landlord takes necessary steps to put him out or until he decides to vacate. A tenant at sufferance on the other hand is one who holds over without the will or consent of the landlord. He holds no estate protected by law; he may therefore be ejected by the landlord exercising his immediate right of possession at any time. It is worthy of note that no specific length of notice is required to be given to determine these tenancies. These tenants are also not trespassers because they were let into possession by the landlord at the commencement of the expired term. Suffice it to say also that tenancy at sufferance is a common law concept which is no longer in use in Nigeria as a result of the concept of tenancy.<sup>8</sup>

### **Tenancy under Statute**

Statutory tenancy connotes two different interpretations. Firstly, it means tenancy created by reason of a statutory enactment and secondly, it is a term used for a tenant who is holding over premises without the consent of the landlord and whose possession is protected under an enactment. He is otherwise known as a 'protected tenant'. Unlike the common law tenancy which is usually contractual, a statutory tenant is a tenant created by statute and imposed on the landlord. The statute defines the tenant and prescribes his privileges and liabilities<sup>9</sup>. Every state in Nigeria has enactments guiding the relationship of landlord and tenant. The enactments are created majorly as a necessity to tackle the socio-economic and other peculiarities of the Nigerian landlord and tenant relationship.

Statutory and contractual tenancies are properly distinguished. For instance, the Lagos State Tenancy Law 2011<sup>10</sup>, defined a tenant to include: 'A subtenant or any person occupying any premises whether by payment of rent howsoever or by operation of law and not person unlawfully occupying any premises under a bona fide claim to be the owner'. By this definition, two forms of tenancies are observed, the Contractual Tenancy (like it operates at common law) and the Statutory Tenancy. The elements of statutory tenancy deduced from the above definition are:

- Any person who occupies premises and pays rent or is called so by a statute is a tenant.
- The person may be occupying the premises without paying rent.
- The occupation may be without the consent of the landlord

It should be noted that unlike the common law concept of tenancy, a statutory tenancy;

- Does not refer to any agreement between the landlord and the tenant
- Does not include transfer of estate or any legal interest from the landlord to the tenant
- Payment of rent is not a condition for establishing a landlord and tenant relationship

A statutory/protected tenant is a tenant whose contractual right to possession has elapsed but who is still in possession (holding over) by reason of a right granted him under the law. A statutory tenant becomes so from the moment he refuses to give up possession after the expiration of his term. It arises by operation of law from a

---

<sup>3</sup> <http://www.lexisnexis.com.uk>. Visited on 2/5/19

<sup>4</sup> Ibid

<sup>5</sup> *Ebenezer v Bell* (1963) All NLR 17

<sup>6</sup> *Mobil Oil Ltd v. J.M. Johnson* (1961) 1 All NLR 93, *Diocesan Synod of Lagos v Dedeke* (1956) LLR 30

<sup>7</sup> I.O. Smith, *The Scope and Application of the Concept of Statutory Tenancy in Nigeria: A Critical Appraisal* 65

<sup>8</sup> *African Petroleum Ltd v Owodunni* (1991) 8NWLR (pt. 210) 391

<sup>9</sup> Tom Anyafulude, *Principles of Recovery of Premises in Nigeria Through the Cases*, 15

<sup>10</sup> Section 47

previous contractual tenancy. By reason of the element of operation of law, it needs neither the consent agreement of the parties nor a court order<sup>11</sup>. It should be noted however that Nigerian laws have modified the principle that statutory tenancy must spring from a previous contractual relationship of landlord and tenant with respect to licensor and licensee relationship<sup>12</sup>. He is a protected tenant in that the landlord cannot forcefully eject him; the laid down rules by the law must be followed to get him ejected. Consequently, a landlord who disconnects a statutory tenant's electricity, removes his roof, window or does anything inconsistent with a tenant's right to quiet enjoyment may be liable for breach of contract or for trespass<sup>13</sup>. It is humbly submitted however that liability for breach of contract ought not to arise as there is no longer a contract between the parties. Further, the landlord is expected to allow the tenant enjoy other benefits he was entitled to under the original contract. This includes an obligation on the part of the landlord to effect repairs<sup>14</sup>. Also where there is a renewal option in the original tenancy, the statutory tenant can exercise that option provided he has not done anything that will operate as a waiver of the right<sup>15</sup>. This suggests that a contractual tenant's status may change to that of a statutory tenant and back to a contractual tenant. On the other hand, a statutory tenant is liable to pay for the Use and Occupation of the premises for the period he was holding over. In addition, a statutory tenant's right is not transferable because he has no title or estate in the premises. His right is just possessory. He cannot give what he does not have. *Nemo dat quod non habet*. A major similarity between a contractual and a statutory tenant is that the tenant must have come into occupation lawfully. By implication, the only classes of persons who will not come into the category of tenant are squatters and trespassers because they have no protection under the law. A contractual tenant has a legal estate in the premises while a protected tenant has only a right of possession.

### **Types of Tenancies**

**Periodic Tenancy:** This is a tenancy that revolves at both common law and statute. It is tenancy that continues for successive periods. Periodic tenancies do not have a specific termination date but has specific period of tenancy<sup>16</sup>. This type of tenancy belongs to the contractual class of tenancies. Under various recovery of premises laws, types of periodic tenancy include: weekly tenancy, monthly tenancy, quarterly tenancy, half-yearly tenancy and yearly tenancy<sup>17</sup>. In the absence of any express agreement to the nature of periodic tenancy, the mode of payment of rent (when rent is paid or demanded) will determine the type of periodic tenancy<sup>18</sup>. **Fixed Tenancy:** This is also a type of tenancy revolving both at common law and statute. It is a tenancy for a definite period. Unlike the periodic tenancy, the commencement and termination dates of a fixed tenancy are known to the parties. Where this type of tenancy is determined by effluxion of time, the tenant at common law who holds over automatically becomes a trespasser and can be ejected by the landlord without services of notices or obtaining a court order. Under the statutes however, such tenants are protected. They therefore become statutory tenants and need not be served with notice to quit but are entitled to seven day notice of owner's intention to apply to court to recover possession and can only be ejected by an order of a court of competent jurisdiction.<sup>19</sup>

### **The Concept, Scope and Nature of Leases**

There has been a lot of confusion about terminology when it comes to leases and tenancies. Some people interchangeably use the terms leases and tenancies to refer to the landlord-tenant relations. The reason for the use of the terms to represent both leases and tenancies is not far-fetched. The two concepts are very similar especially as the essentials of both are virtually the same namely: words of demise; complete agreement; the identification of the parties; and definite premises; commencement and duration of agreement. The Court of Appeal per Onalaja J.C.A. (as he then was) defining a lease stated as follows:

A lease is the demise by the landlord of a less estate than that which himself possesses in the land. If he transfers his entire interest, it is an assignment. The estate created in a lease is designated 'Terminus' owing to its duration or continuance as being defined and limited. A lease may take effect without necessity of actual entry but to be effectual an agreed rent must be made between the parties and this is to be derived from the intention of the parties.<sup>20</sup>

<sup>11</sup> *Roberts v. Samuel* (1950) 13 WACA 55, *Strutt v. Panter* (1953) 1 QB 397

<sup>12</sup> Section 14 of the Lagos State Tenancy Law, 2011

<sup>13</sup> The difference is that where the interference is done off the premises it will be a breach of contract but where it is done on the premises it will be in the realm of breach of covenant. *Adollo v Adeyemi* (1966) 2 All NLR 96

<sup>14</sup> Lanre Fagbohun, *Essays on Nigerian Law of Landlord and Tenant*, 28

<sup>15</sup> *Infra*

<sup>16</sup> www.businessdictionary.com accessed on 3/5/19

<sup>17</sup> Section 13(1), Lagos State Tenancy Law, 2011

<sup>18</sup> Section 13(6), *E.O. Fasehun v Pharco (Nig) Ltd* (1965) All NLR 640

<sup>19</sup> Section 13(5)

<sup>20</sup> *Lewis Opara v. D.S. (Nig.) Ltd.*, (1995) 4 N.W.L.R. (pt.390) p. 440.

The effect of using the terms interchangeably may however be drastic as in the case of *WJ Blakeman v Associated Hotel Management Services Limited*<sup>21</sup> where the court held that where a lease which term exceeds one year is not registered, then the same becomes *null* and *void* and the rights therein would be interpreted as a periodic lease, which can be terminated with one month's notice. A lease therefore is a document creating an interest in land for a fixed period of certain duration in consideration of payment of rent.<sup>22</sup> The National Land Code of Malaysia,<sup>23</sup> the 'NLC' attributes a different meaning to the two different words and with different effects on those who are involved. The NLC<sup>24</sup> provides that where the rental of the property is for three years or less, it is referred to as a tenancy<sup>25</sup> and it is exempted from registration. Section 213 Special provisions with respect to tenancies exempt from registration: (a) any tenancy or sub-tenancy for a term not exceeding three years granted pursuant to section 223; and (b) any tenancy or sub-tenancy for a term not exceeding one year granted pursuant to the provisions of any previous land law. So a tenancy need not be registered. On the other hand, a rental for a period of more than three years is a lease<sup>26</sup>. Section 221 of the National Land Code Act 56 of 1965 provides: Section 221 on Power of proprietors to lease for terms exceeding three years is to the effect that every lease granted pursuant to the section shall be for a term exceeding three years and the maximum term for which any lease may be granted shall be:

- a) ninety-nine years if it relates to the whole of any alienated land and
- b) thirty years if it relates to a part only thereof.

It is not in all cases that leases are conveyed by a deed or in any particular form as may be prescribed by law; a lease may be validly created orally or in writing without being under seal<sup>27</sup>. Where a lease is registered, the existence of the lease is endorsed on the title. It therefore becomes a matter of giving notice to the public. In such a case, if the proprietor decides to sell the property, the buyer, if this is not disclosed to him and he does not make a land search, is bound by the lease because it is registered and endorsed. The buyer therefore cannot deny the rights of the person to whom the property is leased or ask him to vacate the property until the expiration of the lease period. Thus, by the conceptual meaning of a lease, it is clear that it is a contractual arrangement fully compliant of the essentials of a valid contract, namely; Offer, Acceptance and Consideration.<sup>28</sup> The description of a lease therefore justifies its categorization as tenancy which is applied or used interchangeably with the term leases and which is also a generic name used in referring to all such arrangements where a limited interest in law has been created and conveyed vide a written or oral agreement from a person known in law as the landlord or lessor to another known as the tenant or lessee to enter upon, use and or occupy land for an agreed purpose with the clear understanding that upon expiration of the term granted the landlord or lessor shall be entitled to the reversion. On this platform, Professor I.O. Smith noted:

Whatever may be the nature of the landlord's interest in land, the tenant's interest is always a leasehold and the retention of a reversion by the landlord is essential for if a landlord conveys the whole of his interest, the transaction would amount to an assignment and the relationship of landlord and tenant would cease to exist.<sup>29</sup>

### **Types of Leases**

There are different types of leases ranging from financial leases, operation leases, leverage and non-leverage leases, conveyancing type leases, sale and leaseback, full and non-payout leases, net and non-net leases. It is no longer a contradiction that one of the important features of a lease is right of possession to the exclusion of even the lessor. The germane question however is whether this feature is the only test to distinguish a lease from a license as was in the case of *Lynes v Snaith*. The position in England is that there are other distinguishing factors besides exclusive possession to overrule a license. The law does not impute intention to enter into a legal relationship where the circumstances and the conduct of the parties negate any intention of the kind. Denning L.J observed;

Although a person who is let into exclusive possession is *prima facie* considered a tenant, nevertheless he will not be held to be so if the circumstances negate any intention to create a tenancy. Words alone will not suffice; parties cannot turn a tenancy into a license merely by calling it one bit if the circumstance and the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege with no interest in the land, he will be held only to be a licensee.

---

<sup>21</sup> [1985] eKLR; Kenya Law Civil Appeal No. 45 of 1984

<sup>22</sup> S.A. Oretuyi, *Some Reflections on Leases/Tenancies in Relation to the Land Use Act 1978* in essays on the Nigerian law of Landlord and Tenant pg. 206

<sup>23</sup> National Land Code Act 56 of 1965 (Malaysia)

<sup>24</sup> National Land Code Act 56 of 1965. Section 213

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*. See Section 221

<sup>27</sup> Leases for less than three years need not be under seal. See *Cole v Jead* (1939) 5WACA 92

<sup>28</sup> Hon. Justice I.A Umezulike, *ABC of Contemporary Land Law in Nigeria*, Snap Press Nigeria Ltd, 2013, p. 369

<sup>29</sup> I.O. Smith, *Practical Approach to Law of Real Property in Nigeria*, (Revised Edition), (Ecowatch Publications Limited), (2013), p.247.

Furthermore, using intention to determine whether a person is a licensee or lessee or tenant has shown some ambiguities even more than using the exclusive possession test. *Balogun v UAC Ltd*<sup>30</sup>. However, it must be stated that there are essential elements of a lease which are:

- Certainty of parties, that is, there must be a known lessor and lessee.
- Both must be persons known to law, that is, they must be juristic persons<sup>31</sup>.
- There shall be certainty of terms, that is, specific covenants must be spelt out<sup>32</sup>.
- A lease must be for a specific fixed period, that is, it must indicate dates of commencement and expiration.
- A lessee must acquire right of exclusive possession<sup>33</sup>.

### **3. Leases, Tenancies and other Forms of Occupation Distinguished**

At common law, the landlord is estopped from denying title to his tenant where the tenant was let into possession by the landlord at the commencement of the term which is now expired and the tenant still remains in possession. This tenant is protected only to the extent that his status is not a trespasser.<sup>34</sup> While under the Nigerian statutory legislations by virtue of Section 40 of the Rent Control and Recovery of Residential Premises Law<sup>35</sup>, a tenant has been judicially construed to include any lawful occupier of premises whether or not he is a tenant.<sup>36</sup>

### **Tenancy and other Forms of Occupation examined**

The nature of tenancy in modern times is amorphous. This is because it depends on jurisdictions.<sup>37</sup> Remarkably, the statutory provisions pertaining to the relationship of landlord and tenant in Nigeria moved from the common law approach to the criteria of lawful occupation of a premises whether as a tenant, licensee or servant. This statutory requirement has made the Nigerian courts to interpret the law as any person who lawfully occupies a premises is given the protection under the law.<sup>38</sup> There are different categories of tenancy recognized by the law namely:<sup>39</sup> Contractual tenancy, Statutory tenancy and tenancy at Sufferance.<sup>40</sup> Other forms of occupation which look like tenancy but are in strict sense not tenancy are Trespasser, Squatter and Licensee. The relationship of landlord and tenant does not arise in the case of a Trespasser because there was no agreement creating an interest in any form since the occupation of a trespasser is wrongful and unlawful and cannot be termed an Occupier. On the other hand, a Squatter is a person who settles on property of another without any legal claim or title.<sup>41</sup> In the case of a licensee, it is a general rule that a licensee does not qualify as a tenant since the agreement between parties to the license creates mere personal rights as opposed to a proprietary interest in favour of the licensee to use and occupy the premises for a purpose and to do something rightfully on the land which would have otherwise amounted to trespass.<sup>42</sup> This, though led into occupation by the licensor, the licensee has no estate known to law. This position is emulated by the Lagos State Tenancy Law 2011 which specifically excluded a servant or licensee<sup>43</sup> to be accorded the paraphernalia of a tenant under the law. This is as a result of the fact that in Lagos state before one can become a statutory tenant there must exist a contractual relationship evidencing the intention of the parties. On the other hand, the Supreme court further explained who a statutory tenant is in *African Petroleum Co. Ltd v. Owodunmi*<sup>44</sup>.

<sup>30</sup> (1958) NNLR 77

<sup>31</sup> *Idowu v Williams* (1974) 3 CCHCJ P. 344

<sup>32</sup> Landlord and Tenant Edict of Rivers and Kaduna States No. 4 of 1988 and Section 52(1) of No. 17 1990 respectively

<sup>33</sup> *London of North West Railway Co v. Buckmaster* (1874) 10 QB p. 70

<sup>34</sup> Section 47 of the Lagos State Tenancy law, which states that a tenant- 'includes a sub-tenant or any person occupying any premises whether by payment of rent howsoever or by operation of law and not persons unlawfully occupying any premises under a bona fide claim to be the owner'

<sup>35</sup> No. 9, 1976 of Lagos State. See also Section 2 of the Recovery of Premises Law.

<sup>36</sup> *African Petroleum Co. Ltd. v. Owodunmi* (1991) 8 NWLR (pt.210) p.391

<sup>37</sup> Nature and Scope of Statutory Tenancy in Nigeria by Abikoye Oluwatoyosi Oluwatosin; Accessed from academia.edu on February 2, 2018

<sup>38</sup> Of note, there is an exception- being the Lagos State Tenancy Law 2011 which excludes licensees and servants and only accord the paraphernalia of a statutory tenant to such persons who have initially entered into a contract with the landlord and lawfully occupy the premises.

<sup>39</sup> *Landlord and Tenant, Useful Hints* (Practice Notes No. 6) by Justice J.O Ige p.2

<sup>40</sup> Lagos State Tenancy Law No 14, 2011 and the various Recovery of Premises Law obtainable in various states in Nigeria e.g CAP 132 Laws of Kaduna State 1991, CAP 139 Laws of Kwara State 1994, Laws of Yobe State 1994, Laws of Borno State 1994, CAP 76 Anambra 1991 CAP 132 etc

<sup>41</sup> *Principle of Recovery of Premises in Nigeria through the Cases* by Tony Anyafulude p. 34.

<sup>42</sup> *Nature and Scope of Statutory Tenancy in Nigeria* by Abikoye Oluwatoyosi Oluwatosin accessed from Academia.edu on February 2, 2018

<sup>43</sup> Section 1(2) of the Lagos State Tenancy Law No. 14 of 2011

<sup>44</sup> (1991) 8 NWLR (pt. 210) p.391

### **Leases and Tenancies Distinguished**

- Tenancies are usually for a short period of time, though sometimes renewable, leases are for longer periods, usually a minimum of three years.
- Tenancies are sometimes in written form; leases are written documents by deed specifically setting out the terms of agreement.
- Leases are largely governed by the terms agreed thereto, while external factors in the form of statutory regulations usually dictate certain terms of tenancy.
- Tenancies by nature unless they are for a fixed term are usually renewable at the expiration of every term, leases are usually not renewable, where parties need to further, they enter into new agreement which though may have similar provisions with the original one.
- Leases usually relate to commercial/business properties while tenancies are largely in respect of residential premises.

### **Leases, Tenancies and Licensees Distinguished**

- While a lease and a tenancy convey an estate in land, a licensee has no estate in land instead he only has a right of possession.<sup>45</sup>
- While a lessee can grant a sub-lease, unless the lease specifically restricts him from doing so, a licensee cannot transfer his license.
- A tenant/lessee acquires a right of possession to the exclusion of the lessor, a licensee does not enjoy such right.
- By reason of statutory rules, certain terms are implied in landlord and tenant relationships but parties to a license are bound by express terms in the license. In other words, licensees do not enjoy the benefits accorded to statutory tenants.
- A lease once granted cannot be revoked but the grantor of a license can revoke same upon reasonable notice of the licensee.

### **Statutory/ Protected Tenants and Licensees Distinguished**

- A licensee has the permission of the landowner to enter and remain in premises, a statutory tenant, though entered premises with the consent of the landowner but does not have the permission to remain. He only holds over after the expiration of his tenancy.
- A statutory tenancy can only be determined by an order of court but a license can be determined by any of the ways agreed upon.

### **Tenants at Will and Licensees Distinguished**

- A tenant at will has a tenure without a definite term but licensees are usually with definite terms.
- A tenant at will can maintain an action for trespass against the landlord but a licensee cannot.

### **Licensees and Trespassers Distinguished**

- A licensee is put in occupation with the consent of the landlord but a trespasser comes upon land without the consent of the landlord.
- A license can be determined by reasonable notice but no notice is required in respect of a trespasser.

### **Nature of Right of Occupancy Under the Land Use Act (Act) 1978 in Relation to Landlord and Tenant Law**

Right of Occupancy before the promulgation of Land Use Act, 1978 was commonly expressed as Land Ownership. Before the Act, the applicable land laws were received English laws and the customary laws. Prior to March 29, 1978, title to land in Nigeria could be derived under the received English laws and the customary laws. In southern Nigeria, the policy was dualism with customary land tenure system operating side-by-side and at times overlapping with the English land tenure system enacted as State Land Laws<sup>46</sup>. Northern Nigeria had the Land Tenure Law of Northern Nigeria of 1962.<sup>47</sup>This dual land tenure system introduced many complexities and uncertainties in the Nigerian land tenure system.<sup>48</sup> Though there were many legislations dealing with land in Nigeria, the most crucial legislation is the Land Use Act. The Act nationalized all the land in each state in Nigeria by vesting all in the Governor. and created a new interest in land tenural system called Right of Occupancy which

---

<sup>45</sup> *Okoye v Dumez* (1985) 1 NWLR (pt. 4) 783

<sup>46</sup> Akintunde Otubu: 'The Land Use Act and Land Administration in 21st Century Nigeria: Need for Reform' *Journal of Sustainable Development Law & Policy* Vol. 9, 2018, Afe Babalola University, p.83 <https://www.ajol.info/index.php/jsdlp/article/view/176458> accessed 5 May 2019

<sup>47</sup> [martinslibrary.blogspot.com](https://martinslibrary.blogspot.com), <https://martinslibrary.blogspot.com/2014/02/right-of-occupancy-land-use-act-nature.html?m=1> accessed 5<sup>th</sup> May 2019

<sup>48</sup> Akintunde Esan: 'Illuminations on Certificate of Occupancy and the Right of Occupancy in Nigeria' <https://akintundeesan.blogspot.com/2015/05/illuminations-on-certificate-of.html?m=1> accessed 5 May 2019

compels the land owners to just Occupation and Use of the land<sup>49</sup>. In *Nkwocha v Governor Anambra State & Ors*<sup>50</sup>, Kayode Eso, JSC held: 'The tenor of the Act as single piece of legislation is the nationalization of all lands in the country by vesting its ownership in the state leaving the individual with an interest in land which is a mere right of occupancy and which is the only right protected in his favour by law after the promulgation of the Act'. Ownership of land before the Act was either by settlement, conquest, sale, gift or laches and acquiescence. With the promulgation of the Act, subsequent ownerships acquired by the above methods became extinguished and reverted back to the Governor of the state. Freehold interests acquired prior to the Act got converted to leaseholds, the Governor becoming the lessor. Thus it is said that the Act stripped off ownership rights vested in individuals, families, and communities prior to its enactment and vested same in the Governor<sup>51</sup> leaving them with right of occupancy which, if granted by the Governor anywhere in the state is called a statutory right of occupancy and if granted by the local government under section 36 of the Act is called a customary right of occupancy.<sup>52</sup> A critical examination of the Act, probably shows that the only interest created under the Act in favour of a man who has interest in land is the right of occupancy.<sup>53</sup>

#### **4. Conclusion and Recommendations**

Though this discourse is no doubt inexhaustible, it is clear that since the intervention of statutes, some remarkable developments in tenancy laws have emerged. For instance, the Tenancy Law of Lagos State has offences and penalties provisions in Section 44, which has been described as 'a progressive movement in curtailing the incidence of such criminal acts under the law'. In addition, the application of the privity of contract principle to leases is fast becoming outdated with the socio economic realities of the property market in modern times and with emphasis shifting from contract to protection of statutes. One of the remarkable achievements of the law in respect of this subject as opposed to the common law rule is the provision of 'option to renew' which if present in a tenancy agreement, a tenant who has been holding over can after several periods of holding over decide to exercise whether the landlord consents or not thus leaving the landlord at the mercy of the tenant who decides when he will and will not pay his rent. By reason of a statute, once a tenant's tenancy has been duly determined by service of the necessity notice, the landlord retains a right not to accept rent from such a tenant if he later decides to renew same. Although statutes have helped greatly to cover the lacuna in the primitive law on landlord and tenant, the situation is not yet near perfect. For instance, the laws are not uniform in certain respects; occupation amounting to tenancy at will in Rivers State of Nigeria is termed a license in Lagos State of Nigeria. This springs up confusion with respect to what amounts to a specific type of occupation. Based on the loopholes observed in this subject and holding to the changing circumstances, there is need to further look into the laws for reviews that would meet up with the current global trends and developments. The following measures may be helpful.

- The administrative structure of the Land Use Act is inconsistent and devoid of clarity of functions and purposes. The Act should therefore be amended to cater for landlord and tenant relationships in clear terms.
- The provisions of the various landlord and tenant laws in Nigeria seem to favour the tenant more; it is recommended that the laws should seek towards striking a balance between the two.
- The forms of occupancy in all states should be based on lawful occupation of premises; it is believed that this will settle some of the difficulties in categorizing some types of occupancy.
- Efforts should be made to harmonize the substantive state laws with the Recovery of Premises laws.
- Recovery of Premises should be periodically reviewed to cater for the socio-economic circumstances trending in the landlord and tenant relationships of the society.

---

<sup>49</sup> Ibid.

<sup>50</sup> (1984) 1 SCNLR 634 at 652.

<sup>51</sup> Akintunde K. Otubu 'The Land Use Act and Land Ownership Debate in Nigeria: Resolving the Impasse' p.15 [https://www.researchgate.net/publication/272173374\\_The\\_Land\\_Use\\_Act\\_and\\_Land\\_Ownership\\_debate\\_in\\_Nigeria\\_Resolving\\_the\\_Impasse/citation/download](https://www.researchgate.net/publication/272173374_The_Land_Use_Act_and_Land_Ownership_debate_in_Nigeria_Resolving_the_Impasse/citation/download) accessed 5th May 2019

<sup>52</sup> Akintunde Otubu: 'The Land Use Act and Land Administration in 21<sup>st</sup> Century Nigeria: Need for Reform' *Journal of Sustainable Development Law & Policy* Vol. 9, 2018, Afe Babalola University, P.83 <https://www.ajol.info/index.php/jsdlp/article/view/176458> accessed 5 May 2019

*Savannah Bank Limited v Ajilo* (1989) 1 NWLR (part 97) 305. See also footnote 11 and 12 at p.84

<sup>53</sup> Op.cit 7