LAND RIGHTS UNDER CUSTOMARY LAW: AN EXAMINATION OF THE DICHOTOMY IN THE APPLICATION OF THE RULE OF *QUIC QUID PLANTATUR SOLO SOLO CEDIT**

Abstract

Land disputes are a common occurrence in land transactions. It is not unusual to find so many interests existing simultaneously over a piece of land particularly where improvements have been made upon such land. One of the cornerstones of land transaction in Nigeria is that whosoever owns the land, owns everything beneath the soil and up to the sky. This principle is expressed in the Latin maxim quic quid plantatur solo solo cedit. The principle enjoys judicial approval by both Court of Appeal and the Supreme Court in avalanche of cases. This paper addresses the applicability of this maxim to customary land within the southern states. Findings revealed that there are conflicting judgments and scholarly writings among text writers with respect to the applicability of this maxim under customary law. The paper through doctrinal research methodology, examines the applicability of the principle of quic quid plantantur solo solo cedit in customary land law in Nigeria. It intimately scrutinizes the applicability of the principle to customary land transaction in Nigeria and found that, the principle is unknown to customary land transaction. Customary land transaction is unique and determined by the custom and traditions of where such land is situated. It makes recommendations towards the improvement/codification of customary land transactions in Nigeria to avoid confusion. It recommends that the Supreme Court comes out with a clear position on the application of this rule under customary law.

Keywords: *Quic quid plantatur solo solo cedit, Customary Land Law, Customary land, Land disputes, Interests in land.*

1. Introduction

Under the indigenous customary law, use of land was basically limited to cultivation and building purposes. This basic use of land has fast become obsolete as a result of the socio-economic challenges which have gradually created the need to expand the use of land to accommodate mechanized large scale agriculture and industrial development. [1] The influence of westernization and colonization has no doubt further contributed to changes and perception the indigenous people had concerning land.[2] The challenges posed by this new approach to land has indirectly created other issues with respect to land ownership under customary law and has made it an object of serious concern under property rights. Land has been defined by several scholars to include things growing or attached to it.[3] This paper reviewed the etymological and scholarly definitions of the concept of land under customary law and juxtaposed it with the concept of land under the English law. This helped in evaluating the rule *quic quid plantatur solo solo cedit* and the extent of its application. The rule in *quic quid plantatur solo solo cedit* at common law denotes that all things attached to a land forms part of the land and entitled to the same rights of the property as the soil itself.[4] This rule is settled under the English land tenure, but remains an area of controversy under customary land tenure. Land matters form the bulk of adjudicated cases under customary and statutory law, hence the need for a thorough examination of this rule. This paper is divided into five parts; the introduction, land

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[1] I. O. Smith. 2013. *Practical Approach to Law and Real Property in Nigeria*. (ed) Lagos. Ecowatch Publications. P. 115.

[2] M. O. Ajayi, 2016. *Dynamics of Succession and Inheritance Rights of Women among the Avianwu of Edo State Nigeria*. PhD Thesis Submitted to the African Law Unit, Institute of African Studies, University of Ibadan. P.46

[3] For example G.B.A, Coker, *Family Property among Yoruba* (Sweet & Maxwell) (2nd ed) PP 39-40. He states that land includes buildings and improvements made on it. See also C.O. Olawoye , *Title to Land Law in Nigeria* in I. A. Umezulike 2013. ABC of Contemporary Land Law in Nigeria. Enugu, Snaap Press Nigeria Ltd. P.6 where he aligns with G.B.A Coker's submission further states that even the courts have through their decisions supported this position. In *Adagun v.Olayioye* [1964] 1 All N.L.R. 127, the courts made reference to the fact that streams and ponds also include land.

[4] Smith I.O. 2013 *op cit*. P.15

tenure under the Customary law and the English Law, application of the maxim under the English law, application of the maxim under customary land tenure and matters arising, recommendation and conclusion.

2. Customary Land Tenure and English Land Tenure

Land is a very important phenomenon for human existence as it is very important for human survival. It may be referred to as the primary national resource of all nations from which other resources, agricultural, mineral and commercial are derived.[5] Obi defines land as a deity, the source of all life, of food and fertility, the custodian of social norms. Both as good and as a legal person, some form of respect and tribute is due to mother earth.[6] This definition of land by Obi no doubt represents the value attached to land under customary law. Under the land Law and Registration (1976) Land has been defined as 'a source of all material wealth. From it we get everything that we use of value whether it be food, clothing, fuel, shelter, metal or precious stones. We live on the land and from the land and to the land our bodies or ashes are committed when we die. The availability of land is the key of human existence and its distribution and use are of vital importance'.[7] Land could be defined as an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it.[8] Land has been defined under the Interpretation Act to include any buildings and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals.[9] The Statute defines 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 the right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.[10] Customary land is land that is not governed by Statute tenure, but by the indigenous customary law applicable where the land is situate. Land under customary law could be acquired through communal ownership, family land, ceremonial land, gift or individual purchase. The land is usually owned by the indigenous community and administered according to their customs. It has been stated by some scholars that land in the indigenous African society was free and accorded great respect because ownership of land is a source of power. It is regarded as the most unifying factor in an African society.[11] According to Lloyd, among the Yoruba, land is regarded as the solid part of the earth's surface, the ground. The rights in land are often held by persons other than those holding rights in the house on the land.[12] He states further that the Yoruba out rightly distinguished farm land to be used solely for agricultural improvement and hence drew a distinction between land and the improvements made thereon. These improvements were regarded as manmade improvements and were regarded as distinct from the hard surface of the earth.[13] Land has also been defined as an ancestral trust which the living shared with the dead, hence land is inalienable.[14] The constant frictions between the western approach (legal) and the African traditional (customary) approach, most especially with respect to alienation of land has necessitated the need to examine customary land tenure briefly.

Customary land tenure system has been defined as 'the system of landholding indigenous to Nigeria'. [15] Under the indigenous customary land law, the management of land was devoid of quarrels and was administered peacefully among family members. Land belonged to the community, family but never to an individual.[16] This trend has

[5] Umezulike, 2013. Op cit. 2
[6] S. N. C. Obi, *The Ibo Law of Property*. 1965, Butterworth African Law Series No.15.
[7] *Ibid* p.33
[8] B. A. Garner (ed), *Black's law Dictionary* (8th ed) Thompson and West. P. 892
[9] Section 18 (1)
[10] Section 2 Cap 100 LWN, 1959
[11] A. Emiola, *The Principles of African Customary Law*. Emiola Publishers, Ogbomoso, 2005. P.115
[12] P.C. Lloyd., *Yoruba land Law*. Oxford University Press. London, 1962, p. 13
[13] *Ibid* p. 13
[14] H. A. Amankwah, *The Legal Regime of land Use in West Africa: Ghana and Nigeria*. 1989. Tasmania: Pacific law Press. P.1
[15] I. O. Smith, *Sidelining Orthodoxy in Quest of Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria*. 2008. Lagos University Press, Lagos.p.4;
[16] *Amodu Tijani v. Secretary, Southern Nigeria* [1921] A.C. 399 at 404; *Balogun v. Oshodi* [1931] 10 N.L.R. p.50.

gradually faded away and land can now be allocated to an individual.[17] Before westernization was gradually introduced in the indigenous African society there was in place an acceptable and well-established indigenous land tenure system, which was economically, culturally and politically satisfactory.[18] With the advent of colonialism, the English legal system was introduced. The customary land tenure system was well organized and every one had well defined interests in land even though they co-exist on the same parcel of land. No one could alienate family property or whatever interest he had in land without the knowledge and consent of the family member's particular the family head.[19] The interests in land could be transferred to the owner's heirs as family property upon his demise or this right could be transferred absolutely during his lifetime.[20] The rights to use and transfer land determined who could use the land, the duration of use and under what conditions such land was held.[21]

Before the advent of colonialism there was a dual practice of land tenure system in Nigeria. As a result of the Fulani Jihad in the northern parts of Nigeria, land was vested in the Emir who held it in trust and subsequently alienated same to the people. In the south as stated in the preceding paragraph, land was held in trust for the people either by the community, elders, headman, chiefs or family. The customary law rules in the south were as diverse as the many ethnic groups that existed. The advent of colonialism saw to the enlargement of the dual land tenure system that existed into four systems; which are Land tenure under the English law, Land Tenure under State laws, tenure under Land Tenure law and land tenure under customary Law.[22] The English land tenure was gradually introduced in Lagos through the various Crown Grant laws. The Received English Law dates back to as far as 1860 when Ordinance No 3 of that year introduced English law into the Colony of Lagos. In *Folarin .v. Durojaiye* [23], Oputa JSC (as he then was) stated: 'Our colonial contact with England exposed us to the English common Law and Statutes of General Application. There is nothing to be ashamed of; or apologetic about our assimilation of the positive aspect of the Received English Law into our *corpus juris*. After all English law was highly coloured and radically influenced by Roman law as England was once a Roman Colony and the American Restatement bears visible clear scar and easily discernible marks of its English Common Law origin. Similarly in the case decided by Uwais CJN (as he then was) *Attorney General of the Federation .v Attorney General of Abia State*[24], the learned justice said:

'Historically, the British ruled their colonies by introducing English laws to the colonies. Most of the colonies in Africa including Nigeria were either conquered or ceded colonies or protectorates and trust territories. English law was introduced in those colonies by express enactment, the legislation provided for the introduction in those colonies by express enactment, the legislation provided for the introduction and observance of English law. Such legislation was made by the Crown by Order-in-Council, acting by virtue of prerogative, or powers conferred by the British Settlements Act, 1887 (for settlements) and by the Foreign Jurisdiction Act, 1890 for protectorates, protected States and Trust Territories, that is the former mandated territories. In the alternative, English law was introduced by the colonial legislature by means of local legislation through Ordinances, Proclamations, Acts etc. by virtue of the powers granted to such legislature by the crown, English law was introduced into West African territories (Ghana and Nigeria) by this means. In this case the authority for the application of English law is to be found in such enactment as the Supreme Court Ordinance of Nigeria…the amount of law received was the Common law, Doctrines of Equity and Statutes of Application.[25] The outcome of this western influence was

[17] *Tongi v. Khalil* [1954] 14 WACA. 331at 332
[18] Y. Aboki, *Introduction to Statutory Land Law*, Lecture Notes on the Land Use Act, Ahmadu Bello University, Zaria, Revised edition August 2001 in
[19] E. O. Arua & E. C. Okorji, *Multidimensional Analysis of Land Tenure in Eastern Nigeria*.
[20] *Kabiawu v. Alabi Lawal* [1965] 1 All N.L.R. 29 at 335.
[21] *What is land law? Land Tenure and Development in FAO Corporate Documentary Repository.* http://www.fao/org/docrep/005/y4307e05.htm. Accessed 14th February, 2019.
[22] J. A. Omotola, 'The Land Use Act 1978 and Customary System of Tenure'. *The Journal of the Nigerian Institute of Advanced Legal studies.* 1982 N.C.L. Rev. P.55
[23] [1988] 1 NSCC 255
[24]]2002] FWLR (pt.102) p.1
[25] E. Malemi, 2012

disastrous and hindered conveyance[26] where the courts all gave divergent decisions with respect to transferring customary land title in fee simple. The courts had to determine whether an owner of land held under customary law, could only convey a customary title. All land comprising the colony of Lagos was declared Crown land and land was divided into various settlements through various Crown Grants. The possibility of taking over the powers from the Oba of Lagos who was the traditional head of the community was doubtful as land was vested in the white cap chiefs (the Idejos)[27]. The implication is that King Dosumu had no land to cede under the 1861 treaty since he lacked the initial power to transmit such land except with the approval of the white cap chiefs. From a plethora of cases, it can however be argued that the treaty was only limited to the sovereign rights of the Oba and had nothing to do with the proprietary rights of the landowners in Lagos.[28] This situation led to the dual application of traditional and the received land tenure which was subsequently introduced in other Southern parts of Nigeria as people were desirous for a degree of certainty based on the fact that land held under English law was capable of being registered.

It is in the writer's opinion that the subsequent change of land tenure from customary tenure to the English system by the colonial masters was not borne out of a sincere purpose. The fact that alienation of land was almost impossible and foreigners were not allowed any form of control over the land probably necessitated the introduction of the English law. The colonial masters through a gradual process levelled many allegations against the customary law tenure system, describing customary land tenure as archaic, primitive, confused, hodge-podge and not performing to the expectations of the contemporary Nigerian society.[29] The colonial masters were desperate to expand their trade and explore the natural resources which were in abundance in the colony. In *Lewis v. Bankole,* Speed J stated'.... I must not be understood to be saying that your customary law is timid, barbaric and archaic. There are a lot of its principles that are admirable even to those who are not makers of it. But certainly there are many objectionable features in it. The earlier the courts or the legislature give them some coup-de-grace the better'.[30] History has it that the colonial masters came under the guise of introducing western education and religion.[31] They could have hardly achieved this without abundance of land. The most controversial issue with respect to a valid alienation of land under customary law, which was the concurrence of agreement between the family head and the family members gradually shifted to a consideration of the conditions for validity.

3. Alienation of Land and the Rule of *Quic Quid Plantator Solo Solo Cedit* under English law

Having explained the definition of land in its natural sense and understanding the natural and artificial content of land which include land as the earth surface, subjacent things of physical nature and things attached to land,[32] it is pertinent at this point to dwell on the crux of this paper which dwells on things attached to the earth surface. The question that has raised several controversies bothers on the ownership of land and things attached unto such land, such as trees, crops, mineral resources where developments on the land were made by someone other than the owner of the land. The principle *quic quid plantatur solo solo cedit* applied under the English law and provides that whatever is affixed to the soil, belongs to the soil), is applicable in this circumstances. It is a basic Roman law principle adopted into Common law.In Nigeria, the courts have constantly applied the rule of this principle when faced with ownership of land and things attached to the land. Section 15 (a) Land Use Act, 1978 expressly gives credence to the application of this maxim. The Section provides that during the term of a statutory right of occupancy, the holder shall have the sole right to and absolute possession of all the improvements of the land'. This

[26]*Balogun v. Oshodu* [1931] 10 NLR 36; *Coker v. Animashawun* [1960] LLR 71; *Coker v. Animashawun* [1960] LLR 71; *Alade v. Aborisade* [1962] WNLR 74. In this case the Supreme Court held, 'were a family was the absolute owner of the land, it could transfer his entire interest in his land so long as he had the agreement of the family head and other family members.

[27] Smith, supra p. 26

[28] See *Onisiwo v. A.G. Southern provinces* [1912] 2 NLR 77; *A.G of Southern Nigeria v. John Holt & Ors* [1910] 2 NLR 1 P. 14

[29] *Enimil v. Tuakyi* (1952) 13 WACA 10 (Ghana). See also Kuma V. Kuma (1934) 2 WACA 178.

[30] *Lewis v. Bankole* [1908] 1NLR p.81.

[31] B. Fafunwa, *History of Education in Nigeria*. 1974 London: George Allen; Ayu, I. *The Trumpet of Liberation in Nigeria*. 1991. Paper Presented at the 52nd Anniversary of the Katsina-Ala Old Boys. January 16, 1991. F. W. Coker, 'The Technique of the Pluralistic State'. 1921. *American Political Science Review*. 15.1: 186-195.

[32] At Common law, land is described to include land of any tenure and tenements, hereditaments-corporeal and incorporeal which includes minerals, easements, trees, rent charges and profits (I. A. Umezulike, 2013. *op, cit* p. 6).

provision is made irrespective of the fact that Section 1 of the same Act provides that all land comprised in the territory of each State vest in the governor of that state and shall be held in trust and administered for the use and common benefit of all Nigerians.[33] In *Francis v. Ibitoye*[34], the parties were in the process of concluding a contract, though some consideration had been remitted. Meanwhile the sum of twenty six pounds had been paid, and the plaintiff went ahead to erect a structure on the land. His case against the defendant when challenged was for a refund of cost of the erection and the twenty six pounds remitted earlier to the defendant. The trial court relying on the rule held that a building erected in such circumstances became the property of the land owner. The court further held that there was no obligation to compensate the builder. [35] It is however important to note in the above mentioned case[36] that customary law was not applied in arriving at the court's decision. What the trial judge did was that he investigated the case and applied the rules under the English law. The fact that the parties are Yoruba, did not translate to the fact that their customary law was applied. Going through the case thoroughly, there is nowhere, customary law was specifically pleaded and this remains a condition precedent before a customary law can be applied in a case. No doubt this case was seriously criticized by some legal luminaries. Professor T.O Elias was of the view that the plaintiff in *Francis v. Ibitoye*[37] ought to have been awarded some form of compensation.[38] Another scholar passionately rebuked the judgment of the court in the same case and went down memory lane. He described the situation in ancient times and stated that when controversies like this occurred, the house of the tenant could be burnt to the ground. However in recent times, a reasonable form of compensation could be paid to the tenant by his overlord or the tenant may have the house sold to anyone that his overlord approved off, with the aim of getting back whatever he must have invested on the land.[39] In *N.E.P.A v. Amusa*[40] the trial judge adumbrated the rule when he acknowledged that the maxim remained a good law. He stated further; '…It is a general rule of great antiquity and it means that whatever is affixed to the soil becomes, in contemplation of law, a part of it, and is subjected to the same rights of property as the soil itself. Thus, if a man builds on his own land with the materials of another, the owner of the soil becomes in law, the owner also of the building. Similarly, if trees were planted or seeds sown in the land of another, the owner of the land became the owner also of the trees, plants or the seeds as soon as they are rooted…'.

From the forgoing it is settled law that the maxim is not subject to controversy under the English law and has been accepted as a law model. However the application of the maxim under the customary law has been subjected to severe academic criticisms as there are divergent opinions with respect to the application of the maxim under the customary law.

4. Application of the Maxim *Quic Quid Plantaor Solo Solo Cedit* under Customary law: Matters Arising

It is important that a brief definition of customary law be given, before addressing the applicability of this maxim under the customary tenure system. Customary law has been defined by various scholars and legal luminaries to be the law that regulates the way of life of group of people which is not the Common Law (of England) and not been enacted by a competent legislation in Nigeria.[41] Lloyd defines customary law as unwritten law based on neither a code nor upon a case law of precedents, customary law is the ancient law that has always been observed, it is supposed antiquity is the basis for its authority.[42] It is worthy of mention that Nigeria as a State is made of over 250 ethnic groups; hence it can be said affirmatively that there exists over 250 customary law practices existing simultaneously in the plural society like ours. The applicability of the maxim to customary law had be subjected to so many arguments by legal scholars and jurists who had variously argued for and or against the rule. Some of the divergent opinions held by these scholars will be examined to help in understanding why they belong to the various schools of thought. However it is expedient to state from the onset that judicial precedents existing with respect to this maxim do not expressly support the applicability or otherwise of the doctrine to customary land law. One of the few cases bothering on the issue of ownership of land and things attached to the land is *Agbada Okioko v. Ozo*

[33] Section 1 land Use Act, 1978.
[34] [1976] 12 SC 99.
[35] See also *UAC Ltd v. Apaw* [1936] W.A.C.A. 114 at 117.
[36] *Francis v. Ibitoye supra.*
[37] *Supra.*
[38] T. O. Elias, *Nigerian Land law*. Routledge & Kegan Paul Ltd., London, 1951 pp 202-203.
[39] A. K. Ajisafe , *Laws and Customs of Yoruba People* P. 12 para 19 (e).
[40] 1976] 12 SC 99 at 114-115.
[41] See the definition of Customary law by the Supreme Court *in Kharie Zaidan v. Fatima Khalil Mohssen* [1973] ANLR 740 p. 753. See the definition given by Obaseki JSC in *Oyewumi v. Ogunesan* [1900] 3 NWLR (pt.137) 182 at p.207. See also the definition of Emiola, A. *Principles of African Customary Law op cit*. p. 5.
[42] P. C. Lloyd, *Yoruba Land Law op cit.* p. 17.

Esedalue where the Supreme Court determined an issue based on customary pledge. The court held that the pledgor of a land owned all improvements made on such land after redeeming the pledge.[43]

Coker in his writings is of the opinion that the maxim applies in Yoruba native law and custom when he said, '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 solo cedit* which is a maxim of most legal systems is also a part of Yoruba native law and custom'.[44] In pursuant of his claim, he relied on some cases such as *Ballie and ors v. Offiong and ors*[45] but on an intimate study of the case reference was hardly made nor canvassed all through the case by the court except in the cases of *Owoo v. Owoo*[46] where the court held that family property remained a family property irrespective of the fact that a family member re-built a house on the land. The principle adopted in Owoos' case was not adopted in *Santeng V. Darkwa* [47]where the judge observed that when a house was built on the ruins of a family property did not automatically stamp out the status of the house as family property, the site on which the house was built remains family property. The authors of this article herein strongly disagree with Coker's submission having made specific reference to the Yoruba. The maxim cannot be said to apply to the Yoruba people as land transactions under customary law have always specified that the land is different from whatever was attached to the land.[48] Evidence abounds to the fact that in practice prospective land buyers were informed from the onset that they had to pay a specified amount for things attached to the land after payment for the land.

Similarly Olawoye postulates that, 'for the sake of commerce, the law does not distinguish between the ownership of the soil and the ownership of the fixtures thereon. He posits that Coker's position on the maxim should be preferred. The principle, *quic quid plantatur solo solo cedit* applies',[49] according to Olawoye's submission cannot be said to be true about customary land tenure. In his own case, his submission could in the opinion of the writer be considered general. The validity of this statement is however in doubt in view of the fact that Nigeria comprises several ethnic groups with divergent customary practices. Umezilike is of the position that the maxim is not of general application in Nigeria, that Cokers' submission is inconsistent with authorities and the general principle of customary law of the Yoruba, Ibo and other people of Nigeria.[50] He states further that economic trees and other things on the land may be owned separately from the land on which they stand and may be transferred apart from the land.[51] Nwabueze adopted a much more liberal and diplomatic approach in his submission, though it appears to be inclined with submissions of Coker and Olawoye. He stated that the practice is also applicable under customary law, but not in its strict sense. The test is subjective and depended on the situation in each case. Another factor to be considered is the statutory enactment modifying the operation of the maxim. Lloyd[52] and Obi[53] however hold divergent views with respect to the applicability of the doctrine under customary law. Both scholars are strongly of the opinion that under customary land tenure physical land is different from improvements made thereon. Lloyd and Obi's submission was adumbrated by Niki Tobi in his judgment when he 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

[43] [1974] 3 SC. p. 115. See also *Alao v. Ajani* v. [1989] 4 NWLR (Pt. 113) 1; *Seteng V. Darkwa* [1940] 6 WACA 52; *Owoo v. Owoo* [1945] 11 WACA 81.

[44] G. B. A. Coker, *Family Property among the Yoruba.* Sweet & Maxwell. 2nd ed. p.39-40. This view was also supported by Ollenu., *Customary Law of Ghana*. Which he claimed was the practice in some parts of Ghana.

[45] [1936] 13 N.L.R 11; *Lewis v. Bankole* [1908] 1 N.L.R. 82; *Oloko v. Giwa* [1939] 15 N.L.R. 31; *Fixon Owoo v. Robert Owoo*. [1944] 11 W.A.C.A. 81.

[46] *Supra*.

[47] [1940] 6 W.A.C.A. 52.

[48] The authors have being involved in several customary land transactions where things, particularly cash crop were counted and sold separately from the land. This practice is predominant among the people of Iwo in Osun State. Nigeria.

[49] C.O. Olawoye., *Title to land*, Evans Brother Ltd 1974.

[50] Umezulike, *op cit*. p. 7.

[51] C. K. Meek, *Land Law Tenure and land Administration in Nigeria* pp. 172-173; Chubb, *Report on Ibo land Tenure* P. 101-103; S. F. Nadel, *A Black Byzantine*; Ajisafe, *Laws and Customs of Yoruba People*, p.11; Rowling Report on Land Tenure in Ondo and Province, Para 13-14; Ijebu Province, Para 66; Elias, T.O., *Nigerian Land Law* pp 176, 179 and 183; *Otogbolu v. Okeluwa* [1981] 6-7 S.C; S. N. C. Obi, *Ibo Law of Property*. Butterworths African Law Series. No 5 (1962) p. 32, in I A. Umezulike, *A B C of Contemporary Land Law*. op cit. p. 7

[52] Lloyd.

[53] Obi, 1963, *Ibo Law of Property ibid.*

land and the improvement made thereon'.[54] Niki Tobi states further, that 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, will ultimately loose the property to the owner of the land at the suit of the owner as the maxim applies. Onwuamaegbu,[55] is also of the position that the maxim does not apply to customary tenancies in Nigeria because it is native law.

Having intimately scrutinized the various conflicting submissions made by learned scholars and jurists about the applicability the doctrine to customary law, it is expedient to submit at this point that the writers align their thoughts with those of Lloyd, Obi, Umezulike and Niki Tobi. The Supreme Court decision in *Okoiko v. Esedalue*[56] where it held *inter alia* that the maxim applied to customary cannot be said to be the true position of the land. The same Supreme Court in its subsequent decisions in 1980 and 1988 respectively[57] never made reference to Okoikos case.[58] Okanny is of the position that the law is not as settled as the Supreme Court appears to make it. Under the customary tenure system, proprietary and ownership interests are the focal points of reference and importance. Land rights can be literally said to exist in different degrees all denoted by the word 'title'. Legally title can be referred to as an existence of facts from which the right of ownership and possession could be adduced. [59] The use and control of whatever title a person may possess in land is protected by law and these rights display the degrees of autonomy over the land. In *Odunlayi v. Soroyewun*,[60] Hallininan J. held that the purchaser of a family land acquire a right to demolish a house and remove materials but could not as against the family assert a right to use and occupy the house on family land. This case buttresses the writer's opinion on the application of the maxim to customary law but however encourages equity to come into play by compensating the tenant.[61]

5. Conclusion and Recommendations

The application of the doctrine to customary land tenure has about lots of controversies. Legal scholars and jurists have made divergent positions on the application of the doctrine to customary law.[62] However it is important to emphasize that the meaning of land and what constitutes land has different meanings and interpretations to so many people. Ownership and proprietary interests are fundamental issues under both systems of land tenure but more pronounced under customary law. The relationship between customary land tenure and English tenure cannot be overlooked, but the fundamentals they seek to protect are at variance. Under the indigenous customary land tenure, land is defined to suit the culture and way of life of the people. The applicability of the doctrine is a contention with no immediate resolution at the moment and has led to a series of divergent opinions as established in the body of this paper. It is our firm resolution having examined the possible application of the maxim to customary land tenue, that the maxim cannot be seen to strictly apply under customary law except where obvious evidence abounds that the owner of a disputed land had acquiesced his right. We urge the Supreme Court to take definite position on the application of the maxim to customary land tenure. The courts should stop relying on their speculations on what the law should be and call upon expert evidence when the need arises. The position under the customary law denotes a sharp contrast to what exists under the English law. It is recommended that the Supreme Court should come out with a clear position on this doctrine of *quic quid plantatur solo solo cedit*. This can however be achieved by engaging customary law experts to illuminate the distinctiveness of the customary and English land tenure. It is important to appreciate the nature and rule with respect to fixtures under the customary law. The approach adopted in *Omolowun v. Olokiude*[63] in which the equitable principle was adopted be utilized by the courts in their decisions; in which case the interests of the overlord and the tenant will be protected. Customary law should be codified for to aid certainty of the laws. Whenever the courts are faced with issues bothering on the application of the maxim to customary law, it is absolutely necessary to call expert evidence to prove the customary law in issue. When this is done the core ideas or the rights which both systems seek to protect, the possible technicalities envisaged, will determine the extent of the applicability of this maxim.

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[54] *Osho v Olayioye* (1966) N.M.L.R 329; *Ezoni v Ejodike* (1964) All N.L.R 402.
[55] Onwuamaegbu, *Nigerian Law of landlord and Tenant*
[56] Supra
[57] *Mosanya v. The Public Trustee* [1980] FNR 261 and *Omotesho v. Oloriegbe* [1988] 4 N.W.L.R. (Pt.87) p. 225
[58] Supra.
[59] *Ogunleye v. Oni* [1990] 2 NWLR 9Pt. 135) at 784.
[60] Unreported suit no. 1/52/48 of July 21, 1949 cited in *Omolowun v. Olokude* [1958] W.N.L.R. 130
[61] E. Chianu, *Right to Improvement of Land in Nigeria. Indian Law Institute*. 1990. Vol 32.Number 2. 217-238. Available 14.139.60.114>jspui>bitstream>021_... Accessed 4th March, 2019
[62] See the positions and counter positions of the application of the doctrine of maxim to customary law in the writings of E. Chianu, *Right to Improvement of Land in Nigeria*, *op cit* and G. Ezejiofor, *Is the maxim Quic Quid Plantatur, Solo Solo Cedit A Rule of Customary Law*. Source,thenigjuridicalreview.com> Accessed 4th March, 2019
[63] [1958] W.N.L.R.130.