INTERROGATING TRUST PROVISIONS UNDER CONTEMPORARY NIGERIA LEGAL SYSTEM*

Abstract

Trust settlement is very important in the modern economy to be left without a comprehensive legislation that answers to the contemporary economic question. In the capital and money markets, the regulator often ensures that trust deed for transaction documentation conforms to the scrutiny and strict regulatory provisions. The question is, whether the plethora of statutes and legislations, (some with tangential and marginal provisions) relating to trust settlement have fully attended to the contemporary need of trust options? How has the lacuna in the leftover of colonial legal appendage of Trustees Act, 1893 been ameliorated by other legislations in Nigeria? Is it possible for the National Assembly to engineer a robust legislative trust regime that will strengthen the hands of trust practitioners and rejig a new trust regime? This study presented a picture of trust provisions in Nigeria jurisprudence. A doctrinal methodical approach was employed to analyze statutes and legislations relating to trust options in Nigeria. Secondary sources such as cases and decisions of courts were scrutinized to evaluate the judicial opinions in respect of trust options. It was found that the only comprehensive trust statute is old and most of its provisions have failed to answer to current economic questions. It canvassed for a robust legislative framework by the National Assembly to answer many of the plethora issues demanded by the modern society.

Keywords: Trust Provisions, Legal System, Interrogation, Contemporary Issues.

1. Introduction

There are several legislations and relationships that confer duties and obligations on individuals which appear on the superficial level as trust instruments. Added to this, is the fact that in the course of discharging such duties, the actors, agents or proxies appears to be exercising the duties and function of a trustee when in actual fact that is not the case. In the same vein, several legislations are laced with trust provisions and even though such provisions have actually aided the courts to adjudicate on matters pertaining to trusts and charities, however those provisions are insufficient and cannot necessarily be a substitute or play the role and functions which a purposeful and a reformed extant trust legislation would perform in relation to trust creation, powers and duties of trustees. In this category are legislations like Land Use Act[1], Companies and Allied Matters Act[2], Investment and Securities Act[3], Trustees Investment Act[4], the Statute of Charitable Uses Act 1601, the Conveyancing Act of 1881, the Statute of Frauds Act of 1677, Wills Act of 1837, Married Women's Act 1882, Judicial Trustees Act of 1896, the Supreme Court of Judicature Act of 1875, all these legislations merely scratch trust on the surface without focusing on trust as a distinctive subject different and distinguishable from other forms of legal relationships. Obviously, the terse provisions in the various trust legislations enumerated herein has without doubt helped to bridge the gap but at the same time it does not excuse the law reform commission , the National Assembly and stakeholders from modernizing the rusty trust legal regime to reflect the present reality and bring it at par with other jurisdictions. This paper will therefore look at the Trustees Act 1893[5], Land Use Act 1978, Trustees Investment Act 2004, Companies and Allied Matters Act 2020, Investment and Securities Act 2007, to see whether the trust provisions that permeates this legislations can address the emerging complex issues arising from the duty of care owed by trustees to the beneficiaries and also preview the extent which a dynamic and reformed trust legislation can operate to fill the vacuum left behind under trust provisions.

2. Trustees Act 1893

It should be noted that most of the parliaments of commonwealth countries have made specialized legislation to regulate trust estate governance, however this Act still remains the only direct written statute on trust estate management in Nigeria.[6] The statute is obviously a part of Nigeria colonial heritage which has been incorporated into the country legal system as a statute of general application, which refers to statutes which were in force in England on 1st January, 1900 not after that date. The implication is that any statute made after that date is not a statute of general application and are only applicable in Nigeria, if and only if our local legislatures have not enacted any law in that area. This means that even if there is a statute of general application on a particular field and the National Assembly or State House of Assembly goes ahead to enact a law in that same field, then the Act of the National Assembly or Law of the State House of Assembly will prevail[7]. This study argues for a solution to the vacuum created by the absence of a contemporary legislation and or reliance on otiose and inadequate legislative framework. It is strongly believed that this work will chart indispensable roadmap that will provide the necessary guide towards a robust parliamentary framework that will make Nigeria's continuous dependence on statute of general application a thing of the past. While considering when courts should use the statute of general application to adjudicate on matters before them, honorable Justice Niki Tobi, put it succinctly when he said: 'Where a local statute is available and applies to a particular local situation, courts of law have no jurisdiction to go all the way to England to search for an English statutes. This is because by the local statute, the law makers intend it to apply in the locality and not any English statute which is foreign and inapplicable.'[8] It is to be noted that where such statute of general application has been repealed in England, it is still enforceable as long as no local legislation has been made on that field in Nigeria. Nigeria is in dilemma regarding her trust estate management legislative framework. While England has amended her trust laws to meet the current exigencies and development in that sector, Nigeria parliament and the law reform commission still compel the courts to depend on statute of general application to adjudicate on sensitive issue like trusteeship. In this

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[1] CAP L5, LFN 2004
[2] CAP C20, LFN 2004.
[3] 2007
[4] CAP 16, LFN 2004
[5] CAP 53 1893
[6] The law in the United Kingdom has since been repealed by so many statutes thereafter, such as the trustees Act of 1925; the trustees investment Act of 1961; the trustees Act of 1995)
[7] https://labakeblogs.wordpress.com/2014/09/27/statutes-of-general-application-in-nigeria-what-you-might-be-missing/
[8] *Nze Bernard Chigbu v. Tonimas Nig. Ltd & Anor*. (2006) LLJR-SC

regard, it may be necessary to give another of Niki Tobi's opinion regarding an extant law on the issue under focus, he observed and rightly too that:

> Section 45 of the Interpretation Act, Cap 89, Laws of the Federation and Lagos, I950 provided that the statutes of general application that were in force in England on the 1st day of January, 1900 shall be in force in the Federation. By this nebulous provision, a number of English statutes were held to be applicable in Nigeria as statutes of general application by the courts. From the state of the case law, the approach of the court has not been consistent. The court have not found it quite easy to determine what is not. And so, what amounts to be a statute of general application is still a vexed juridicial problem in our jurisprudence, as the courts do not successfully apply a single criterion or sets of criteria across the board. The issue is therefore largely taken on the particular merits of the case before the court.[9]

From the above quote by Niki Tobi, it is obvious that identifying Statutes of General Application applicable in Nigeria is challenging even for court and one will not be wrong in holding the opinion that reliance on Statute of General Application may elicit an unintended miscarriage of justice which could have been avoided if the issue in question was adjudicated based on a domestic and autochthonous legislation. Trust estate management will be insulated from the whims and caprices of judges once Nigeria migrate from statute of general application to Property Control Act as the extant law to govern adjudication in trusteeship matters . While it is still the prerogative of the court to determine what a Statute of General Application is, JSC Niki Tobi in a decided case[10] had this to say:

> [F]rom the trend of the case it cannot be said that any English Statute which was enacted before 1st January 1900 is automatically applicable in Nigeria. No Nigerian legislation is a potent and formidable source of Nigerian law; it forms the most substantial and definite part of the corpus juris of Nigeria and the judges are involved daily in the interpretation of the statute. As the statutes are the most precise and exact source of Nigerian law, the courts are bound to apply them in the cases that come before them. They will have nothing to do with English Statutes unless it is applicable in the circumstance as a statute of general application.[11]

In other words, all laws made in England which relate to the Nigeria colony prior to January 1, 1900, automatically become our laws until repealed by the National Assembly. Any law made after this date and before independence do not have the force of law unless adopted. Consequently, the English Trustees Act of 1925 which amended certain aspects of the 1893 Act does not have binding effect. It is not convenient for the trust estate management sector to be overlooked because so many provisions in other statutes such as the companies and Allied Matters act, investments and securities act and many other laws to be examined hereunder have related provisions of trust instruments. Though the Act is deficient but it recognizes the right of a trustee to appoint an agent to represent it in any specified field that it wishes. In this wise, the trustee may employ an agent in the discharge of its duties and rely on the advice of such agent without liability. In the case of a solicitor appointed by a trustee for purposes of legal documentation or security perfection involving Trust property under the care of the trustee, the act or omission of the solicitor will have the same effect as if it was done by the trustee.[12]

3. Land Use Act

The concept of trust in the Land Use Act[13] is found in vesting of the control and management of land in each of the 36 States of the Federation in the Governor of the particular state for such governor to hold the land as trustee and administered same for the use and common benefit of all Nigerians.[14] It is obvious that the concept of trust under the Land Use Act is different and can be clearly distinguished from the concept of trust under the extant law. This particular trustee (Governor) at best is a mere perfunctory trustee who presides over a general territory of a given state and there is no specific trust instrument outside the Act that is executed between the governor as trustee and the indigenes of the states as beneficiaries. Added to that, the Governor cannot be compelled to render account as trustee under the extant law, and for that reason, the kind of trust created under the Act has been regarded as a bare trust[15]. The Act[16] foisted the powers of a trustee on the governor without corresponding responsibilities to render account in any prescribed manner as may be embodied in a trust deed. This section also asserts state control over land. The section provides:

> Subject to the provisions of this Act, all land comprised in the territory of each state in the Federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.[17]

Meanwhile unlike the governor, the head of family under customary law can be held to account, while the Governor under the Act cannot be held to account. LUA is essentially a property and conveyance statute, it will be necessary therefore to focus on the aspect that rub off on land as a key component of trust asset and its impact on trusteeship endeavor. One of the key duties of a Trust manager is how to secure and collateralize trust asset so that it is insulated from the rascality or recklessness of creditors and entrepreneurs. It is true that the Land Use Act is a major issue to contend with in estate planning. Also the convoluted Certificate of Occupancy procedures often give room for opaque practices in property acquisition. Ownership of property, often snowball into a subject of litigation, therefore making estate planning or trusteeship services very challenging. Generally speaking, the Transfer of real estate is usually very challenging and need to be handled diligently. The Trustees must encourage settlor to ensure that the title of their real estate property is perfected with a proper follow up at the land registry and necessary steps taken to ensure that the original documents are in safe custody to avoid being compromised. Mortgage cannot be avoided in the course of trust estate management and when such necessity arises, it is incumbent on the trustee to ensure that security perfection conforms to the way and manner it is provided for and or being regulated by the LUA. To this end, the consent of the state governor becomes inevitable and must be obtained before perfection can be adjudged as being in consonance with the law. Security perfection is inchoate except it conforms to the provisions of the Land Use Act. Thus, the

[9] *Nze Bernard Chigbu v. Tonimas Nig. Ltd Supra*
[10] Ibid.
[11] Ibid.
[12] Section 17 (3) trustees act, 1893).
[13] CAP L5, LFN, 2004 (hereafter LUA)
[14] Section 1 of Land Use Act, *Supra.*
[15] *Abioye v. Yakubu*[1991]5 NWLR (Pt. 190) p. 130
[16] Section 1 Land Use Act.
[17] Ibid

process will involve but not limited to register the ensuing mortgage by payment of requisite taxes and fees and obtaining a charge on that collateral, which thereafter operates as public notice of the existence of such an encumbrance. Land and buildings are usually accepted as collateral by trustees and most often are pledged by potential creditors, who may be individuals and or companies in consideration for credit facilities. A thorough consummation of land transaction would require a diligent documentation coupled with the requisite consent of the relevant state governor as stipulated by the LUA. It is trite, for every debenture or borrowing involving land and /or building as collateral, that the consent of the state governor must be obtained, without which the transaction would be invalid. Note the LUA provides that:

> It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his righty of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained….[18]

It has been observed by the Supreme Court that '...the Land Use Decree is a landmark in the history of land tenure in the country'[19] In the same vein, former President Shehu Shagari had earlier remarked that 'the Act has harmonized the tenure system in the country and also eased access of Government to land to execute its projects.'[20] Also, in *Nkwocha v. Governor of Anambra State & Ors*,[21] Irekefe JSC, stated that 'the Act is the most impactful of all legislations touching upon land tenural system of this country and after full nationhood.'[22] However, in discrediting the Act, the word 'vest' as used in Act[23] has been suggested to imply the vesting of the ownership of all lands in the Governor which has the effect of divesting all previous owners of land, the ownership of their lands. These owners included the communities, families or individuals. In the words of Lipede and Adeyemi, 'the Act is an obnoxious one'.[24] They therefore called for a repeal of same as it has deprived citizens of their ownership of land. Omotola[25] and Nnamani[26] remarked that the Act has created confusion to the system of land administration in Nigeria. With due regard, it appears that these learned writers seemed not to be aware or did not appreciate the policy objectives of the Act. In the words of Nnamani, 'I cannot think of any statute which has produced so many ambiguities, contradictions, absurdities and confusions as this Act has done.'[27] Omotola, an ardent anti-Land Use Act admitted that 'if there be any award for bad drafting, the draft man of the Land Use Act will easily win the first prize.'[28] Ogundare J.[29] opines that the Act has virtually confiscated all the undeveloped lands in Nigeria from its community and private owners to the government. He observed that, 'the use of the word 'vested' in section 1 has the effect of transferring to the Governor of the State the ownership of lands in that State.'[30] Contrary to the above view, Adigun[31] argued that even with the Act 'there are no landless Nigerians and that the Governor of a State is no more than a replacement of the trusteeship of say the Oba of Benin or the head of the family or community.' Oretuyi[32] is of the opinion that the Act[33] makes the Governor the legal owner of the land even though the ownership is not absolute since the land is held in trust for the use and common benefit of all Nigerians. Similarly, Smith[34] expressed the view that section 1 vests the radical title on the land in every State in the Governor of that State subject to the provision of the Act. The radical title as expressed above can be said to be the legal title to land which inheres in the Governor while the other less titles can be described as the equitable title which every Nigerian owns. Thus, while the previous legal title can be said to have been taken away, the Act[35] preserves the equitable rights of possession, occupation and enjoyment of all previous owners of land be it in urban or rural areas.

Other major aspects of the Act where divergent views have been expressed either for or against the Act include the status of the Act vis-à-vis the Constitution. For instance, the Act requires the consent of the Governor for a valid transfer of interest in land. This has been held to be a good innovation by the Act by some writers and judges. However, Karibi White[36] and Obaseki perceive this requirement as a clog to economic development in Nigeria. Karibi White while concurring with the view expressed by Obaseki in *Savannah Bank (Nig) Ltd v. Ajilo*[37] said 'the observation of Chief Williams that the requirement of consent in every transaction is a veritable clog in the progress of the commercial life of the nation and requires urgent review.'[38] On the status of the Act under the Constitution since its inclusion in the Constitution[39] there have been decisions of the constitutionality and other constitutional aspects of the Act. The interpretation of this provision has thrown up a lot of controversy among writers and commentators. While some of them have strongly maintained that the Act is a mere existing law, not forming part and parcel of the Constitution, others maintained that it is part of the Constitution. In *J.M. Aina & Co. Ltd v. Commissioner for Lands and Housing, Oyo State of Nigeria*,[40] Fakayode C.J. held that the Land Use Act is not an existing law but it formed part and parcel of the Constitution and it had to be regarded as such to all intent and purposes. It was also held in that case, that the Act has repealed itself by its own terms and by being part of the 1979 Constitution instead of being

[18] Section 22 (1) Land Use Act, *Supra.*
[19] *Abioye v. Yakubu Supra.*
[20] *Daily Times* May 12th, 1988
[21] 4(1983)4 NCLR 719
[22] Ibid
[23] Section 1 LUA
[24] *Sunday Punch* 18th August 1980.
[25] Omotola J.A., 'Law and Rights: Whither Nigeria?' Being inaugural lecture delivered at the University of Lagos on Wednesday June 29th1988 Lagos.
[26] Nnamani, the Land Use Act 11 years after GRBPL, May 1989 p.31
[27] Ibid.
[28] Omotola J.A., *Law and Rights, Supra.*
[29] *Tijani Akinloye v. Chief Oyejide* suit No. HC3/9A/83 of 17/9/8
[30] Ibid
[31] Adugun O, 'The Equity of the Land Use Act', in Report of National Workshop Held at University of Lagos on 25th– 28th May 1981 (Lagos: University Press, 1982)33
[32] Oretuyi, S.A., 'Public Takeover of Land-Federal and State Government Rights The Land Use Act: Ibid Report of Workshop, foot note 99
[33] Section 1 LUA.
[34] Smith I.O., *The Law of Real Property in Nigeria* (Law Center Lagos State University 1995)
[35] Sections 34(2) and 36(2) of LUA.
[36] Karibi- White, JSC. In *Savanah Bank Ltd v. Ajilo* (1989) NMLR (pt.97) p.305
[37] (1989) NMLR (pt.97) p.305
[38] Ibid
[39] section 315(5) of the 1999 Constitution
[40] (1983) 4 N.C.L.R. 643

an existing law. Also in *Umar Ali & Co (Nig) Ltd v. Commissioner for Lands and Survey & Ors*,[41] Anya C.J. arrived at a similar conclusion though for different reasons. However, in *Chief Nkwocha v. Governor of Anambra State & ors*,[42] the Supreme Court settled the confusion on the status of the Act, by holding that the Land Use Act is not a mere existing law but part and parcel of the Constitution.

A trust deed is usually executed between the creator or settlor and the trust manager for the benefit of those specified in the Deed. However, where corporate finance transactions are concerned, each lender will be expected to execute a Deed of Appointment of Trustees which is corollary or an appendage of the Trust Deed. In corporate financing, the consent of the governor must be obtained, therefore the trust deed will only be conditional upon obtaining the consent of the governor which automatically validates and makes the trust deed complete and effective.[43] However, in a private trust, a trust documentation evidencing that the land and building forms part of the estate of the settlor and that the settlor enjoys quiet and unencumbered right over such estate, will exonerate the trustees to validly bequeath the right and such privileges on the beneficiaries. To this end and in private trust, the settlor can give only what he has to the trustees, who will then validly pass such right to the beneficiaries, howbeit, equitable despite the State Ownership, Control and Trusteeship Policy enunciated by the LUA. The concept of imposing the duty of a trustee on the governor is to make sure that an individualistic conception of property does not rear its ugly head again and has been observed by Jakande[44] 'as a comprehensive review of land policy in all its ramifications…to come out with clear-cut decisions, law and regulations.'

The Act could fairly be adjudged to have balanced the state ownership over land with the age long customary rights of the natives,[45] thus creating dual allegiance. The Act, by vesting the radical title in land in the Governor as the trustee and the rights of occupancy in the people, is being construed as simplifying the ownership concept in land holding. This position was supported by the court in *Ogunola v. Eiyekole*,[46] Smith[47] further highlighted this position when he observed that with the advent of the Land Use Act, 1978, the ownership structure has been radically transformed. He holds the view that, the radical title to land within the territory of a state in Nigeria having being vested in the Governor, that what Nigerians enjoy are the rights of occupancy, therefore ownership concept in land in Nigeria today may be construed in terms of a right of occupancy. Therefore wherever land forms a part of a gift or a collateral under a trust deed, the trustees must ensure that they initiate the process of obtaining the consent through appropriate documentation. Consent is a critical requirement coupled with other important conditions that must be satisfied before the consent of the governor can be obtained.

4. Companies and Allied Matters Act

This is another very important legislation with a trust provision and which to certain extent has helped to fill the vacuum that has existed as a result of the absence of a strong regulatory framework in the trust sector. It is one legislation that has attempted to provide for the duties and functions of a trustee howbeit perfunctorily. In Companies and Allied Matters Act (CAMA) it is provided that 'where one or more trustees are appointed by any community of persons bound together by custom, religion, kingship or nationality or by anybody or association of person established for any religious, educational, literacy, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorized by the community, body or association… apply to the commission in the manner hereafter provided for registration under this Act as a corporate body.'[48] The provisions in CAMA clearly underscore the fact that the absence of a robust legislation in trust estate management is mitigated by other legislations and this seems to contribute to the palpable apathy by the stakeholders in coming up with a concrete plan aimed at updating our trust laws. Under part C of CAMA, a trustee is not expected to possess any specific qualification before appointment or assumption of the office of a trustee. It is important therefore to understand the need for expertise knowledge in financial matters necessary for operation in corporate finance transaction. It appears that such expertise knowledge is a prerequisite for a corporate trust so that it can discharge the enormous and delicate functions associated with money market debt instruments. The case in point is a convertible debentures, i.e. debentures that can be converted to shares, then the date and terms on which the debentures can be converted into shares and the amounts which may be credited as paid up on those shares, as well as the dates and terms on which the holders may exercise any right to subscribe in respect of the debentures held by them must be clearly stated.[49] Borrowers and lenders under a debenture look up to or depend on the trustee to act if the event of realization of the security happens. In this wise, CAMA may need to provide a clear categorizations of businesses to be handled by natural person trustee, group of natural person's trustees and corporate trustee. Most trust property has multiple interest running concurrently and where one trustee is acting for several beneficiaries will be the one to have a debenture allotment and the holder of the debenture stock certificate which would state the name of the stockholder and the amount of holding.[50]

This paper cannot overstate the benefits that would accrue where there is a more pragmatic regulatory framework to govern professional trust practitioners and those who undertake the practice of trusteeship. This is inevitable, especially when viewed against the critical role that each trustee has to make regarding investment decisions on behalf of class of beneficiaries which may have a mix of minors, the ignorant and professionals in a given trust property. Even where CAMA allows a borrowing company, with the consent of the lenders to classify a debentures either as perpetual,[51] convertible,[52] secured or naked,[53] as well as redeemable debentures. If this scenario plays out, the trust manager that invests in a debenture will be expected to scrutinize the nomenclatures to ensure that recovery of the trust asset is seamless and does not constitute a drain on the trust estate. A reform in trust sector should be holistic enough to provide a guide

[41] (1983) 4 N.C.C.R. 571
[42] (1983) 4 N.C.L.R. 719
[43]. See the following cases; *Awojugbagbe Light Industries Limited v. Chinukwe* [1993] 1 NWLR (part 270) 485; *Oyabanji B.M.S Limited v. U.B.A plc* [2001] 6 NWLR (part 708) 80; *Ola and sons limited v. bank of the North* [1992] 3 NWLR (part 229) 377.
[44] Former Gov. of Lagos State at the Formal Opening of the National Workshop on the Land Use Act, 1978 on May 25, 1981 at the University of Lagos.
[45] See section 2, 5 of the Land Tenure Law 1962
[46] (1990) 4 NWLR (pt. 146) 632 at 647
[47] Smith I.O. *Supra*
[48] Section 590 CAMA
[49]. Section 168 (e) CAMA, LFN 2004
[50]. Section 167 (1) CAMA, LFN 2004
[51]. Section 171 CAMA, LFN 2004
[52]. Section 172 CAMA, LFN 2004
[53]. Section 173 (1) and (2) CAMA, LFN 2004

to the trustee on security documentation where trust property is involved in the assets offered as security. Negative pledge may be offered to a trustee by a borrower in the course of securitization. In practice, debentures are scarcely naked, or unsecured, and in some exceptional cases will a diligent trustee accept same in the course of security perfection, but even at that critical decision should be legislated upon and left at discretion of a trustee. A typical naked debenture will render the trustee weak, thereby making recovery onerous or impossible thereby leaving the trustee with litigation route i.e. to sue on the loan in the event of default. Added to that, negative pledge will encourage the borrower to default as the trustees is practically holding nothing and if the event of default occurs then the Trust Deed becomes ineffective in securing the lenders. Naturally the borrower would be expected to make a conscious effort to avoid incidents that could jeopardize it business interest or put it in a situation not to meet its repayment obligation. However, negative pledge exaggerate the risk of lenders since it is practically impossible to secure certain situation except as insurable risk upon which the borrower will be restituted to continue in business while the lenders have to wait.

CAMA has foisted on the trustees a fiduciary responsibility and same is highlighted, where the statute specifically states that it is the duty of the trustee to safeguard the right and interests of the debenture holders. Put it differently, it is the duty of a trustee to protect the interest of the lenders as embodied in the trust deed. It is to be noted that this could only be achieved by ensuring that adequate security documentation and perfection is done under the scrutiny of the trustee. To this end, it is expected that all Charges securing the debenture or loan granted by the lenders be vested in the trustees on behalf of the lenders.[54]

Therefore it could be stated without any contradiction that role of the trustee in protecting the lenders is both statutory and regulatory. In this wise, CAMA enjoins the trustee to safeguard the right and interests of the debenture holders[55] by way of a charges on the assets used in securing the debenture or loan granted. It is obvious that CAMA tends to provide more on trust estate management than any other piece of legislation regarding the responsibility of a trustee under a secured credit transaction where a company is the beneficiary. However, the Act has in no way conferred any form of immunity on the trustee for breach of trust or for failure to show the degree of care and diligence required of a trustee.[56] Therefore, any provision in the trust deed which exempt or condone negligence where a trustee fails to show a degree of care and diligence expected of a fiduciary will be of no effect. Naturally, the degree of care and diligence expected of a corporate trustee will be much higher than that of an individual trustee. Corporate trustee are formed solely with the aim and objective of dispensing trust services. The memorandum and article of association of such companies clearly represent to the public their expertise in delivering both public and private trust. However, where natural persons are retained as trustees, they would obviously exhibit inevitable knowledge gap and inexperience on delicate issues which may require special skill and professional training like in the areas of law, accounting, medicals, nuclear science etc. Fortunately, the Trustee Act has envisaged such inadequacies and therefore give a trustee the powers to delegate their functions and duties to specialized agents.

5. Investment and Securities Act (ISA) 2007

ISA is indisputably the singular most relevant and related legislation that has a major impact on how trustees perform their roles especially the Corporate Trustee. . This Act has in great measure influences the growth and development of the trust estate management with the establishment of SECURITIES AND EXCHANGE COMMISSION (SEC). The Investments and Securities Act (ISA) is a comprehensive legislation that outlines in details the powers of the regulatory body, the qualification of who can provide trust services, the registration, roles and duties of the trust managers. The Act also specifies the rights of the investor and provides a detail outline that guides the procedure of accessing financing from the public. Added to that, it regulates bond issuance, real estate investment trust, collective investment scheme, debenture issuance and debt management by governments and sub national institutions. Trust mangers cannot just commit the trust assets under their care except the issue meets the specifications of the regulator[57] and the extant law.[58]

Bonds

Trust assets are used by Trust managers to deepen and increase liquidity in the bond market, so one cannot be in doubt as to why bond issuance is rigorously regulated by the Investment and Securities Act. Part of the reason is the need to protect the investors from losing their capital. Borrowings from the capital market, States, Local Governments and Federal Capital Territory are therefore made in strict compliance with the stipulations in the Act.

Collective Investment Schemes

Collective investment scheme is defined as a scheme in whatever form including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio.[59] The scheme obviously is an investment window which a trust manager may wish to explore in an attempt to grow the trust asset placed under their management. The portfolio is usually created by corporate bodies as opposed to individuals and most often, the services of a trustee is usually retained to professionally manage the scheme. In this wise, the ISA defines a trustee as 'the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust.'[60] The Act recognizes that where two or more investors contribute money or other assets to and hold a participatory interest,[61] that a CIS is constituted. A discerning observer will note that CIS may be a very risky investment window due to the ease with which CIS could be constituted by corporate bodies and added to that is also the loose definition of CIS in the Act. It could be infer that it may be possible for an indolent and unscrupulous institution to set up to raise money from the public and may unwittingly loose such funds due to weak internal corporate governance of management of the issuer. The schemes listed as collective investment schemes[62] include Unit trust schemes, Open-ended

[54] Section 186 (3) CAMA, LFN 2004
[55] Section 186 (2) CAMA, LFN 2004
[56] Section 186 (4) CAMA, LFN 2004
[57] Securities and Exchange Commission
[58] Trustees Investment Act
[59] Section 153 (1) ISA
[60] Section 152
[61] Section 153 (1) (a) ISA)
[62] Section 154 (1) (a)-(c) ISA Section 154 (1) (a)-(c) ISA

investment schemes and Real estate investment schemes.[63] Added to that, SEC may designate a scheme as constituting a collective investment scheme via a notice published in the gazette. In any given trust undertaking, the content of the trust Deed serves as the compass to guide the trustees in navigating the way on how to discharge the functions owning to the beneficiaries and as duly spelt out in the trust deed. It is of paramount importance, that the trustee must ensure that everything done with respect to the scheme is done in accordance with the provisions of the trust deed and the investments and Securities Act of 2007[64] or any other amendment.

Real Estate Investment Trusts

A real estate investment trust (REIT) is another investment window in which a trust fund could be invested. It is operated as special purpose vehicle with the aim to execute the investment objectives of the investors. Usually, REIT will invite the public to subscribe to the issue floated by the scheme in order to enable the funds raised therefrom be used for the purchase or development of real estate. Since it is a trust, the usual principles and certainties of trusts will apply thereby imposing a fiduciary responsibility on the trustee to ensure that REITs funds are applied diligently to acquire, develop and manage real estate assets to yield income to the investors. The income realized from the rental, leasing or sale of the properties is usually distributed directly to the REIT holder regularly and or as specified in the REITs trust deed in the proportion of investment by each investor. Similarly, just as a shareholders benefit by owning stocks in a quoted companies listed by the Securities and Exchange Commission , an investor in a REIT earn a *pro rata* share of the economic benefits that are derived from the production of income through commercial real estate ownership.[65]

6. Trustee Investment Act 2004

Trustee Investment Act (TIA) prescribes the legal framework or guidelines for the investment of trust funds particularly in the absence of specific provision within the trust deed and rules. Therefore, it could be said that, the TIA is a law enacted to put the investment powers of trustees under strict scrutiny, whether of public funds or of private funds.[66] The TIA regulates the trustee's power to invest trust funds in debentures and fully paid-up shares of any company incorporated and registered under the Companies Act,[67] excluding private companies. The 2016 reform was made to reflect the provision of ISA[68] which states as follows: 'Notwithstanding the provisions of this [Investments and Securities] Act, the relevant provisions of all existing enactments including the Trustees Investments Act. . . shall be read with such modifications as to bring them into conformity with the provisions of this [Investments and Securities] Act in relation to capital market matters.'[69] The restraint on the trustee to invest only in public-quoted companies that are listed on the Nigeria Stock Exchange (NSE)[70] is understandable when viewed against the background of the volatile prices of some stocks. Again, the trustee must ensure also that such publicly-quoted companies must have paid dividends consistently for three consecutive years prior to the year in question.[71]

7. Pension Reform Act 2014

The Pension Reform Act, (2014) follows closely Trustee Investment Act and creates a trust in respect to the death of an employee,[72] thus:

> (1)Where an employee dies, his entitlement under the life insurance policy maintained under sub section (5) of section 4 of this Act shall be paid by an underwriter to the named beneficiary in line with section 57 of the insurance Act 2003.[73]
>
> (2) Upon receipt of a valid will admitted to probate or a letter of administration confirming the beneficiaries under the estate of the deceased employee , the pension fund administrator shall , with the approval of the commission , release the amount standing in the retirement savings account of the decease to the personal representative of the deceased or to any other person as may be directed by a court of competent jurisdiction, In accordance with the terms of the will or the personal law of the deceased employee as the case maybe.[74]

The above provisions further strengthen the need to urgently make a comprehensive legislation to control all property being held in trust pending the perfection of the beneficiaries' title and instrument of authority. For annuity contract forms,[75] annuitants are made to agree that in the event of death that the annuitant within the guarantee period, the commuted value of the outstanding guarantee period shall be paid to the named beneficiaries of the annuitant or his or her estate where there is no beneficiary. The new dispensation in pension matters[76] ushers in a regulator that performs oversight functions over two operators, namely pension fund administrators (PFAs) and pension fund custodians (PFCs). Under the new pension dispensation, these dual functions are split between the PFAs and the PFCs. Management of the pension funds are vested in the PFAs while custody of the assets resides with the PFCs. This two institutions interfaces daily with those who cannot avoid to ask question about wealth transfer and estate settlement. |It will serve the citizens greater interest if trusteeship is regulated so that it ceases to be an all comers' trade. This thesis therefore support a specialized and chartered institute model like those of secretaries, stockbrokers, managers, administrators, marketers, etc

8. Conclusion

Based on the foregoing, it is clear that the origin of the received law of Trust in Nigeria depends heavily in the received common law of England, the doctrines of equity and the statutes of general application. Be that as it may, the reception were systematic, starting with the then Colony of Lagos, then being extended to Southern Protectorate and then to the whole of Nigeria. However since The 1893 Act could not have envisage contemporary trust challenges and did not provide trustees with adequate wide powers in the context of today's modern world of investments, the need for reform is both inevitable and urgent to enact one basic legislation to harmonizes the various trust provisions that are scattered in several legislations herein enumerated.

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[63] union trustees Limited acted as trustees to Union Homes N4Billion REITS and lost its investment due to internal issues in Union Homes
[64] Section 181 (1) ISA
[65]. *Thisday* 3 August 2009: Nigeria Daily Newspaper Print
[66] Okafor, L. *Leo on Living Trust.* (Lagos: Prestige Books, 2009)1
[67]. Now companies and allied matters act, cap C20, Laws of the Federation 2004.
[68] Section 312(1)
[69] Ibid.
[70] Section 1 (2) (b), Trustee Investment Act, 1962.
[71] Section 1 (2) (c)
[72] Section 8 of Pension Reform Act 2004 LFN.
[73] Ibid.
[74] Ibid.
[75] Custodian Life Assurance Limited Contract Specimen
[76] section17 pension reform act establishes national pension commission