

AN ANALYSIS OF CERTAIN MODES OF ACQUISITION AND DISPOSITION OF PROPERTY IN NIGERIA

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Abstract

The ownership of property is a fundamental aspect of the existence of humans in every clime. It is beyond dispute that human beings attach much importance to their property, hence why this work was conceived to analyze the modes of acquiring and disposing of these. This article was carried out utilizing the doctrinal research methodology which entailed the review of case law, relevant texts and articles, statutory provisions, et cetera. In the course of this work, different types of acquiring and disposing property were examined especially in the Nigerian jurisprudence. It is believed that this article will help project the enlightenment of this area of jurisprudence to our academia and populace.

Key Words: Acquisition, Disposition, Property, Nigeria

1.0 Introduction

The right to acquire and dispose of property is an inalienable right of every individual. In Nigeria, the right of every citizen to acquire property anywhere in the country is sacrosanct.¹ Flowing from the above, whenever one toils and eventually succeeds in acquiring the same, it is natural for one to hold it dearly, because a man would sooner forget the death of a parent than the loss of property.² When a person decides to dispose of it, it is usually for some good reason and his right to do so is sacrosanct because it demonstrates the fullest power he can exercise over his property. According to Nwabueze:

It may be said that the most conclusive way in which a person can demonstrate that he is the owner of a thing is if he can alienate it outright to anyone he likes.... The right of disposal is not only the most conclusive but also the most valuable incident of ownership.³

From the above, it is not difficult to appreciate why this article was conceived. It is to appraise certain modes of acquiring and disposing of property in Nigeria to examine them and note the legal ramifications thereof.

2.0 Modes of Acquisition and Disposition of Property in Nigeria

2.1 Gift

A gift is a gratuitous transfer of property from its owner to another with the intention that the ownership thereof shall pass from the donor to the donee.⁴ Gift can also be defined as the act of voluntarily transferring property to another without compensation⁵. The foregoing definition

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¹The Constitution of the Federal Republic of Nigeria (1999) As Amended, s.43. See also Universal Declaration of Human Rights, Article 17 and African Charter on Human Rights, Article 14.

² N Machiavelli, *The Prince* (London: Penguin Books, 1963) 53.

³B O Nwabueze, *Nigeria Land Law* (Enugu: Nwamife Publishers Limited, 1982), 7.

⁴ *Ibid.*

⁵ B. A Garner, *Black's Law Dictionary* (7th ed, West Group, 1999) 696.

implies that there is no consideration flowing from the receiver of the gift. One of the essential qualities of a gift is that it lacks the elements of a bargain based on *quid pro quo* which characterizes sales.⁶ In a gift, no payment at all is needed. There are different types of gifts, including the following: Manual Gifts, Prenuptial Gifts, Class Gifts, Gift *causa mortis*, and Vested Gifts.

- i. Manual Gift
A gift of movable, tangible property made by delivery without any formalities.
- ii. Prenuptial Gift
A gift of property from one spouse to another made before marriage.
- iii. Class Gift
A gift to a group of persons uncertain in number at the time of the gift but to be ascertained at a future time, who are all to take in a definite proportion, the share of each being dependent on the ultimate number in the group.
- iv. Gift *Causa Mortis*

A gift made in contemplation of the donor's imminent death. Three essential conditions must exist for this type of gift to be manifest:

- i. The gift must be with a view to the donor's present illness or peril;
- ii. the donor must die from that illness or peril, without ever recovering; and
- iii. there must be a delivery of the gift.
- v. Vested Gift

An absolute gift is neither conditional nor contingent, though its use or enjoyment might not occur until sometime in the future⁷.

It is pertinent to underscore that a declaration of title to land can be made by the court based on the gift of land⁸. A gift of land is *inter vivos*; ie made during the lifetime of the Donor. The following conditions must however exist for the gift to be valid;

- i. Intention of the donor to make the gift;
- ii. Completed act of delivery to the recipient; and
- iii. Acceptance of the gift by the recipient⁹.

Furthermore, a gift of land is absolute and once made, divests the donor's title in favour of the Donee¹⁰. Once a gift has been made and accepted the donor's right over the land ends and he is estopped from laying claim to it later on.¹¹ Thus, in *Oguejiofor vs. Osaka*¹²; the appellant had in 1978 made a gift of a plot of land to the respondents (trustees of an organization called, 'The Light of Christ Praying Band, Onitsha'). The gift was stated to be for 'The Worship of God'. The appellant later rescinded his membership in the organization, took the *ozo* title, and became a juju priest. He then sought to set aside the gift. The trial and penultimate courts rejected his claims

⁶ *Dung v. Ghollom* (1992) 1NWLR (Pt. 220) 738 at 745.

⁷ See BA Garner, *op cit*, 696-697 for a fuller exploration of types of gifts.

⁸ YY Dadem, *Property Law Practice in Nigeria* (3rd ed, Jos: Jos University Press Limited, 2015), 5.

⁹ *Achodo vs Akagha* (2003) FWLR (Pt. 186) 612.

¹⁰ YY Dadem, *op cit*, 5; IO Smith, *Practical Approach to Law of Real Property in Nigeria* (Revised edition, Ecowatch Publications Limited, 2013), 9.

¹¹ Y.Y Dadem. *op cit*, 5.

¹² (2000) 3 SC 14.

whereupon he appealed to the Supreme Court. Dismissing his appeal, the Supreme Court stated that

A gift made *inter vivos* is an act whereby something is voluntarily transferred from the true possessor to another person with the full intention that the thing shall not return to the donor and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring to the giver. The essential thing to consider is that the gift is complete when the Donee has accepted it. If that condition is satisfied, the Donor has no right to revoke the gift.

Where the gift is made in a formal transaction, it will be reflected in a Deed of Gift¹³. A Deed of Gift (or Gratuitous Deed) is a Deed executed and delivered without consideration¹⁴. However, where it is made under customary law, it need not be reflected in deed or writing since a customary gift of land is an incident of native law and custom to which writing is alien.¹⁵ Here witnesses will be required to prove the transaction.

A gift may be revoked on the following grounds:

- i. Fraud;
- ii. Mistake
- iii. Misrepresentation; and
- iv. Total failure of the object of the gift.¹⁶

In customary law, for a gift of family Land to be valid it must be made with the agreement of the family head and principal members of the family¹⁷. Therefore, a gift made by the family head without the concurrence of the principal members is voidable, and void vice versa.¹⁸ Finally, due to the absence of formal documents, it may be more difficult to prove title from gift in customary law. Nevertheless, the onus of proof can be discharged by calling credible witnesses.

2.2 Prescription

Prescription is the acquisition of title (especially an intangible thing such as the use of real property) by open and continuous possession over a statutory period.¹⁹ It has also been stated to be an original mode of ownership by which ownership is acquired through uninterrupted possession of property for a specified period²⁰. For instance in Enugu state, the law is that no action shall be brought to recover any land after the expiration of thirty years from the date on which the right of Action accrued to the state or to the person through whom the state claims.²¹ Similarly, no action shall be

¹³ YY Dadem, *op cit*, 5.

¹⁴ BA Garner, *op cit*, 423.

¹⁵ *Kwari v. Rago* (2000) FWLR (Pt 22)1129.

¹⁶ *Imah v. Okogbe* (1993) 12 SCNJ 57.

¹⁷ I. O. Smith, *op. cit*, 98.

¹⁸ *Oshodi v. Aremu* (1952) 14 WACA 85.

¹⁹ B.A Garner, *op. cit*, 1201.

²⁰ Du Bois, *Willie's Principles of South African Law*, (9th ed, Juta & Co. Cape).

²¹ Actions Law (Cap 4) Revised Laws of Enugu State of Nigeria (2004), s. 22(1). In Lagos State, it is 20 years pursuant to s. 16(1) Limitations Law of Lagos State (2003).

brought by an individual to recover any land after the expiration of twenty years from the date on which the right of action accrued to him or to the person through whom he claims.²²

According to the authors of Britannica, modern justifications for prescription include:

- i. The desire to avoid the difficulties of proof which long continued delay in the assertion of rights occasion; and
- ii. The argument that long-continued use permits the inference of ownership since right and use usually go together²³.

The view has also been expressed that the justification for prescription is that the negligent omission of the owners to guard their property should be penalized by taking away the property from them and awarding it to the long-term possessor²⁴. The above view has however been refuted on the ground that proof of negligence is not required for prescription and an owner is in principle, free to do with his property as he pleases, including to neglect it.²⁵ The above scholar went on to offer the alternative view that the justification for prescription is the legalization of the factual impression of ownership created by the long and uninterrupted period of possession²⁶. Prescription connotes the acquisition of title to or right over property by long possession and usage²⁷. Being identical to the concept of proof of title by acts of long possession and enjoyment of land, it is one of the five modes of proving ownership of land outlined in *Idundun vs Okumagba*²⁸ and may be relied upon as the basis for a claim of ownership.²⁹

The basis for the concept of long possession as the root of title derives from the equitable principles of laches and acquiescence on the part of the careless and slothful party, who unduly sleeps over his right thereby misleading the opposite party to believe that he has abandoned or waived his right.³⁰ Establishing title through long possession has been stated to be more apt in a claim of possession where neither party can establish a definite root of title and so the court may make a declaration of title in favour of the party able to prove acts of possession over a reasonably long period on the basis that the person in possession is presumed the owner unless the other party can prove otherwise.³¹

Nevertheless, a plea of long possession is a shield of defense and cannot be used as a sword by the plaintiff³². Thus, in *Olayioye vs. Osho*³³; the Supreme Court deprecated the error of the trial Judge in employing the plea of long possession as a sword. It stated that long possession can be relied upon to resist a claim to title but not to establish a claim for declaration to title. Furthermore, if long possession is the basis of title, it must be pleaded as a defense, or else evidence adduced to

²² Actions Law (Cap 4) Revised Laws of Enugu State of Nigeria (2004), s. 22(2). In Lagos State, it is 12 years pursuant to s. 16(2) (a) Limitations Law of Lagos State (2003).

²³ See <<https://www.britannica.com/topic/prescription-property-law>>; accessed on 23rd April 2018.

²⁴ The view of an unnamed scholar quoted in A Taiwo, *The Nigerian Land Law* (Princeton & Associates Publishing Co. Ltd, 2016), 28.

²⁵ Du Bois, *op.cit*, 510.

²⁶ *Ibid*.

²⁷ AMD Olong, *Land Law in Nigeria* (2nd ed, Lagos: Malthouse Press Ltd ,2011), 211.

²⁸ (1976)10 SC 227.

²⁹ See I.O Smith, *op. cit*, 641; *Odogbolu v. Okeluwa* (1986); SC 99; Evidence Act (2011), s.143.

³⁰ *Ramsden vs Dyson* (1866) LRHL, 129 at 140.

³¹ I. O Smith, *op. cit*, 642.

³² *Ibid*, 643.

³³ (1961) 1 NNLR 685.

prove the same goes to no issue.³⁴ To ground a plea of long possession as foundation for ownership, it must *inter alia* be shown that such possession is adverse in the sense that it is inconsistent with the right of the other party and of such a character that the other party would be deemed to have notice therefore, actual or constructive.³⁵

According to Duddington, for a prescription to apply, the following conditions must be present:

- i. The use of the land must be without force;
- ii. The use of the land must be without secrecy; and
- iii. The use of the land must be without permission.³⁶

Prescription could be interrupted or suspended³⁷. It is interrupted when it is completely halted and has to start *de novo* whereas if it is suspended, there is only a temporary cessation until the circumstances promoting the suspension stop, after which the prescription resumes³⁸. Interruption could arise in the following cases:

- i. Where the possessor surrenders the property to the true owner or a third party;
- ii. As a result of acts of the owner or a third party; or
- iii. Due to unanticipated events such as war or flooding.³⁹

Prescription at common law was suspended for certain categories of persons who were due to incapacity or other impediments unable to enforce their rights. These include minors; insane persons; married women who were subject to their husbands' marital power and persons suffering any kind of disability under the law.⁴⁰ As long as any of the aforementioned persons suffered the disability/impediment, the right of prescription was suspended.

It is pertinent to observe at this point that the principle of law applicable in Nigeria differs under the types of laws that are applicable. Thus we have the Prescription under Common Law; Prescription under Customary law and Prescription under Islamic law

i. Prescription under Common Law

At common law, time runs in favour of an adverse possessor, and the exercise of possessory rights over a long period may amount to ownership by prescription unless it is shown that the alleged true owner did not know, actual or constructive, of the adverse possession⁴¹.

The limitation periods for Enugu and Lagos State have been earlier stated⁴². Time starts to run from when the right of action accrued or where the right of action is concealed from the time the owner discovers the truth or could discover the same with due diligence.⁴³ Where the plaintiff or some other person through whom he claims was in possession, the right of action accrued when

³⁴ *Archibong v. Ita* (1954) 14 WACA 520.

³⁵ *Akinloye vs Eyiola* (1967) NSCC Vol. 516.

³⁶ J. Duddington, *Land Law*, (2nd ed, England: Pearson & Longman, 2009), 145.

³⁷ A. Taiwo, *op. cit.*, 29.

³⁸ *Ibid.*

³⁹ Du Bois, *op. cit.* 514 – 515.

⁴⁰ *Ibid.*, 545.

⁴¹ See MVC Ozioko's Lecture Notes on Land law, Faculty of Law, Nnamdi Azikiwe University, Awka.

⁴² See footnotes 17 & 18.

⁴³ MCV Ozioko, *op cit.*

the plaintiff or such other person was either first dispossessed of the land or first discontinued possession.⁴⁴ For the land of a deceased person, time starts to run against the person entitled under his will or his intestacy from the date of his death if either he had the land on his death or was the last person entitled to the land in question.⁴⁵

ii. Prescription under Customary Law

Generally, the rule is that adverse possession by prescription does not apply to land held under customary tenure and is not covered by limitation law.⁴⁶ Put differently, statutes of limitations (in this case relating to prescription) do not have application under customary law.⁴⁷

Nevertheless, the above rule may on equitable grounds, not apply in circumstances where it is desirable to protect the adverse possessor or in the interest of justice and fair play. Accordingly, where injustice will be done to an innocent party who has been in continuous and undisturbed possession for many years to the knowledge of the owner and has altered his position, the above rule will not apply. This second rule was enunciated in *Akpan Awo vs Cookey Gam*⁴⁸; in that case, it was held that the plaintiff could not claim the land in a dispute where the defendants, under a mistaken belief that they were owners of the land, had exercised acts of ownership by making agreements with strangers, granting leases and receiving rents for many years without interference. As stated by Webber, J. In formulating the equitable rule, on grounds of equity, the law will not revert to the plaintiff where the defendant has held undisturbed Possession.⁴⁹

However, a defendant can only invoke the rule in *Akpan Awo vs Cookey Gam* where he established the following by evidence:

- i. He is an adverse possessor;
- ii. He had a mistaken belief that he had a title;
- iii. There was acquiescence by the plaintiff;
- iv. He made expenses or altered his position in reliance on the plaintiff's acquiescence;
- v. He has been in possession for a reasonable length of time

Note that there is no hard and fast rule as to what amounts to sufficient time. Thus, in *Akpan Awo vs Cookey Gam*; 20 years was held sufficient while in *Moravo vs Orade*⁵⁰; 15 years was considered sufficient. Nevertheless, the rule is that the length of time in cases where the defendant developed the land is shorter than where he did not⁵¹. This may perhaps be because the former constitutes an overt act of which the plaintiff ought to have taken cognizance.⁵²

iii. Prescription under Islamic Law

Prescription under Islamic law is a rule recognized as the right called *Hauzi*⁵³. Here where a person has been in undisturbed possession of land for a period of 10 years or more while the true owner

⁴⁴ *Ibid*, see also section 23(1) Actions Law of Enugu State.

⁴⁵ *Ibid*, see also section 23(2) Actions Law of Enugu State.

⁴⁶ *Mogaji vs Cadbury* (1985) 2NWLR (Pt. 77) 383.

⁴⁷ *Majekodunmi vs Abina* (2002) FWLR (Pt. 100) 133@1358,1362 SC.

⁴⁸ (1913) 2 NLR 100.

⁴⁹ See also *Oshodi vs Balogun* (1939) 4 WACA 1; *Saidi vs Akinwunmi* (1956) 1 FSC 107 and *Taiwo vs Taiwo* (1958) 3 FSC 80.

⁵⁰ (1940) 15 NLR 131.

⁵¹ MCV Ozioko, *op cit*

⁵² *Ibid*.

⁵³ *Ibid*.

stands by and does nothing to claim his property and the parties are not related by blood or marriage, the person in possession acquires title by prescription.⁵⁴

This principle is similar to that in *Akpan Awo vs Cookey Gam* except for the following:

- a. Here, length of time is prescribed unlike in *Akpan Awo*.
- b. There is no requirement to show that in reliance on the plaintiff's acquiescence, the defendant has expended money or altered his position.⁵⁵
- c. Furthermore, the parties must not be related by blood or marriage.

2.3 Sale

Sale is defined as the transfer of property or title for a price⁵⁶. A sale generally involves an absolute transfer of the totality of the vendor's interest in land to the purchaser for monetary consideration.⁵⁷ The intention of the parties to the transaction has to be construed to determine whether a particular transaction was a sale or not. There are 4 major elements in a sale, viz:

- a. Parties must have the capacity to contract;
- b. Parties must have mutual consensus;
- c. The thing sought to be sold must be capable of being transferred⁵⁸; and
- d. There must be a price in money paid or promised.⁵⁹

Sale of land usually goes with one of the words, 'Conveyance', 'Assignment', or 'Grant. There are two broad stages in the conveyance of land, viz:

- i. The contract stage, which ends with the formation of a binding contract for sale; and
- ii. The conveyance stage which culminates in the legal title vesting in the purchaser⁶⁰.

The Contract Stage is the stage where the parties agree to the terms to be contained in the contract and create the contract. A contract for the sale of land exists where there is a final and complete agreement of the parties on essential terms of the contract, namely: the parties to the contract, the property to be sold, the consideration for the sale, and the nature of the interest to be granted.⁶¹

Once there is agreement on these essential terms, a contract of sale of land is made and concluded.⁶² Before entering into a contract, the intending purchaser usually makes certain inquiries regarding the property to be purchased. The following questions are *inter alia* usually asked:

- i. What are the boundaries of the property?
- ii. Is there any dispute over the property?

⁵⁴ *Yaro Ningi vs Dan Katsina* (1991) 3 NWLR (Pt. 177) 78.

⁵⁵ MCV Ozioko, *op. cit.*

⁵⁶ BA Garner, *op cit*, 1337.

⁵⁷ I.O Smith, *Practical Approach to Law of Real Property in Nigeria* (2nd edn, Lagos: Ecowatch Publications Limited, 2007) p. 95.

⁵⁸ Recall the story of Count Victor Lustig, arguably the most successful con man in history who 'sold the Eiffel tower twice'; available at <https://en.m.wikipedia.org/wiki/Victor_Lustig>. As the Eiffel tower was incapable of being transferred, the purported sales were void *ab initio*.

⁵⁹ BA Garner, *op cit*, 1337.

⁶⁰ Y.Y. Dadem, *op cit*, 224.

⁶¹ *Ibid.*

⁶² *Mini Lodge Ltd v. Negi* (2010) All FWRL (Pt. 506) 1806.

- iii. Is there any Notice concerning the property?
- iv. What are the guarantees in respect of the property?
- v. Are there any adverse rights or restrictions on or concerning the property?
- vi. What is the method of sale of the property?
- vii. Are there covenants? If so, what are they and what are the consequences of breaching them?
- viii. Are there service charges?
- ix. What are the facilities on the property?⁶³

A vendor is not under obligation to answer the purchaser's enquiries⁶⁴ but where he does, he must be careful not to misrepresent the facts or he will be liable in damages.⁶⁵

There are three broad types of contract for the sale of land, viz:

- i. Oral contract;
- ii. Open contract; and
- iv. Formal contract.

i. Oral Contract

This is the type of contract which is not written. Generally, an oral contract for the sale of land is prohibited.⁶⁶ The rationale for the above has been stated to be the prevention of the possibility of a non-existent agreement between two parties being claimed to exist through perjury or fraud.⁶⁷ Where a contract for the sale of land is not in writing, it is generally unenforceable⁶⁸ but where the sale of land is concluded under Native law and Custom, written documentation may not be required.⁶⁹ For the sale to be enforceable here, the following minimum requirements must be established:

1. Payment of the purchaser price;
2. Possession of the land by the purchaser; and
3. The presence of the witnesses during the transactions.⁷⁰

Where a party alleges that a valid sale of land was conducted under customary law, he must plead and lead evidence of the names of witnesses to the sale and the fact of their having witnessed the sale as well as the handing over of the land to the purchaser.⁷¹

Other than in cases of sale under customary law, the court may also enforce an oral contract for the sale of land where there is evidence of part performance of the contract by the purchaser⁷². For a Court to specifically enforce an oral contract based on past performance, the following must be established:

1. That there is proper oral evidence to prove or establish the terms of the oral contract;
2. The contract must be specifically enforceable in the sense that it is not in the contract for personal service (such as an employer-employee contractual relationship);

⁶³ D.G. Barnsley's *Conveyancing Law and Practice* (London: Butterworth's,1988), 655-657.

⁶⁴ Y.Y. Dadem, *op. cit.*, 226.

⁶⁵ *Sharneyford Supplies Ltd vs Edge* (1987) All ER 588; *Walker vs Boyle* 1 WLR 495.

⁶⁶ The Statute of Frauds (1677), s.4.

⁶⁷ Y.Y. Dadem, *op. cit.*, 13.

⁶⁸ The Statute of Frauds (1677), s.4.;The Property and Conveyancing Law (1959), s.67(1).

⁶⁹ Y.Y. Dadem, *op. cit.*, 227; *Etajata vs Ologbo* (2007) All FWRL, pt. 386

⁷⁰ *Adedeji v. Oloso* (2007) All FWLR (Pt. t356) 610@640; *Oguninuyiwa vs Odokoya* (2009) All FWLR (Pt. 454) 1526.

⁷¹ *Adedeji v. Oloso* (*supra*).

⁷² *Adeniran vs Olagunju* (2002) FWLR (Pt. 87) 825.

3. The act constituting part performance must be unequivocal and consistent with or referable to the contract alleged to have been breached; and
4. The plaintiff has wholly or partly executed his part of the oral agreement with the confidence that the defendant would do the same.⁷³

However, it is worthy of note that a claim for specific performance cannot be granted where the vendor sold a property that is not exclusively his since a court cannot compel a person to do that which is impossible.⁷⁴ Note further that failure to pay the purchase price under a contract for the sale of land constitutes a fundamental breach touching on the root of the contract and therefore precludes the court from granting an order for specific performance.⁷⁵

ii. Open Contract

Here, the contract is contained in some written notes or memoranda and contains the basic requirements of a contract of sale of land (parties, property, and price) but other terms are not agreed to.⁷⁶ It is 'open' in the sense that the parties are free to subsequently agree on other terms of the contract.

iii. Formal Contract

The contract is a standard one that contains both the basic requirements of a contract for the sale of land as well as detailed terms of what the parties want⁷⁷. This type of contract is not only written but well-detailed. The parties agree on "...such terms as they see fit subject to the rule that certain provisions contrary to the policy of the law are void..."⁷⁸ There are many advantages to entering into a formal contract as opposed to other types of contract; they include:

- a. The purchaser has more time to investigate the title before the execution of the deed of Conveyance;
- b. The death of a party does not terminate the contract as their representatives can proceed with the transaction and complete same;
- c. None of the parties can withdraw midway without being liable for the breach of the terms of the contract;
- d. The terms of the contract are expressed; thus making for certainty;
- e. Fixtures and fittings may be transferred and need not be reflected in the deed; thus saving costs (as stamp duties paid on the land cover them);
- f. The vendor cannot unilaterally increase the purchase price subsequently as the same has already been fixed in the contract;
- g. The parties may provide for any specific matter they choose; and
- h. It is easier to enforce the terms of the contract.⁷⁹

After a contract is completed, the parties exchange the same. This occurs when the parties or their solicitors have actual or constructive possession of the contract signed by the other party.⁸⁰ An exchange of contract has the following consequences:

⁷³ *Ibid.*

⁷⁴ *Mohammed v. Klargester Nigeria Limited* (2002) FWLR (Pt 127) 1087 at 1095.

⁷⁵ *Nidocca Ltd v. Gbajabamila* (2014) All FWLR (Pt 724)1.

⁷⁶ Y.Y. Dadem, *op cit*, 231.

⁷⁷ *Ibid.*, 232.

⁷⁸ AJ, Oakely, *Megarry's Manual of the Law of Real Property*, (8th ed, London: Sweet and Maxwell, 2002), 157.

⁷⁹ Y.Y. Dadem, *op cit*, 232 -233.

⁸⁰ *Damb vs Isor* (1980) Ch. 548 at 557.

- i. Equitable interest is created in favour of the purchaser;
- ii. Provided the purchaser is not in default of the terms of the contract, he can prevent the transfer of the property to a subsequent purchaser by action in court;
- iii. The purchaser can sue the vendor to specifically perform the contract or complete the transfer;
- iv. The purchaser can sue against voluntary waste;
- v. The purchaser can transfer his equity to another person;
- vi. A lien is created in favour of the vendor over the property for the payment of the balance where payment has not been completed; and
- vii. The death of any of the parties does not affect the contract.⁸¹

The Conveyance stage is further subdivided into the following:

- i. Completion stage; and
- ii. Post-completion stage.

During the Completion Stage, the parties conclude all the processes that vest title in the purchaser.⁸² The following usually signify completion:

- i. Payment of the balance of the purchase price;
- ii. Execution of the formal conveyance by the parties;
- iii. Handing over of the title deeds and other documents;
- iv. Taking over possession of the property by the purchaser; and
- v. Vesting of the legal estate in the purchaser.⁸³

The Post Completion Stage comes at the tail end of the transaction. It includes the following:

- i. Application for Governor's consent;
- ii. Stamping of the Deed; and
- iii. Registration⁸⁴.

This work will now briefly examine the issue of the Sale of Land which is subject to litigation. Generally, the principle here is that no sale of land effected during litigation gives the purchaser a valid title except if the vendor turns out to be victorious in the judgment.⁸⁵ The principle is captured in the Latin phrase, *Lis pendente lite nihil innovetur*.⁸⁶ The shorter version *lis pendens*⁸⁷ is more common. The following conditions must be present for the above principle to apply:

- i. There must be a pending action at the time of the sale;
- ii. The action must be about real property;
- iii. The object of the action must be to assert title to the real property in issue.
- iv. The vendor must be aware of the pendency of the suit, and
- v. The vendor must be vanquished in the suit.⁸⁸

⁸¹ Y.Y. Dadem, *op cit*, 247.

⁸² *Ibid*, 254.

⁸³ *Ibid*.

⁸⁴ *Ibid*.

⁸⁵ E. Chianu, *Law of Sale of Land* (Benin: Lawlord Publications, 2009), 244.

⁸⁶ This means that nothing shall change during the pendency of a suit.

⁸⁷ This means 'suit pending'.

⁸⁸ E. Chianu, *op. cit*, 244.

In the above circumstances, it is immaterial that the purchaser had no actual or constructive notice of the pending suit.⁸⁹ A case that illustrates the above principle beautifully is *Ogundaini vs Araba*.⁹⁰ In that case, a mortgagor made an equitable mortgage over his property to a bank. When he was called upon to execute a deed of the legal mortgage over the property in favor of the mortgagee, he refused. The mortgagee successfully sued him for an order for specific performance to execute the deed. The mortgagor subsequently appealed but sold the property to the plaintiff while the appeal was still pending. Upon succeeding in the appeal, the mortgagee sold the property to the defendant. The Supreme Court held that the plaintiff was a purchaser *pendente lite* and so had no title over the land.

It is also important to look at the issue of Sale of Family Land. The general principle here is that for a valid conveyance of family property to take place, the family head and principal members must consent to the same. Where there is a sale of family Land by the principal members of the family without the consent of the family head, the sale is void *ab initio*⁹¹ but where there is the sale of family Land by the family head without the consent of the principal members, the sale is voidable⁹².

2.4 Partition

Partition has been defined as the act of dividing, especially the division of real property held jointly or in common by two or more persons into individually owned interests.⁹³ It has also been defined as the legal concept whereby joint possession is disunited so that each former co-tenant becomes a separate owner of a specific portion of land holding a share in severalty as opposed to an undivided share in the whole⁹⁴.

Under customary law, partition of family property is the process whereby property belonging to a family is divided amongst the constituent members or branches of the family and each member or branch is vested with and retains exclusive ownership of the portion of family land conveyed by a Deed of Partition⁹⁵. Once this is done, family ownership of such property ceases or comes to an end⁹⁶.

Whether or not a particular division of family land is intended to be permanent depends on the circumstances of each particular case (including the attitude of the parties) and it is pertinent to underscore that there is a strong presumption that a family property retains its character⁹⁷ although this presumption of course is rebuttable with the onus being on the person seeking to rebut it to adduce evidence to that effect. Partition may be voluntary if it occurs as a result of mutual agreement of members of the family to partition the family property⁹⁸. It could also be effected

⁸⁹ *Ibid.*

⁹⁰ (1978) NSCC 335.

⁹¹ *Ekpendu vs Erika* (1959) NSCC 64; *Adejumo vs Ayantegbe* (1989) 3 NWLR (Pt. 110) 417; *Ojoh vs Kamalu* (2005) 18 NWLR (Pt. 958) 523.

⁹² *Mogaji vs Noga* (1960) 5 FSC 107.

⁹³ BA Garner, *op. cit.*, 1141.

⁹⁴ *Abraham vs Olorunfunmi* (1991) 1 NWLR (Pt. 165) 53 at 75.

⁹⁵ *Olorunfemi vs Asho* (2002) 2 NWLR (Pt. 643) 143. This does not at all suggest that a partition can only be effected by a Deed.

⁹⁶ *Ibid.*

⁹⁷ *Dosunmu vs Adodo* (1959) WRNNLR 325 FSC; A Taiwo, *op. cit.*, 183-184.

⁹⁸ A Taiwo, *op. cit.*, 184; IO Smith, *op. cit.*, 88; *Gbajumo vs Ogunsanya* (1970) 1 All NLR 223; *Balogun vs Balogun* (1943) 9 WACA 78.

under a court order mandating the same⁹⁹ where the interest of peace or justice demands it¹⁰⁰. For instance, where there has been a persistent refusal by the Family Head or other members of the Family to allow a member to enjoy his rights under native law and custom, the courts may order that the family land be partitioned in the interest of justice¹⁰¹.

In these modern times, a Deed of Partition is usually prepared to detail the transaction. It must delineate individual portions of the land in issue¹⁰². For purposes of certainty and to prevent controversy, the preparation of a Survey Plan is recommended when partitioning a land. However, the mere fact that there is no survey plan does not nullify the partition provided each member knows his exact portion¹⁰³.

3.0 Conclusion

In conclusion, this article has attempted to appraise the major modes of acquisition and disposition of land in Nigeria. It has tried to synthesize the views of scholars on this issue. Precisely because of the attachment individuals have to property, it is most pertinent to understand how to acquire or dispose of same as well as the legal ramifications thereof. It is expected that this article will add to the discourse on this issue in this area of our jurisprudence.

4.0 Recommendations

To improve the regime for the acquisition and disposition of property in Nigeria, the following recommendations are pertinent:

1. All transactions involving the acquisition or disposition of land should be documented. This makes such transactions easier to prove because the deed can be produced at any time. Furthermore, where a dispute arises in respect of the land, the witnesses who witnessed the transaction might have died or become compromised. Although documentation of land transactions is common in the sale of land, it is not in gift and partition. Accordingly, whenever a person makes a gift or a land that was previously jointly owned is partitioned, a Deed of Gift or Deed of Partition should be prepared to document the transaction.
2. In all cases of land acquisition or disposition, it is strongly suggested that a survey plan be attached to the Deed to identify the land in issue. This will significantly reduce the disputes because there will be certainty of the land in question.
3. Compulsory registration of all land transactions.
4. Digital land cadastral systems should be maintained in every state so that at a glance, the ownership of any land in any state can be ascertained. Although the FCT has a strong land cadastral system, most states do not have it and this anomaly must be rectified.
5. Restrictions on land transactions such as the requirement of Governor's consent under the Land Use Act (1978) before alienation of land should be jettisoned. A person should be able to dispose of his property as he sees fit.

⁹⁹ *Lopez vs Lopez* (1924) 5 NLR 50.

¹⁰⁰ A Taiwo, *op cit*, 184.

¹⁰¹ IO Smith, *op cit*, 88.

¹⁰² *Ibid*, 88-89.

¹⁰³ *Fatusin vs Akwale* SC 46/1965, Unreported Decision of 20th May 1966.

- 6 There is a serious need to revisit the Land Use Act (1978) and overhaul same, especially the enormous powers given to the Governor. Time has repeatedly shown that the holders of the position, far from being 'good men' have been guilty of serious abuse of their powers to the detriment of citizens.
- 7 Land speculation should be discouraged. The situation where people acquire large tracts of land and hold the same in anticipation of increased prices must be brought to an end because it deprives people who genuinely need land of such land.

Although these recommendations are not exhaustive, implementing them should go a long way towards repositioning the rights of persons to acquire and dispose of property in Nigeria and the jurisprudence relating to land and its administration in Nigeria.