

THE THEORETICAL INSIGHTS OF ADVERSE POSSESSION AND REGISTERED LAND UNDER THE LAGOS STATE LANDS REGISTRATION LAW 2015*

Abstract

This paper examines the intersection of the Lands Registration Law of Lagos State 2015 (LRL 2015) and adverse possession through the theories of indefeasibility of registered title, property rights, and unjust enrichment. The LRL 2015, particularly Sections 2, 18, 27, 30 and 32 establishes a framework ensuring certainty and conclusiveness in land registration. However, adverse possession undermines these principles, creating doctrinal inconsistencies and legal uncertainties. The theory of indefeasibility highlights how adverse possession erodes trust in the register's conclusiveness. The property rights theory critiques the transfer of ownership based on occupation, contravening statutory requirements for registration. The unjust enrichment theory exposes the inequity where adverse possessors benefit without bearing the burdens of compulsory registration imposed on registered owners by LRL 2015. The paper concludes that adverse possession contradicts the goals of the LRL 2015 and recommends its exclusion from the registration framework. Legislative reforms, strict enforcement of registration requirements, and incorporation of restitution principles are proposed to enhance equity and integrity in land governance in Lagos State.

Keywords: Land Registration, Property Right, Adverse Possession, Indefeasibility, Unjust Enrichment

1. Introduction

The interplay between land registration and adverse possession remains a critical aspect of property law, particularly in jurisdictions like Lagos State, Nigeria, where the legal framework is evolving to address contemporary challenges. Lagos State's land registration system, established under the Land Registration Law of 2015 (LRL 2015), aims to provide certainty, transparency, and indefeasibility of title. However, the persistence of adverse possession within this framework poses significant questions about the coherence and effectiveness of the law. Adverse possession, which allows a person in possession of land without the owner's consent to acquire legal ownership after a statutory period,¹ appears inherently incompatible with the principles underpinning land registration. The Land Registration Law of Lagos State emphasizes the indefeasibility of registered titles,² reflecting the broader global shift toward certainty and conclusiveness in land ownership. As seen in other jurisdictions, such as England under the Land Registration Act 2002 (LRA 2002),³ the principle of indefeasibility underscores that the register should be a definitive record of title, immune from unregistered claims. However, the continued operation of adverse possession under the LRL 2015⁴ creates a paradox, undermining the very certainty and security the system seeks to achieve. This inconsistency has drawn criticism from academics and commentators, who argue that the doctrine of adverse possession perpetuates uncertainty in a system that promises otherwise⁵

Moreover, the doctrine of adverse possession in Lagos State raises fundamental questions of fairness and equity. While adverse possession historically served to resolve disputes and promote the productive use of land, its application in a modern, registered system can lead to unjust enrichment at the expense of rightful owners. The theory of unjust enrichment, rooted in Roman law and contemporary legal scholarship, emphasizes that no one should benefit at another's expense without justification.⁶ In the context of land registration, permitting adverse possession without addressing its inequitable outcomes contradicts the principles of justice, equity, and good conscience. The Lagos State context also reveals unique challenges arising from conflicting statutory provisions. This dissonance highlights the need for reforms that align Lagos State's land laws with global best practices, including the integration of restitution principles to mitigate the harsh effects of adverse possession. Scholars like Ojo⁷ opined that adverse possession should be abolished while Smith⁸ advocate for adopting reforms modeled on the English approach, where adverse possession in registered land systems is heavily restricted and subject to procedural safeguards to protect titleholders' rights.

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¹ Section 16 Limitation Laws of Lagos State 2016.

² Section 27 LRL 2015

³ Section 58 LRA 2002

⁴ Section 66(f), 100, 112 of the LRL 2015

⁵ M. Pawlowski, 'Criminal Squatting and Adverse Possession: A Case of Interpretative Logic' (2015). 24 Nott. L.J., 129.

⁶ J. Dawson, *Unjust Enrichment: A Comparative Analysis* (Little, Brown & Co.: NYC, 1951). See also American Restatement (Third) of Restitution & Unjust Enrichment 1 (2011) available at <https://law2.wlu.edu> (accessed 29 December 2024). See further R. Lepinkas, 'Unjust Enrichment Claims in Illinois: Applying a Venerable Doctrine to Modern Disputes' (2003) *ILL. BAR J.* 514

⁷ G. Ojo, 'Acquisition of Title to Land by Adverse Possession: Need to Stop Endorsement of Land Theft' (2016) *The Gravitas Review of Business & Property Law*, 1.

⁸ I. O. Smith, *Essays on the Lagos State Lands Registration Law 2015*, (Department of Private & Property Law, Faculty of Law, University of Lagos, 2017)

In light of these considerations, this study critically examines the compatibility of adverse possession with Lagos State's land registration law, drawing on theoretical frameworks such as indefeasibility of title, property rights theory, and unjust enrichment. The analysis underscores the need for legislative reforms to harmonize Lagos State's legal framework with international standards, ensuring the protection of registered titles while addressing the equitable concerns posed by adverse possession.

2. Theoretical Framework

Theory of Indefeasibility of Registered Title

The concept of indefeasibility of title was well explained by the Privy Council in the case of *Frazer v Walker*⁹, per Lord Wilberforce as follows:

[T]he expression 'indefeasibility of title and interests' ... is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which ... a registered proprietor enjoys. This conception is central in the system of registration.... as registered proprietor, and while he remains such, no adverse claim (except as specifically admitted) may be brought against him.

Indefeasibility of title means that the registered title of real property determines who has the priority interest or ownership of such property. It is a right or title in property that cannot be made void, defeated or canceled by any past event, error or omission in the title. The principle of indefeasibility of title has been said to be the foundation of the land registration system of title. 'It is not a system of registration of title but a system of title by registration; this prevents acts of fraudulence done for both sides of the party which enables a more justified transaction between the two'.¹⁰

The cardinal principle of the land transfer legislation is that the register is everything, and that, except in case of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against the entire world.¹¹ The theory advances that the best and only way to assert land title registration benefits in jurisdictions where operational and to protect one's interest in the land from future controversies, disputes and problems is to register the land or real property. The purpose of land registration system is to provide a method for making title to land certain, indefeasible and readily ascertainable.

The doctrine of indefeasibility of title and the essence of the land title system is based on the philosophy which embodies the principles that the register is a perfect mirror of the state of title, that a purchaser needs not investigate the history of past dealings with the land or search behind the title as depicted on the register, and that the state guarantees the accuracy of the register and compensates any person who suffers loss as a result of an inaccuracy. Indefeasibility of title is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration. The aim was to simplify and expedite the process of transfer of title to land.¹² The principle provides that when title to land is transferred, the new owner takes that title free and clear of all encumbrances except those registered against the title at the time of transfer. Registration is everything. It is conclusive proof of ownership, and it is conclusive proof of any interests, exceptions and/or reservations that may affect ownership.¹³ Indefeasibility of title created by registration follows of necessity as a corollary to the principle of 'independent title'. As stated by Dowson and Sheppard: 'that the register is paramount is 'one of the fundamental principles of Torrens' system' which would necessarily be violated by permitting off-register overriding proprietary interests to be upheld'.¹⁴

The conflict between adverse possession and land registration is exacerbated in a registered land title system wherein the whole purpose of registration is to provide a curtain beyond which title investigation is not desirable, is unnecessary, and in most cases will not be possible.¹⁵ Indefeasibility of title involves the proposition that once a person is registered as proprietor of a certain estate or interest in land, he or she acquires a title that cannot be vitiated except as prescribed in the legislation establishing the system.¹⁶ The indefeasibility principle was designed not only to protect title of the registered proprietor from unregistered interests, but also to save persons dealing with registered

⁹ [1967] 1 AC 569 at 580–581.

¹⁰ Law Teacher 'System of Title by Registration' available at <https://www.lawteacher.net> (accessed 29 December 2024)

¹¹ Per Edwards J. in *Fels v Knowles* [1906] 26 NZLR 604 at 619 (CA).

¹² J. Mugambwa 'Judicial Assault on the Citadel of Indefeasibility of Title under the Papua New Guinean Torrens System of Conveyance' (2007) 5 *Journal of South Pacific Law* 1.

¹³ *Ryan-Froslic J in Jen-Sim Cattle Co Ltd v Agricultural Credit Corporation of Saskatchewan*, 2006 SKQB 173.

¹⁴ E. Dowson and V.L. Sheppard, 'Land registration, 8 *Revue Internationale De Droit Comparé Année*: London, 1956

¹⁵ G. Curtis and T. Ruoff, *Registered Conveyancing* 2nd ed. 833 (The Modern Law Review: London, 1963)

¹⁶ *Ibid.*

land from the trouble and expense of going behind the Register Book in order to investigate the validity of title or possible rival claims to the land.¹⁷

The indefeasibility of registered title theory is therefore a cornerstone of modern land registration systems, including the framework established under the LRL 2015. This principle asserts that registered titles are conclusive and immune to adverse claims, thereby ensuring certainty and security in land ownership. In Lagos State, the LRL 2015 was enacted to modernize land registration and align it with global standards, aiming to eliminate the need for extensive historical investigations into land ownership.¹⁸ However, the continued recognition of adverse possession under the law¹⁹ undermines this principle. By allowing unregistered possessory claims to challenge registered titles, the system dilutes the concept of indefeasibility and perpetuates uncertainty, contrary to the law's objectives²⁰ This inconsistency highlights the need for reform, as seen in the English model under the Land Registration Act 2002 (LRA 2002)²¹, where adverse possession is significantly curtailed to uphold the integrity of the register.

Property Rights Theory

The right to property theory is rooted in laws of nature as identified by Locke, which permit individuals to appropriate, and exercise control rights over things in the world, like land and other material resources which is a justificatory account about the legitimacy of private property rights. The determination of property rights is often regarded as particularly disputatious in a liberal democracy that embraces both individual liberty and the right of the majority to govern.²² On the one side is the protection of intensive property rights as manifestations of a property owner's individuality. Property is an essential natural right; to take it is to take one's labour, to make one a slave. Seen in this way, property rights owe nothing to society; on the contrary, property owners form society and government to protect their property.²³ The very purpose of social organization is that property is an end in itself. Intensive private property rights are to be protected because they provide incentives to entrepreneurs.²⁴ The application of adverse possession to registered land is, therefore, a violation of property right, hence the recommendation of restitution principle to restore those rights. Property rights define the theoretical and legal ownership of resources and how they can be used. These resources can be both tangible and intangible and can be owned by individuals, businesses, and governments. In economics, property rights form the basis for all market exchange, and the allocation of property rights in a society affects the efficiency of resource use. Property rights theory is an exploration of how providing stakeholders with ownership of any factors of production or goods, not just land, will increase the efficiency of an economy as the gains from providing the rights exceed the costs.²⁵ A widely accepted explanation is that well-enforced property rights provide incentives for individuals to participate in economic activities, such as investment, innovation and trade, which lead to a more efficient market.²⁶ Another benefit of guaranteeing property rights is prevention of opportunism. This is discouraged as it is harder to exploit a good protected by enforced property rights.²⁷ Property rights are also believed to lower transaction costs by providing an efficient resolution for conflicts over scarce resources.²⁸ The right to possession is a direct right, inalienable, antecedent to all law, and instituted for the general good. This theory is one application of the approach that all activity of the human race is the planned product of divine wisdom or of some unavoidable and immutable nature of things.

There are various theories of property, especially private property, of which three are most relevant to this research. These include the occupation theory, the labour theory and the utilitarian theory. The occupation theory opines that given that all material resources are given to mankind in common, such material resources become the private property of individuals through the consent of or agreement with the rest of mankind. The division of property takes place by reference to agreements which may be express or implied. The basic principle emerging here is that the first occupation gives rise to private property; put into the words of the common law, it means possession is the root of title.²⁹ Occupation Theorists attempt to answer the relatively simple question of how things become the subject matter

¹⁷ *Ibid.*

¹⁸ See Sections 2, 18, 27, 30, 32 of the LRL 2015

¹⁹ See the combined effect of Section 66(f), 100, 112 of the LRL 2015

²⁰ *Supra* note 15

²¹ See Schedule 6 of the LRA 2002

²² M. Horwitz, 'The Transformation of American Law' (1780-1860) Cambridge, MA: Harvard University Press 384. See further D. Harold, 'Toward a Theory of Property Rights' (1967) *The American Economic Review*; 347.

²³ See A. Witztum, 'Property Rights and the Right to the Fruits of One's Labour: A Note on Adam Smith's Jurisprudence' (2005) Cambridge University Press 279.

²⁴ See D. North, 'Transaction Costs, Property Rights, and Economic Outcomes' (2018), NBERI 24585.

²⁵ *Supra* note 13.

²⁶ D. Acemoglu and S. Johnson and J. Alan, 'Institutions as a Fundamental Cause of Long-run Growth' (Handbook of Economic Growth in: Philippe Aghion & Steven Durlauf ed. (Elsevier, 2005).

²⁷ *Property Rights, Economics Online* available at <https://www.economicsonline.co.uk> accessed 5 January 2022.

²⁸ *Supra* note 15.

²⁹ See for example; *Asher v Whitlock* (1865) 1 Q.B. 1; *Perry v Clissold* [1907] A.c. 73.

of private ownership. The central problem relates to the actual point at which and the amount of labour needed to take first possession. The problem is particularly acute when there are overlapping efforts to take first possession.

The Labour Theory holds property as a natural right and claim that the right of individuals to own and dispose of private property was a natural right of the individual. John Locke argues that private property rights existed before the state and independently of laws prescribed by the state.³⁰ John Locke supposed that one's labour was their own property and, consequently, property was any land maintained and sustained through one's own labour as long as there was sufficient and similar quality land to meet the needs of everyone's labour.³¹ In this ideology, property in a broader sense would be taken as any good a person produced or maintains with their own labour. This was later elaborated on by Adam Smith who believed that the amount of labour it takes to produce a good does not provide its value but instead the labour the good commands or the economic value people will be willing to trade for the goods.³² The limitation of the theory is that, an individual who labours must leave behind enough resources of the same quality of the labour for others to appropriate. This is necessary because the function of property in the theory is the satisfaction of need.

The next is utilitarian theory of private property which views property as a positive right, as opposed to a natural right, created instrumentally by law to achieve wider social and economic objectives. The most influential utilitarian justification for private property is that of Jeremy Bentham who rejected that there could be any notion of natural law and natural rights. One of the shortcomings of the utilitarian justification for private property is that it does not address the question of how people become the owner of the resources, and how initial distribution arises in the first place. The theory posits that property exists as a natural right, and as personal right of man, as determined by nature, is to possess a sphere of action sufficient to supply him with the means of support. This physical sphere should, therefore, be guaranteed to everyone, conditioned, however, upon his cultivating it by his own labour. The right to possession is a direct right, inalienable, antecedent to all law, and instituted for the general good. This theory is one application of the approach that all activity of the human race is the planned product of divine wisdom or of some unavoidable and immutable nature of things. Private ownership of land is a well-known and developed concept and system in most countries. The theory recognises private ownership of land as belonging absolutely to an individual and as such the law, like land registration laws, provides an absolute protection against any intervention on such right by any other party.³³

The property rights theory, rooted in natural law, in other words emphasizes the sanctity of private ownership derived from occupation, labour, and utility. The theory posits that property rights, once established, should be inviolable. In Lagos State, the LRL 2015 reflects this theoretical foundation by recognizing registered titles as conclusive evidence of ownership. However, the doctrine of adverse possession, which permits the acquisition of ownership through possession alone, conflicts with this principle. It effectively allows the transfer of property rights without the owner's consent, undermining the legitimacy of ownership and destabilizing the foundational principles of land registration. This tension is particularly evident in cases where registered owners lose their rights to adverse possessors who have contributed little to the land's utility or productivity, thereby failing to align with the utilitarian justification for property rights. Reforming the law to limit adverse possession would reinforce the sanctity of registered titles and align the system with the fundamental tenets of property rights theory.

The Theory of Unjust Enrichment and Restitution

The concept of unjust enrichment appears in Roman law and early French and German theories of laws.³⁴ The theory was developed by the American Law Institute's Restatement of the Law of Restitution, Quasi-Contracts and Constructive Trusts. It states that: 'A person who has been unjustly enriched at the expense of another is required to make restitution to the other'. The first and central principle is that '[a] person who is unjustly enriched at the expense of another is subject to liability in restitution'.³⁵ It generally applies when one party receives a benefit to the other party's detriment in violation of the principles of justice, equity, and good conscience.³⁶ It is a principle that can be applied when legal rules produce results in particular cases that appear unfair.³⁷ The American Restatement of

³⁰ Wex Legal Information Institute 'Adverse Possession' available at <https://en.wikipedia.org/wiki> (accessed 27 December 2024)

³¹ J. Locke, *An Essay concerning Human Understanding* (Nidditch, Peter H (ed.) 1969)

³² A. Smith, *The Wealth of Nations* (CreateSpace Independent Publishing Platform: California, 2018).

³³ However, in principle individuals have an absolute right of use, exclusion, and disposition of their property, but in reality, private ownership right is not an absolute one for the state and the public using the law may limit such right.

³⁴ J. Dawson, *Unjust Enrichment: A Comparative Analysis* (Little, Brown & Co.: NYC, 1951).

³⁵ American Restatement (Third) of Restitution & Unjust Enrichment 1 (2011) available at <https://law2.wlu.edu> (accessed 19 December 2024)

³⁶ See R. Lepinkas, 'Unjust Enrichment Claims in Illinois: Applying a Venerable Doctrine to Modern Disputes' (2003) *ILL. BAR J.* 514.

³⁷ *Ibid* at 2091.

Restitution and Unjust Enrichment also makes it clear that restitution may be legal or equitable or both.³⁸ A claimant entitled to a remedy for unjust enrichment does not need to demonstrate the inadequacy of available remedies at law.³⁹

The concept of unjust enrichment is based upon the Roman legal maxim ‘no one should be benefited at another's expense’.⁴⁰ In the absence of a benefit to the defendant, there can be no liability in restitution; nor can the measure of liability in restitution exceed the measure of the defendant's enrichment. Restitution is founded on three different principles: the reversal of unjust enrichment; the prevention of a wrongdoer from profiting from his or her wrong; and the vindication of property rights with which the defendant has interfered. In the concept of this area of law, usually the restitutionary action will be that of strict-liability, meaning that the defendant will have the right to claim for restitution to the claimant without being forced to show ‘fault’ on the defendant’s position.⁴¹ *Mansfield v Mcfarlon*⁴² stated that ‘the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.’ The principle of unjust enrichment requires the following elements to come into effect – firstly, that the defendant has been enriched by the receipt of a benefit; secondly, that this benefit is at the expense of the claimant; thirdly, that the retention of the enrichment be unjust, and finally, that there is no defence or bar to the claim.⁴³

Having the rules of adverse possession bounded by an unjust enrichment standard would eliminate the perception of unfairness that adverse possession decisions have engendered in observers. This use of the unjust enrichment principle would be interpreted as a vehicle for ‘covering conduct that was morally wrong although sanctioned by law’.⁴⁴ An appropriate time for the rules of adverse possession to be limited by unjust enrichment occurs when strict adherence to the legal rules would be harsh or oppressive, creating unfair surprise and hardships for title holders by violating their reasonable expectations.⁴⁵ The present society no longer considers letting land lie fallow to be imprudent, unproductive, or unreasonable. In fact, it is common knowledge that farmers are given monetary incentives not to use their land under certain circumstances. Many localities also buy parcels of land for the specific purpose of keeping them undeveloped. Given such situations, it is unreasonable to expect landowners to be aware of a doctrine premised on the anachronistic notion that use of land is more highly valued than non-use, especially when there is no issue about who is the titled owner. To eliminate the unfairness and the perception of unfairness associated with the adverse possession doctrine, legislatures or courts should modify its results by applying an unjust enrichment standard. If the adverse possessor would be unjustly enriched by a successful claim, and the burden on the titled owner would be harsh or oppressive, causing hardship and unfair surprise, and violating reasonable expectations, then adjustments should be made to balance the interests of the parties, generally by requiring payment by the adverse possessor for the value of the property and any tax payments made by the titled owner during the period of the adverse possession. The theory sees adverse possession of registered land as the adverse possessor being unjustly enriched at the expense of the registered title holder, as observed by a commentator, ‘Not only did these cases cause observers to see innocent people being violated by the law, but guilty people being rewarded’.⁴⁶

Restitution refers to the return of property to a rightful owner from whom it was taken. With respect to land, restitution means giving a piece of land or property to the rightful owner. It could also mean compensating an individual or community for lost land or property, appropriated by individuals or government for public usage. Restitution and property share a substantially similar aim: the maintenance of an existing allocation of resources. The absence of a general restitutionary remedy prompted the courts of equity in the nineteenth century to develop the law of property in order to provide relief where an asset which should have gone to the plaintiff came into the hands of the defendant. Equity recognised the asset as belonging to the plaintiff and enforced this equity against a defendant who was not a bona fide purchaser for value without notice.⁴⁷ The trust provided an ideal mechanism for recovery with its division of legal and equitable ownership. The concept of equitable ownership provided a basis for relief in cases elsewhere seen as third party enrichment. The result was that restitutionary relief was analogised with property law and acquired proprietary characteristics.⁴⁸

38 Ibid note 36.

39 Ibid. Section 4(2) ‘A claimant otherwise entitled to a remedy for unjust enrichment, including a remedy originating in equity, need not demonstrate the inadequacy of available remedies at law’.

40 Nemo locupletari potest aliena iactura or nemo locupletari debet cum aliena iactura.

41 Law Teacher. ‘Restitution Property Possession available at <https://www.lawteacher.net> (accessed 15th December 2024).

42 [1760] 2 Burr 1005 at 1012 (97 ER 676 at 681).

43 See V. Graham, Principles of the Law of Restitution, *Edinburgh Law Review*, 2007

44 E. Sherwin, ‘Reparations and Unjust Enrichment’ (2004) *B.U. L. REV.* 57.

45 See S.L. Martin, ‘Adverse Possession: Practical Realities and Unjust Enrichment Standard’ *REAL EST. L.J.*, 2008. See further J. McConville and B. Mirko, ‘Yoking the of Unconscionability and Unjust Enrichment in Australia’ (2002) *DEAKIN L. REV.*, 13.

46 See J. Bunch, ‘Land-Seizure Cases No Rarity’ (2007) *DENVER POST* 37.

47 H. Smith, ‘The Principle of Unjust Enrichment in English and German Law’ (1997) *Otago Law Review*, 37.

48 See S. Fennell, ‘Misdirected Funds: Problems of Uncertainty and Inconsistency’ (1994) *57 The Modern Law Review*. See further P. Key, ‘Bona Fide Purchase in the Law of Restitution’ (1994) *Lloyd’s Maritime and Commercial Law Quarterly* 421.

The justification for the award of restitutionary remedies to vindicate the claimant's property rights stems from the fundamental principle of English law that property rights are of such importance that they are deserving of particular protection.⁴⁹ But, despite this, it might be thought that it does not matter whether the restitutionary claim is analysed with reference to the vindication of property rights or unjust enrichment. It is certainly true that in many cases, the same result will be achieved regardless of how the claim is analysed. But the proper analysis can matter for practical reasons, such as whether the defence of change of position should apply, what the elements of the respective causes of action might be and which remedies are potentially available. It also matters for intellectual reasons, since it is the legitimacy of the vindication of property rights principle which has become the battleground for vital theoretical discussion amongst commentators and increasingly judges about the proper classification of rights and remedies both at law and in equity.⁵⁰ If one person has unjustifiably received either property or money from another, he has an obligation to restore it to the rightful owner in order that he should not be unjustly enriched, or 'retain an unjustified advantage'.⁵¹ The registered owner has acquired his property right and will be seeking the direct enforcement of this primary right. The ownership of an asset cannot be detached from it; rather, the equitable ownership in the substitute asset is newly created in response to unjust enrichment. The basic purpose of restitution is to achieve fairness and prevent the unjust enrichment of a party. Restitution is used in contractual situations where one party has conferred a benefit on another party but cannot collect payment because the contract is defective or no contract exists.

Notwithstanding the afore-said justification provided by the theories for the doctrine of adverse possession, the United Kingdom's Law Commission ('the Law Commission') established that this justification is only relevant regarding unregistered land, since title to unregistered land is relative and, thus, depends on possession.⁵² The Law Commission reasoned that this justification does not take into account the significance of registration of title.⁵³ It argued that any uncertainty pertaining to the status of title is removed once it is registered and the register provides conclusive proof of ownership of land.⁵⁴ To allow adverse possession in such a framework would be inconsistent with the principle that the register is conclusive concerning the ownership of land.⁵⁵ Through this evaluation of the traditional justifications for adverse possession, the operation of unqualified adverse possession regarding registered land suddenly seemed to some to 'endorse' a form of 'land theft'.⁵⁶ The disappearance of the conveyancing justification led the Law Commission to conclude that it can no longer be justified to have adverse possession in relation to registered land.⁵⁷ Therefore, the Law Commission found that the doctrine of adverse possession 'runs counter to the fundamental concept of indefeasibility of title'. The unfairness of the rule, hostility and criticism towards the doctrine particularly in its application to registered land, therefore, gives merit to restricting its operation by unjust enrichment and restitution standards.

The theory of unjust enrichment and restitution in a nutshell offers a compelling lens through which to critique the operation of adverse possession in Lagos State. The theory asserts that no individual should be enriched at another's expense without a valid justification. In the context of land registration, adverse possession often results in the unjust enrichment of possessors at the expense of registered titleholders, particularly when the latter have paid taxes or fulfilled other obligations associated with ownership. This is evident in Lagos State, where the LRL 2015 does not adequately address the inequities arising from adverse possession. Applying an unjust enrichment standard to adverse possession claims would mitigate these injustices by requiring adverse possessors to compensate registered owners for the value of the property or any associated expenses. Such a framework would balance the interests of both parties, ensuring fairness and equity in line with contemporary legal principles⁵⁸ Furthermore, the restitutionary aspect of unjust enrichment underscores the need to protect registered ownership by allowing rightful titleholders to recover their property or receive equivalent compensation. In Lagos State, this approach would align with the LRL 2015's objective of promoting conclusive and equitable land registration. Adopting restitution principles, as advocated by scholars and seen in global best practices, would address the perceived injustices of adverse possession and reinforce the integrity of the registration system⁵⁹

⁴⁹ E. Sherwin, 'Reparations and Unjust Enrichment' (2004) *B.U. L. REV.* 57.

⁵⁰ *Ibid.*

⁵¹ See the definition as offered by a *Dictionary of Law* by J. Law and E.A. Martin, *Dictionary of Law*, 7th ed. (Oxford University Press, 2009)

⁵² Land Registration for the Twenty-First Century: A Conveyancing Revolution – Number 271 (July 2001) paras 2.73.

⁵³ *Ibid* at paras 2.70, 14.3, 14.54.

⁵⁴ *Ibid* at paras 2.73, 14.3, 14.6, 14.10, 14.54.

⁵⁵ *Ibid* at paras 2.73, 14.2-14.6, 14.54.

⁵⁶ *Ibid* at paras 10.11, 10.44.

⁵⁷ *Ibid* at paras 14.1-14.8.

⁵⁸ *Supra* note 36

⁵⁹ *ibid*

3. Conclusion and Recommendation

The interplay between the *Lands Registration Law of Lagos State 2015* (LRL 2015) and the doctrines of adverse possession reveals critical theoretical and practical tensions. Through the lens of the indefeasibility of registered title theory, it is evident that adverse possession undermines the core objective of land registration laws—certainty and conclusiveness. LRL 2015,⁶⁰ which states that registered titles constitute conclusive evidence of ownership, exemplifies this principle. However, the continued recognition of adverse possession, albeit indirectly, contradicts the indefeasibility of registered titles and weakens the reliability of the land register. The property rights theory further underscores the challenges posed by adverse possession. Rooted in natural law, this theory asserts that ownership derives legitimacy from first possession, labor, or occupation. The LRL 2015⁶¹, reinforces the requirement that all property interests be formally registered to gain legal recognition. Yet adverse possession enables the acquisition of land ownership without compliance with registration requirements, creating a conflict between statutory registration and the possession-based approach inherent in adverse possession. Lastly, the unjust enrichment and restitution theory identifies a significant moral and economic flaw in adverse possession: the unjust benefit it confers upon the adverse possessor at the expense of the rightful registered owner. This principle is especially relevant in Lagos State, where landowners are burdened with financial obligations such as taxes and registration fees under the LRL 2015.⁶² Adverse possession creates a scenario where the adverse possessor benefits from land use without corresponding legal responsibilities, resulting in inequity and undermining the integrity of the registration system.

The application of adverse possession in Lagos State's land registration system represents a doctrinal inconsistency that undermines the principles of indefeasibility, property rights, and equity. The *Lands Registration Law of Lagos State 2015* is designed to secure land rights through registration, as illustrated by its provisions emphasizing the conclusiveness of registered titles and the requirement for formal registration of interests. However, the persistence of adverse possession, which prioritizes occupation over registration, challenges the law's fundamental objectives. The findings reveal that adverse possession conflicts with the LRL 2015 by creating legal uncertainty, disregarding the legitimacy of registered ownership, and facilitating unjust enrichment. Addressing these issues is imperative for aligning Lagos State's land registration law with its theoretical underpinnings and ensuring its alignment with global best practices. The following measures would be helpful.

The Lagos State government should explicitly exclude the doctrine of adverse possession from applying to registered land. This would reinforce the provision of the LRL 2015,⁶³ ensuring the indefeasibility of registered titles and upholding the register's conclusiveness as the sole determinant of ownership. Drawing on the unjust enrichment and restitution theory, the LRL 2015 should be amended to require that any adverse possessor claiming ownership compensate the registered owner for the value of the land and associated financial obligations borne during the adverse possession period. This approach balances the equities between the parties and mitigates the perceived unfairness of adverse possession. The government should enhance public awareness of the requirements and benefits of land registration to minimize unregistered transactions and potential conflicts. Strict enforcement of LRL⁶⁴ which mandates the registration of all property interests, is essential to preempt disputes and reinforce the importance of formal registration. Courts in Lagos State should adopt a restrictive approach to adverse possession claims, ensuring that such claims do not override the statutory provisions of the LRL 2015. Judicial decisions should prioritize the principles of indefeasibility and equity embedded in the law.

⁶⁰ Section 27 of the LRL 2015

⁶¹ Sections 2, 18, 26(1) of the LRL 2015

⁶² Sections 28 and 118 of the LRL 2015

⁶³ Section 27 of LRL 2015

⁶⁴ Section 2 of the LRL 2015