ADDRESSING THE IMPEDIMENTS TO THE PERFECTION OF LAND TITLE IN NIGERIA: A COMPARATIVE DISCOURSE WITH ENGLAND

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I. INTRODUCTION

Land resources in Nigeria include trees, rocks, and buildings. Land as a resource has abstract rights and interests like incorporeal hereditaments, right of way, easements, and profits enjoyed by persons over the property or ground belonging to others. In Nigeria, several titles to land are held by persons; sometimes, litigations arise from the conflict in land titles, and in many instances, trespassing is alleged over ownership tussles. In Nigeria, communities lay claim over ownership of land in the community; families also claim a particular portion of land as family property. There are also government lands over which families, communities, and individuals are divested of title. The land title comes in different modes ranging from communal receipts to family receipts, survey plans, and certificates of occupancy issued by the Governor of a state. In many instances, industrialists, real property investors, and even foreign investors do not find it easy to access land for manufacturing and agricultural ventures. This was why the Governor owned all land in the state, allocating them via a certificate of occupancy (C of O) to enable genuine investors to get sufficient ground for the economic development of Nigeria. Academics, members of the bench, and legal practitioners have discussed the importance of land resources and the need to make land readily available for developmental purposes. Accessing land had been a significant challenge in Nigeria, with much litigation in many Courts over trespassing and ownership issues. There are often delays in getting the C of O, coupled with corruption and favouritism. There is a need for reforms in the land sector to repeal the provision for a C of O granted by the Governor

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and replace the same with other modes of land documentation. If the suggested reforms are adhered to, the perfection of title to land will be simplified and free from corruption and delays.

The Black's Law Dictionary defines land thus:[1]

> (1) It is an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and the surface, and everything growing on or permanently affixed to it. (2) An estate or interest in real property.

The Interpretation Act,[2] on its part, defines land as: 'including any building and any other things attached to the earth or permanently fastened to anything so attached, but does not include minerals.' The two definitions reveal the importance of land resources to any country worldwide. The earth's surface is the land, and all that grows on it constitutes raw materials for the manufacturing sector and it takes care of the housing needs of the citizens of Nigeria.

While the constitution gave the right to acquire land,[3] the Land Use Act[4] prescribed the mode of the acquisition and the ways of perfecting titles of any land. Land resources are crucial to the citizens in their endeavours, so the constitution gave citizens the right to own and dispose of immovable properties in any part of Nigeria. We shall examine how it operates in practice.

II. ACQUISITION OF ORIGINAL TITLE TO LAND IN NIGERIA

A. The First Settlement at a Location

There is a popular Nigerian saying, *omo onile no nile*, meaning that the owners of the land are the sons of the land; hence these dwellers have a superior claim to any land matter arising in that community. This is so because the *omo onile* are the descendants of the first settlers and are the people who can and are entitled to control and manage native land. These natives were the initial or first settlers in the community, and unless it can be proved that the first settlers coopted the new or second settlers into joint ownership, joint ownership cannot be upheld. These first settlers or settlers could be individuals, groups of persons or families. The courts have repeatedly held that ownership goes to the first settler in the absence of anything to the contrary; thus, in *Owonyin v. Omotosho*,[5] the court said:

> But ownership or title must go to the first settler in the absence of any evidence that they jointly settled on the land or that a grant of joint ownership was made to the later arrival by the first. The question, therefore, resolves itself to this – who was the first settler on the land.

1 *Black's Law Dictionary* 9th edn (2004) 955.
2 The Interpretation Act Cap 123 LFN, 2004.
3 Section 43 Constitution Federal Republic Nigeria, 1999.
4 Laws of the Federation of Nigeria, 2004.
5 (1962) WNLR 1.

It follows that the first settlers must convincingly state how they became the first settlers, and if that is well settled, any other person claiming title to any land in the community must trace their root of title to the first settlers. This is why when solicitors draft a deed of assignment, a recital is inserted, tracing the history of the land until it gets to the hand of the present assignor. A family receipt is essential in the sale of land in Nigeria because it shows that the land was bought from its owners by the first settlement. The family receipt and a deed of assignment entitle a purchaser of land to approach the Government for issuing a C of O.

B. Conquests Confer Original Titles

Conquest is the invasion by one group of people against another group whom the invading party considers weak. Some centuries past, some groups may have invaded a community of settlers via warfare, conquered the first settlers and even compelled them to pay tribute to the new invading colonists. Invasion into a new territory or conquest operated in the era of survival of the fittest, and there were no international regulations of state relationship with one another or laws prohibiting communal invasion and clashes. There are now international laws such as the United Nations declarations[6] on the rights of people in a country. There are laws on the indigenous right to self-determination,[7] which implies that the domination of a group of people by another group is prohibited under international law. With these laws in operation, no nation or community is permitted to annex another country or community. Although in the case of *Mora v. Nwalusi*,[8] the Privy Council gave a nod that possession through conquest can establish title, such control must have been so long that there is no doubt of their ownership of such land regardless that the owners got their title through conquest.

III. MODES OF ACQUIRING PRIVATE REAL PROPERTY IN NIGERIA

A. Land Can Be Inherited

Black's law defines inheritance as 'An estate or property which a man has by descent, as heir to another, or which he may transmit to another, as his heir.'[9]

From the definition, it means that when a relation, presumably a father, dies intestate, his real property passes on to his children or next of kin through inheritance. When a relative takes over the ownership and administration of the estate, we then say heritage has taken place. Land can be acquired by inheritance, in which case those who received the land do not need a purchase receipt or Deed of Assignment to evidence title. Incidentally, if a person had several children before his demise, all the children would inherit the properties as family

6 1948.
7 United Nations Declaration on the Rights of Indigenous People in September 2007.
8 (1962) 1 All NLR 681.
9 *Black's Law Dictionary*, *supra* note 1.

properties,[10] and the eldest child would administer them as a family for the benefit of all other siblings. However, the inherited family property may later be partitioned and owned individually, and each person can alienate their portion without the consent of the other siblings.

B. Land Can Be Purchased

In *Folarin v. Durojaiye*,[11] the court recognises the purchase of land by customary transaction. This means that a parcel of land can be purchased under the native law and custom of the area where the land is located. Witnesses must attest to the land purchase transaction, and the seller must physically lead the purchaser into possession, which evidences the customary transfer of title to the buyer. From thence onward, the seller becomes a former owner and has lost or transferred all his rights and privileges on the land to the new owner. The court recognised landed property sales by the English legal system. The sale of land under the English system is considered a fee simple estate. This law requires the buyer and seller to prepare and sign a Deed of Assignment witnessed by third parties. If it turns out that the seller is not the valid owner of the property, the sale transaction becomes *void ab initio*, as no man can give what he does not have.[12] Suppose it is later discovered in an investigation by a proposed buyer that the seller does not have title to the land he alienated. In that case, the seller becomes liable under the indemnity clause of the executed Deed of Assignment, whereby he will be required to refund the purchase price and compensate the buyer for all expenses incurred by the buyer as a result of the seller's defective title.

C. There Is the Gift *Inter Vivos* Concept

Black's law dictionary defines *inter vivos* gift as:

> an act whereby something is voluntarily transferred from the true possessor to another person with full intention that the thing shall not return to the donor, and with full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver.[13]

When a person makes a gift *inter vivos*, the intention is an absolute gift, and such gift, when completed, cannot be cancelled or recalled. Usually, there will be a Deed of Gift to evidence such a transaction. The beneficiary of the *inter vivos* gift is under no obligation to return the gift even if the giver changes his mind after making the gift. The gift deed also binds the giver's representative and next of kin. The court held that the receiver of the *inter vivos* gift acquired permanent ownership and title and that the land cannot be recalled or the gift cancelled even

10 *Ogunmefun v. Ogunmefun* (1931) 10 NLR 82.
11 (1988) INWLR (pt 70) 351.
12 *Okonkwo v. Dr. Okolo* (1988) 2 NWLR (pt 79) 632.
13 *Black's Law Dictionary*, *supra* note 1 at 657.

if the beneficiary misbehaves in the future; this was the court's decision in *Jegede v. Eyinogun*.[14] An *inter vivos* gift is not a conditional gift or a pledge and so is not subject to the good behaviour of the receiver in the future.

D. The Gift of Land on a Conditional Basis

A conditional gift of land is similar to a leasehold estate under the English estate system. The English system has a fixed term or tenure, and the leasehold reverts to the Lessor. In contrast, under the customary law system, a conditional gift of land has no fixed period. It runs continuously subject to the good relationship between the overlord and the beneficiary. Under the native law and customary practice, the beneficiary or the grantee will constantly be in possession so long as he recognises the grantor's ownership and pays the usual tribute called *Ishakole* in local parlance to the overlord. The overlord has the power and right of reversion if the grantee attempts to sell or alienate the property without recourse to the overlord. The grantee loses the right to possession whenever he tries to assert ownership or fails to recognise the overlord and stops paying tribute to the overlord. The right to remain in control by the grantee passes to his next of kin, who must continue to recognise the overlord by paying the tribute. The actual position of the conditional gift under the customary tenancy is well captured by his lordship in the case of *Etim v. Eke*,[15] where the court declared in the following words:

> It is now a settled law that once land is granted to a tenant under Native law and custom, whatever may be the consideration, full possession rights are conveyed to the grantee. The only right remaining in the grantor is that of reversion if, at any time, the grantee denies the title of the grantor or abandons or attempts to alienate. Without the grantor's permission, the grantee cannot convey to strangers any rights regarding the land.

E. The Concept of Land Borrowing under the Native Law

There are instances where a land owner may gift his land to another person for specific purposes. At the end of the goal, the owner reclaims his land, or better put; the owner exercises his reversionary power or right. There could be a traditional festival or event that takes place annually or seasonally in a community. An owner of a parcel may lend his land to a person or group of persons for the seasonal event. After the events or festival, the property reverts to the original owner. If the land is borrowed and there is a reversionary right of the owner, it will be absurd or wrong if the borrower chooses to build a house on the ground; if such is done, it will work against the reversionary right of the valid owner. Native law does not contemplate erecting permanent structures on borrowed land. No wonder the

14 (1959) 5FSC 270.
15 (1941) 16 NLR 43 at 50.

court observed in the case of *Adeyemo v. Ladipo*[16] that borrowing land for erecting houses is unknown under customary law because it will rub the original owner's right of reversion.

F. Pledge or Customary Mortgage

A pledge is like the modern-day mortgage. It is a customary practice whereby a land owner can use his land as collateral to obtain a loan from another person, with the understanding that the pledger can redeem his land at any time when he repays the traditional loan obtained from the pledgee or his creditor. A pledgee can never metamorphose into an owner under the pledge arrangement, no matter how long the pledger takes to repay the loan. This is why it is said that a pledge always remains a pledge. While the pledge subsists, the pledgee can plant crops and harvest them and use the land in any manner beneficial to the pledgee, provided it does not hinder the reversionary rights of the original owner whenever the actual owner is ready to pay the loan. In *Amao v. Adigun*,[17] the court held that the customary pledge permits the pledgee to harvest his crops even if the pledger had repaid the loan. The pledgee is, therefore, not under undue pressure to remove his crops if the pledger suddenly comes forward to liquidate his indebtedness.

IV. THE IDEA OF DERIVATIVE TITLE TO LAND IN NIGERIA

In the olden days, it was unheard of or rather an abomination for a family to sell land absolutely to an outsider or anyone else. Land ownership by a community was joint ownership and was held in trust by the chiefs or traditional rulers to benefit the community as a whole. No one contemplated land sale in the manner in which we have it today. The Africans believe that the land belongs to the present and future generations, so it was unheard of that land be alienated. In *Lewis v. Bankole*,[18] Osborne C.J. noted emphatically that permanent alienation of land was alien to native Africans. Osborne C.J. said, 'The idea of alienation of land was undoubtedly foreign to native ideas in the olden days.' The land was held communally by the traditional ruler for the benefit of all members. Any community member who desired to build a house could apply to the traditional ruler, who was the custodian of the land, and a portion would be allotted to him for that purpose. This implies that the member who was allotted land was not entitled to sell or permanently alienate the land. If he abandoned the land, the land reverted to the community. The communal land served farming purposes and was used for festivals and celebrations, and no one laid absolute claim of ownership of any portion of the land. Communal land could be used as a pledge or conditional gift, but these were not permanent ownership transfers. However long a pledgee uses a parcel of land, it can never metamorphose into a passage of title of ownership to

16 (1958) WRNLR 138.
17 (1957) WNLR 55.
18 (1908) INIR 81.

the pledgee. With the advent of Europeans and other foreigners into Nigeria and other African nations, pressure began to mount on the African natives to release communal land for commercial and agricultural purposes. Factories needed raw materials, and the land must be used to produce the raw materials required for imperial industries overseas. The European merchants began to entice the native Africans with gifts and sometimes used intimidation to get the lands for their commercial interest.

Not too long ago, the Africans began to yield to pressure and began alienating lands to foreigners and colonial masters. Africans also desired modernisation and European civilisation; they began to release their land permanently for valuable consideration. Confirming the later trend of absolute alienation of land in the face of urbanisation, the Privy Council in *Oshodi v. Balogun*,[19] shed more light on this point:

> In the olden days, it is probable that family lands were never alienated; but since the advent of Europeans and foreigners in Lagos many years ago, a custom has grown up of permitting alienation of family land with the general consent of the family and a large number of premises on which substantial buildings have been erected for purposes of trade or permanent occupation have been so acquired.

Their lordships see no reason for doubting that the title acquired by these purchasers was absolute and that no reversion in the hand of the Chief was contemplated. There is no doubt that total land alienation in Nigeria has come to stay, provided that valuable consideration is furnished. Fee simple estate, as we have in the English form, is part of the land tenure system in Nigeria. It is a product of European influence.

Okulade v. Awosanya[20] defined a family thus:

> family is a body of persons who live together in one house or under one head including parents, children, and servants. The group consists of parents and their children, whether living together or not. In the wider sense, all those are nearly related by blood or affinity. Those descendants claim descent by common ancestors, a house, kindred or lineage. Following the above court definition of family, we would define the family house as a residence which the father of a residence sets apart for his wives and children to occupy jointly after his death. All his children are entitled to reside there with their mother, and all his married sons with their wives and children. Also, a daughter who had left the house on marriage can return to it by deserting or being deserted by her husband. Only with the consent of all those entitled to reside in the family house can it be mortgaged or sold.

19 (1936) 4 WACA 1 at 2.
20 (2002) FWLR (pt 25) 1.

At the demise of the founder of a family, the property of the deceased founder devolves into his children as family property.[21] The Supreme Court had ruled that any alienation of the family property by an individual is void *ab initio*.[22] The family property belongs to no single person in the family. It belongs to all children of the deceased father in perpetuity as family land. Family property can be created by a conveyance, where land is purchased with the money belonging to the family. The family property can be made via the Will of the deceased father. Family property can come to an end through the instrumentality of partition.[23]

V. FAMILY PROPERTY CONCEPT IN NIGERIA

A. Ownership and Possession as It Applies to Land in Nigeria

For a better understanding of the meaning of ownership, we shall have recourse to the description given by Niki Tobi J.C.A. (as he then was) in *Abraham v. Olorunfemi*.[24] The learned jurist puts it this way:

> It connotes a complete and total right over a property. It is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation, transfer or disposition of the property. He exercises his right of alienation and disposition without seeking the consent of another party because, as a matter of law and fact, there is no other party's right over the property that is higher than that of his, and it is final; the owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose detrimental to his personal or proprietary interest. Nobody can say anything so far as the property is his and inures in him. He is the Alpha and Omega of the property. The property begins with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the undisputable owner.

An owner of land owes no allegiance to anybody related to that land. He decides what to do with the ground without consulting anyone or seeking the consent of anyone. He can dispose of the land via gift or sale and can mortgage the land for as long as he deems fit, and he cannot be questioned because he has the title of ownership superior and far above any other person. He holds the land free of encumbrance because the final say about the property starts and ends with him. Even if he seeks opinions on what to use the property for, he does so at his discretion and is not bound to accept the suggestions or advice offered to him, even by an expert. The owner's power over the property can be considered totalitarian, as he has overall control over the land.

21 *Ogunmefun v. Ogunmefun* (1931) 10 NLR 82.
22 *Ibid.*
23 *Olowosago v. Alhaji Adebanjo* (1988) NWLR (pt 88) 275.
24 (1991) I NWLR (pt 165) 53.

Sir Frederick Pollock[25] described ownership as a right to control a property recognised and protected by law. Such an owner holds an absolute title that can be passed to another person. Until the owner surrenders his ownership to another person via purchase or gift, his ownership rights remain absolute and unchallengeable.

VI. POSSESSION AS IT APPLIES TO LAND

Possession means being in physical control with the consent of the valid owner. Possession is derived from the Latin word possessionem. It indicates that condition of fact under which one can exercise his power of a material thing at his pleasure to the exclusion of others.[26] Being in possession also connotes an overlord who the person in possession must recognise. Possession can be with one person, while ownership rests with another person. The possessor and the owner may also be the same person, where a man uses his land to operate a factory for car tyre manufacturing. To be in possession does not mean the possessor must be physically present. The possessor may employ people working for him on the land for farming or building purposes. The land could be demarcated by pegs, perimeter fence, planting crops, or merely putting beacons and farming on the ground to show that one is in possession.[27] The possessor is entitled to ward off any trespasser, even if the trespasser is the valid owner. The actual owner can go to a court of competent jurisdiction to establish his superior title; if he succeeds, he can displace the man in mere possession. It should be noted that if the possessor holds the land for so many years unchallenged, the possession could translate to the title due to laches, acquiescence, or abandonment of the property.[28] This is why an owner should be collecting tribute or rent from tenants or a person in possession so that the possessor does not turn himself into an absolute owner in future. A person who went away from his property for three years but had a caretaker who collected rent on his behalf was held to be in possession.[29] Ordinary fencing of the land and physical distinction had been held to constitute enough possession.[30]

VII. CONTROL AND MANAGEMENT OF THE COMMUNITY

Customary land tenure had long been recognised, even during the colonial days. The Privy Council had long restated this rule of customary land tenure in *Amodu Tijani v. Secretary*, *Southern Nigeria*,[31] where Coussey J.A. (as he then was) said: 'There can be no quarrel with that statement of customary tenure. The land tenure system under the native law and custom traces the control and management of

25 O. Pollock, *Jurisprudence and Legal Essays*, London (1961) 93.
26 *Akinsanya v. Ajeri* (1997) 12 NWLR (531) 99, 108–109.
27 *Ajero v. Ugorji* (1999) 10 NWLR (621) 1 SC.
28 B.O. Nwabueze, *Nigerian Land Law*, Nwamife Publishers Limited Enugu (1972) 10.
29 *Iseru v. Catholic Bishop of Warri Diocese* (1997) NWLR (pt 495) 517.
30 *Wuta-Ofei v. Danquah* (1961) 3 All ER 596.
31 (1921) 2 AC 399 at 404.

communal land in Africa.' The position of the custodian of the customary land comes into focus. The Chief is presumed the owner of the community land and acts like an owner. Although he is not the sole owner of communal land, he is vested with the power of the land. He may be likened to a trustee on behalf of the community, but he is not, in the true sense, a trustee because the community is not the principal of the traditional ruler. The traditional Chief would see to it in any matter patterning to the communal land. He is a representative of his subjects, and no issue can be resolved about the communal land without the involvement of the traditional ruler. He represents the community, but he is not an agent of the community, and the community is not his principal. The community land is jointly owned by the community, the Chief inclusive. The traditional ruler is not in a trusteeship relationship with his subject in the sense of English law on trusteeship. Trust arrangements must have a beneficiary. The Chief or king is also a beneficiary in the community land. In any lawsuit arising out of the land, the traditional ruler will go to court on behalf of the community. If compensation, rents, or tribute is to be paid to the community arising from using the communal land, the Chief will receive it.[32] In *Amodu Tijani v. Secretary of Southern Nigeria*,[33] the court restated that the Chief was the man who must, by law, represent the community in any action since he was legally in the custody of the community land for the benefit of the community. He is also entitled to enter into a lawsuit on behalf of the community. Any alienation of any part of communal land without the authorisation of the traditional ruler is void and of no effect whatsoever. No community member can question the traditional ruler on any issue arising from the communal. However, the traditional ruler may occasionally brief the family heads or his council of elders on matters arising from the communal land. In the Ghanaian case of *Rutterman v. Rutterman*,[34] the court held that the Chief is not the sole owner of the communal land, but the control and management of the land rest in him, and he is not answerable to the subject. His subject cannot sue him over land management.

VIII. HOW CAN LAND TITLE BE ESTABLISHED IN THE NIGERIAN COURT?

It must be stated that the police cannot and do not declare actual ownership even though their investigation reveals that Mr A is the valid owner. The police investigation is not necessary in a land dispute except if there is a threatened breach of peace by the disputing parties; in that case, the police may be called upon to wade in and restore peace, and after that, the police are expected to advise the parties to file an action at the High Court through their lawyers. It is ultra vires and unconstitutional for police to assume a judicial role in land disputes. It is a common feature in Nigeria to see the police invite disputing parties over land issues and begin to investigate which party truly owns the land. This practice by

32 (1921) 2 AC 399.
33 *Ibid.*
34 (1937) 3 WACA 178.

the police force is wrong. The police should inform the parties to consult their lawyers to file actions at the High Court on their behalf. Many Nigerians, even the elite, still run to the police on land disputes. The Nigerian police must learn to be truthful in telling a complainant that it is not within the jurisdiction of the police to adjudicate land matters or even tenancy matters. The State High Court of Law has jurisdiction over an issue arising out of land in Nigeria. Without first coming before a High Court at the first instance, any court that assumes jurisdiction, the decision reached in such a court is a nullity. The claim or action on a declaration of title to land is a civil one, and the burden of proof lies on the person who would lose if no evidence is adduced on either side, according to section 132 of the Evidence Act.[35] For instance, if a plaintiff files an action in trespass against a man, then the man files a statement of defence averring that he is the plaintiff's tenant and cannot be a trespasser. Because of the Evidence Act, the plaintiff cannot prove that the defendant is not his tenant. The onus rests on the defendant to establish his tenant status. If he does so, the burden shifts to the plaintiff to disprove the defendant, a non-tenant of the plaintiff. A title claim to the land is based on a preponderance of evidence and never proven beyond a reasonable doubt.

A claimant or plaintiff who files an action to prove his ownership of land must prove any of the five principles or adduce evidence to establish any of the five grounds. The Claimant does not need to prove all five grounds to succeed. The five grounds are:

i. By traditional evidence. This involves a claimant calling family witnesses to prove traditionally that the Claimant is the property owner. Members of the family will trace the route of ownership from the first settler or original owners before it gets to the hands of the present person claiming ownership of the land. This title route may establish that a party's ancestors acquired the land through settlement or conquest before the title is passed to the person via the derivative title of inheritance.[36]
ii. By production of documents of title duly authenticated unless they are documents of 20 years old or more produced from proper custody.[37]
iii. By an act of possession in and over the land in dispute extending over a sufficient time, numerous and positive enough to warrant the inference that the persons in custody are the actual owners.[38]
iv. By acts of long possession and enjoyment of another land so situated and connected similarity that the presumption under section 46 of the Evidence Act[39] applies and the inference can

35 2011.
36 *Dakolo v. Dakolo* (2011) 46 (pt 2) 669 at 690–691.
37 *Momoh v. Umoru* (2011) 46 (pt 1) 292 at 363–364.
38 *Idundun v. Okumagba* (1976) 9–10 SC 227.
39 2011.

be drawn that what to be true of the other piece of land is likely to be true of the other part of the land.[40]

v. By proof of possession of connected or adjacent land in the circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner to the land in dispute.[41]

Interestingly the above conditions for proving title to the land were established by the Supreme Court through the lead judgment of Fatayi-Williams J.S.C. (as he then was) in the case of *Idundun v. Okumagba*[42] and has since been restated by the courts and the apex court itself in many cases that came before them.

IX. THE *LOCUS STANDI* QUESTION IN ACTION FOR TITLE TO LAND IN NIGERIA

For a person to initiate an action relating to title to land, he must bring before the court some piece of evidence that links him to the property in dispute; if not, the person becomes a meddlesome interloper, a busybody indeed. Something must show that the Claimant had a connection or interest in the disputed land; if not, he becomes a stranger, and the court cannot hear a stranger on a subject that does not concern him. This is what *locus standi* means. It is settled that *locus standi* denotes the legal capacity to institute a proceeding.[43] It is, therefore, advisable that a claimant possesses any of these documents to convince the court that he has a connection or interest in the property in dispute; if he fails to do so, his claim will disclose no good course of action and consequently his action for a declaration of title or trespassing of the land will fail in its entirety. Such documents, one of which a litigant must tender, to establish a *locus standi* include Irrevocable Power of Attorney or ordinary power of attorney, Deed of Gift, Deed of Assignment, Purchase Receipt, Letter of Administration, Will, and Family receipt. Without any of the above documents, a claim of title will not disclose a reasonable cause of action; hence there will be no *locus standi* to institute a suit for title to land.

X. THE ROLE OF THE GOVERNOR UNDER THE 1978 DECREE, NOW LAND USE ACT 2004, IN NIGERIA

The control and management of urban land are in the hands of the Governor of each state of the Federal Republic of Nigeria.[44] By this privileged position, the Governor holds land in trust for the citizens of his state. He can make land available to any entrepreneur or industrialist who needs vast land for developmental and agricultural purposes. This further means that the Governor

40 *Nnadozie v. Omesu* (1969) 5 NWLR (pt 446) ratio 5 CA.
41 (1976) NSCC 445.
42 *Ibid*.
43 *Benedicta Ojukwu v. Louisa Chinyere and Anor* (2008) vol. 36 (pt 7) NSCQR 1279 at 1299.
44 Land Use Act 2004, section 1.

can acquire a portion of land for the public interest, like building a school, hospital, train station, motor parks, housing estate scheme, etc. The summary is that the Governor holds the land for the benefit of the citizens and is not expected to use his privileged position to oppress the people or unduly deprive the people of their land in the guise of public use without paying adequate compensation to the victims. This was why the court of appeal in *Lemboye v. Ogunsuji*[45] held that section 47 of the Land Use Act[46] was inconsistent with sections 1, 4(2), 4(8), and section 6 of the constitution of Nigeria. The court declared the action of acquiring the property without compensation unconstitutional. The Governor cannot erode the constitutional right of the citizens to own and dispose of property without first payment of adequate compensation.

Upon allocating land for whatever purposes, the Governor must perfect the title created by issuing a C of O to the allottee. Upon the allocation of land to anybody, the Governor must give a C of O as a document of perfection of title to the allottee. The Local Government Chairman has similar power over land subject to rural area jurisdiction.[47] The Nigerian Supreme Court confirmed this position of the Governor in *Adisa v. Oyinwola*.[48] This privileged power of the Governor to allocate and acquire land can be challenged via judicial review, and the court had held in *Lemboye v. Ogunsiji*[49] that compensation must be paid upon land acquisition by the Governor.

XI. OWNERSHIP OF PROPERTY IN THE ENGLISH LEGAL SYSTEM IN COMPARISON TO NIGERIA

All land in England and Wales belongs to the Crown. This means that all landholders are leaseholders.[50] The Crown system does not apply to Nigeria. In Nigeria, the land is held by the Governor of each state of the federation, who perfects the title of land owners by issuing a C of O. The Governor allocates land to those who need it for commercial and agricultural purposes.

The United Kingdom operates the leasehold and freehold estate system. The freeholders own the property and the land upon which the property is situated.[51] The freeholder will be responsible for the maintenance and can alter the structure in line with applicable estate laws. In the Nigeria land tenure system, there are leasehold estates which the state government builds and sells to allottees, with the Government providing guidelines for the use and maintenance of the estate. The Governor is the head Lessor, and the allottee is the lessee for a term of 99 years, after which the lease reverts to the Governor as the permanent title holder

45 (1987) SC 169.
46 Land Use Act, *supra* note 44.
47 *Ibid.* section 11, 12, 47.
48 (2000) NSCC 7 (SC 304 of 1991).
49 [1990] 6 NWLR 210 (CA).
50 Law of Property Act 1925.
51 S. Bright, *Property Law*, Oxford University Press (2016) 23.

of all lands in the state.[52] This 99-year rule does not apply to the English system. The owner of a piece of land in Nigeria is referred to as an 'allottee' and not an outright owner because the lease has a limitation of a 99-year term. The state government owns the land upon which a house is built in Nigeria. In maintaining the reversionary right, the state government collects ground rents and Land Use Charges or Tenement rates annually.

It is to be noted that the English Monarch, who is currently King Charles III, has an overriding interest in land matters in England, Wales, and Northern Ireland. This theoretical position of crown land ownership has no consequences unless a freehold has no owner.[53]

In England, a person who buys a house buys it on freehold and owns it outrightly. To perfect his title, he has to register the property with the HM Land Registry, creating property identification of the ownership in case of search or dispute.[54] Nigeria has a similar status. A land owner must prepare a deed of assignment and survey plan, obtain a land information certificate, and register the land at the land registry. After that, the purchaser of land in Nigeria must approach the Government for the C of O.[55]

There are similarities in land ownership in Nigeria and England with few variations, as stated above. This is understandable because Nigeria was a former British colony and inherited a similar land tenure system.

XII. WHAT REFORMS ARE REQUIRED IN THE LAND SECTOR IN NIGERIA?

The objective of the Land Use Act is to place land under the control and administration of the Governor of the respective states of Nigeria so that those who genuinely need land for commercial agriculture, industrial and other developmental purposes can quickly get such lands from the Governor and a C of O issued to such an individual. A Governor cannot be sued for denying any applicant a C of O.[56] Sections 5 and 6 of the Act[57] mandate that the Governor or the Chairman of a Local Government issue a C of O and Customary Right of Occupancy, respectively. Laudable as it may appear, in practice, the procedure for granting this title document from the Governor's office is tedious, highly bureaucratic, and open to abuse and corruption. Yet, the Act gave immunity to the Governor from legal action against refusal to grant a C of O. This means that nepotism and favouritism can be perpetuated against an applicant, and the applicant cannot run to the court as the last hope of the ordinary person. To this end, many applicants are denied this title document called C of O unjustly or for failure to offer bribes to those who work at the Governor's office. We, therefore, recommend that the immunity of the Governor be removed so that those who are

52 Land Use Act 1978, section 1.
53 K. Gray and S. Francis Gray, *Land Law*, Oxford University Press (2020) 27.
54 *Ibid*. at 123.
55 Land Use Act, *supra* note 44, section 9.
56 *Ibid.* section 47 (6).
57 Land Use Act, *supra* note 44.

unjustly denied the C of O could approach a court for an order of mandamus to compel the Governor to grant genuine applicants a C of O. We also recommend that the period for application and granting of the C of O be statutorily specified to be 30 working days, failing which an aggrieved applicant could approach the court for redress.

Secondly, the C of O should not be the only final recognised title to land for official transactions such as mortgages and loan facilities from a bank. Once a person buys a piece of land, executes a deed of assignment and does a survey plan, it should be a good title.

The parliament should statutorily provide in the Land Use Act that registration of land conveyance as done in the UK should be a suitable and sufficient title. The King or Queen of England does need to append her or his signature for a land title to be perfected. The Land Use Act should be amended to remove the bureaucratic power of the Governor in the perfection of title to land in Nigeria.