

**LAND INSTRUMENTS REGISTRATION LAWS OF STATES: THE PROVISIONS
VIS-A-VIZ THE EVIDENCE ACT AND THE PARADIGM SHIFT IN BENJAMIN
VERSUS KALIO**

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INTRODUCTION

The constitutions of the Federal Republic of Nigeria 1979 and (1999) constitution as amended [Section 14 {2}{b} under Fundamental Objectives and Directive Principles of State Policy, Chapter 11 and Sections 33, 43 and 44 under Fundamental Human Rights, Chapters iv} guaranteed security of lives and properties of every Nigerians. Lives cannot be said to be properly and well protected and secured without people's properties (both intellectual and real) well-guarded and protected.

Many reasons have been given by various authors diffusing, divulging and micro scoping the purposes for introduction of Land Instruments Registration Act and Laws. However, from all the views garnered, one purpose remains sacrosanct and well assumable. That is, controlling of transactions on the land by the citizens to guide and guard against dubious and fraudulent activities of land speculators and protect the interest of the state (public interests) in the proper management of the state's land. Therefore, this forms part of the efforts galvanized by Governments at both the federal and states levels to bring land transactions under control and management to safeguard citizens and state's interests in land, in line with the powers bestowed on the state by the Constitution of Nigeria 1999 as amended, the Land Use Act and Land Instruments Registration Laws of states respectively. **(Sections 1 and 2, Land Use Act, 1978 and also Land Instruments Registration (Preparation and Registration) Laws of various States.**

However, some provisions in the Land Instruments Registration Laws of states are mostly inimical, offensive and of course, proclaimed and portrayed the states' interest in revenue generation rather than controlling citizens' fraudulent and dubious transactions relating to

proper management of state's lands. Among which is making registration of land instruments a condition precedent to pleading and admissibility of evidence in causes and matters relating thereto before any law courts.

Sadly, enough many good land causes and matters had been lost as a result of this moribund, obsolete and archaic provision in the states' laws. A good example of this instance can be well explained through the cases of **Oredola Okeya Trading Company vs. A. G Kwara State {1992} 7 NWLR {PT 254} Pg 412 and Nasiru vs. Abubakar {1997} 4 NWLR {Pt 497} Pg 32**. The courts in the two cases held that a document that qualifies as an instrument must be registered. Failure to register it makes it unpleadable and inadmissible in evidence. And this forms the fulcrum of this paper.

The paper will therefore sail through history and evolution of land registration, an overview of the provisions of ordinances and laws on registration of instruments, the registerable instruments (instruments that must be registered), effect of non-registration of instruments, {in land and with courts pronouncements that seem to swing the pendulum from the previous holdings and positions of case laws to the present positions} conclusion and necessary recommendations.

HISTORICAL BACKGROUND

The system of registering title and interests in lands is known as the "Torrens system" which was named after its proponent, Sir Richard Torrens, who in 1858 first introduced registration of title into south Australia and where it later spread to many other parts of the world. Registration of titled as propounded by Richard Torrens rests squarely on three (3) principles listed as follows: -

- A law suit adjudicates title to be in the plaintiff/claimant's subject to any mortgage, easement or other interest the court finds to exist. This adjudicate of state of the title is officially registered on a conclusive certificate of title.
- When the registered land is transferred, a new certificate is issued by the registrar, after making a substantive review of what has happened to the title since the last issuance.

- An insurance indemnity fund is established to compensate the last interest because of the errors of the registrar or operation of the system.

It is instructive to note that at a point in history, registration of title and interests in lands was voluntary and not under compulsion (**Dukeminier Krier, Property 3rd Edition, Little Brown and Company by Jesse Dukeminier, Boston-Toronto-London 1993 Page 764**)

In Nigeria, land registration assumes three different dimensions, firstly, the government statutory system of registration of instruments affecting land. While the 2nd dimension is a government statutory registration of titles to land which applies majorly in southern states like Lagos state, Oyo state and Rivers state, etc. and lastly procedures under which local governments register transactions affecting land In Nigeria. (**Yakubu M.G, in his book Land Law in Nigeria, 1985, pages 117-118**)

The government statutory system of registration of instruments affecting land and proceedings over land transactions' registration under the local government system are mostly applicable in the Northern parts of the country. Therefore, the system of land titles registration does not apply in the northern states.

Niki Tobi {Retired Justice of the Supreme Court}, stated that the land registration started in Nigeria in the early 19th century and precisely 1863, when English law was first introduced into the colony of Lagos after it was ceded to the British crown. **Cases and materials on Nigerians Land Law (reprint)** page 139,

The registration later extended to other parts of southern protectorate in places like Asaba (now Delta State) and old Calabar (now Cross-Rivers State)

The repealed and subsequent editions of land registration ordinances were enacted and vested Governor with power to establish offices in some parts of the colony and protectorates. And this gave in to the establishment of a land registry in the Northern protectorate for the first time in Kaduna in 1915.

The land and native rights proclamation, 1910 provided in addition to the effect that all instruments affecting land which were registrable must be registered within six months of the execution or where the instruments happened to be a will, it must be registered within a year of the testator's death.

The proclamation did not, however, state the fate of an occupier who fails to register and there was no judicial review /intervention in respect thereof.

The amalgamation of both southern and northern protectorates in 1914 under Lord Lugard saw both the land registration ordinance of 1907 and provision of Land and Native Rights proclamation, 1910 for the registration of land instruments repealed and consequently replaced by a single enactment known as Land Registration Ordinance 1915". This was later amended by the Land Registration Ordinance 1924, which was operational and in force until the creation of Federal system of government under the Richard's constitution of 1945.

Since the introduction of the federal system of government, each of the former three regions that is, North, West and East, has enacted the Land Registration Instruments Laws which are almost or precisely the same provisions but with little or slight different in their provisions relating to titles and or interests in land in Nigeria.

Presently with the former three (3) regions divided into thirty-six (36) autonomous states including the federal capital territory, Abuja, each of the state still applies or makes a carbon copy or replica of this same Ordinance of 1924 and makes it applicable within their states.

An Overview of Registrable Instruments and Various Provisions and Cases Relating to Instruments Registration

It is imperative to state here that spurious attempts were made to find the standard meaning for the word" registrable" as used here but to no avail. All the authorities, which include English and law Dictionaries, (Roger Bird, {1982} Osborn's concise dictionary, 7th edition and the Black's Law dictionary}, consulted and used in this research could not trace the word. However, I found solace in the works of some eminent and most respected jurists of our time like, Niki Tobi Jsc [retired] and justice J.O Ige {former Ag. Chief Justice of Oyo State} and in some cases where it was used thus and since I cannot be better than them in research, I have

respectfully adopted, for convenient, the use of the words Registrable instruments, for instruments that are required to be registered by laws.

S.2 Land Registration Ordinance No. 36 of 1924 defines the land instrument

“as a document affecting land in the state whereby one party (grantor) confers transfers, limits, charges or extinguishes in favour of another party (grantee) any right or title to or interest in land in the state, and includes a certificate of purchase and a power of attorney {underline and italics mine}under which any instrument may be executed, but does not include a will”.

It provides further under **section 14** of the Ordinance that every state’s grant executed after the commencement of this Ordinance, and every instrument affecting land which is the subject of a state grant whereby land is granted by a native to a non-native executed after the commencement of this Act shall so far as it affects any land, be void unless the same is registered within six months from its date (or, in the case of an instrument whereby land is granted by a native to a non-native, from the date on which it receives the governor’s consent) if executed in Nigeria, or twelve months from its date of execution elsewhere.

Section 15 provides that no instrument shall be pleaded or given in evidence in any law court as affecting any land unless the same shall have been registered. From the foregoing provisions it would be appropriate and safe to say that documents under the Registration of Land Instruments Ordinance as provided in the Ordinance are any documents/ instruments which convey, confer and transfer any right or title to interest in land. Hence the following documents could be accommodated.

- i. Certificate of Purchase
- ii. Power of Attorney
- iii. Certificate of Occupancy
- iv. Mining Lease,
- v. Water Right,
- vi. Exclusive project of license granted under the Mineral Acts
- vii. Timber License granted under the Forestry Act and

- viii. Grant likes Conveyance Lease, or Mortgage, or Instrument Assigning landed properties.

It is also pertinent to note that from the section 15 above, not all the stated interests can come under the given provisions even though they could be covered by registrable instruments, for it to fall under the provisions, it must relate to Land.

Worthy of note is the fact that all the states enactments on land instruments registration are replica and verbatim provisions of the Ordinance with no significant amendment and or improvement that might have been necessitated by the effusion of times, modern growth and development in the area of interests in land { **Section 2, cap 56 of Oyo State 1976, Land Instruments Registration, Section 2,3,14 and 15 cap L3No.4 of 2006, Kwara State Land Instruments Registrations Laws, Section 20, cap 74 of 1999, Rivers State Land Instruments Registration Law, Section 2, cap 58, 1973 of Lagos State Land Instruments Law** } etc.

The extant relevant provisions of Kwara State Land Instruments Registration Law. **Section 2** provides

“Instrument is a document affecting land in kwara state whereby one party {hereinafter called the grantor} transfers, limits, charges or extinguishes in favor of another party {hereinafter called the grantee} any right or title to or interest in land in kwara state, and includes a certificate of occupancy and power of attorney under which any instrument may be executed but does not include a Will”

Section 3 sub 1 of same law provides that subject to the provision of this law, every instrument executed in the state within any area designated as a development area shall be registered.

Section 3 (2) of the provision exempted registration of instrument affecting land already covered by certificate of occupancy

Section 4 provides for registration of instruments and filing of judgment affecting land, while section 17 provides for the method in which the registration can be made. Section 23 makes non filing of judgment not to affect the validity of Judgment.

The above provisions in the Kwara State Land Instruments Laws earlier noted were copied from the provisions of the Ordinance and are also available in almost all the states with nothing or little additions and or adjustments in terms of paragraphing and wordings. And therefore remained the present position of our states laws including the Federal Capital Territory.

What determines registrability of instruments?

In the case of COKER VS. OGUNTOYE (1939) 15, NLR 57 per Arnes, Assistant J, laid down the *fons et origo* principles to be followed in determining whether any particular document is an “instrument” within the context and meaning of the Ordinance. When held that instrument requiring registration are those documents which actually are the very means by which a right or title to or interest in land is conferred, transferred, limited, charged and extinguished in favour of another party and within the ambit of the Ordinance have to be registered. See the case of AJAO VS. ADIGUN {1993} 3 NWLR {PART 282} 389

The above in other words presupposes that if the right or title to or interest is not conferred or waited or envisaged to be conferred in a later period, or rely or dependent on the preparation of another document such a document cannot be represented or qualified under this provision as registrable instruments. This without doubt put it straight that registrable document must of itself convey, transfer, charge, limit the right or title and or interest in land.

EFFECT OF NON REGISTRATION OF INSTRUMENTS

Section 18 of the same Ordinance of 1924, specifically makes compulsory registration of any instrument/document affecting land. This presupposes that once a document has to do or relate to land it must be registered.

In the case of Jammal V. Saidi and Another (1933) 11NLR (Nigeria Law Report NLR) the court held that under section 15 of Land Registration Ordinance, the agreement of lease being unregistered could not be pleaded or given in evidence.

Section 3 and 17 of the Kwara State Land Instrument Registration Law specifically mentioned Certificate of Purchase and Power of Attorney as a registrable instrument and which

must be registered **Section 2** also make list of some instrument that are registrable like Deed of Conveyance, Deed of Transfer, Certificate of Release etc, and with the exclusion of a Will.

At the risk of being repetitive, the provisions of states in respect of the Land Instruments Registration are carbon copy made from the antique provisions of Land Instruments Ordinance of 1924 and with little or slight different.

Section 2 Land Instrument Registration of Kwara State provides for the effect of non-registration of land instruments which are required to be registered. The effect of non-registration was that such documents will not be admissible in evidence for non-registration (See Section 15).

Section 3 of Land Instruments Registration makes compulsory registration of land instruments like conveyance and power of attorney and non-registration of same attracts sanctions provided under section 14 of the Kwara State Law.

Therefore, any instrument purporting to transfer title, interest in land must be registered and non-registration of it will void the said conveyance or transfer, ditto for power of attorney, donation of power and right by one party (donor) to other (donee) is also void when not registered.

Another effect as stated in the provision is that such instruments/documents must not be pleaded and or given in evidence before the law court as seen in case of Jammal{supra}

Complementing the above position of the law, a plethora of cases had been decided on the same premise. The recent case of *FUMUDOH VS IKE (2018) All FWLR (Pt 934) 1213-CA* while also given effect to Section 2, instruments Registration Law of Lagos State Cap.58{which is in *pari materia* with section 15 of the Kwara State Land Instruments Registration Law} the court held that for the purpose of claim and proof of title to land in Lagos state, no instrument shall be pleaded or given in evidence in any court, unless the same shall have been registered. An unregistered document affecting land must not be pleaded and neither is it admissible in evidence. The court though was quick to add that an unregistered registrable instrument is not admissible in evidence as or in proof of title to land, it is admissible in evidence as and in proof of payment of purchase price for a piece of land by a party and when

coupled with possession of the land in question by the party, is capable and creates an equitable interest in such land which can consequently translate into legal interest or estate.

Further to this, if an unregistered document is pleaded, a trial court upon application made to it, must strike out paragraphs of pleadings where such unregistered document is pleaded. The court of appeal further held that even where the unregistered documents was mistakenly or by errors admitted in evidence part of the evidence relating to that unregistered document should be expunged for reason of lacking evidential value. See the following cases of Warigbelegha V. Owerre (2012) 3 NWLR (pt 1288) 573 at 830 and Ogbini V. Niger Construction Limited (2006) All FWLR (pt 317) 390

From the case of **Fumudoh** cited above, it is deducible that purchase receipt not being a document registrable under land instruments land may not entirely be done away with on the ground of non-registration, but could be **admissible in evidence and given evidential value especially when supported with possession**. This position of the court is in sharp contradiction with the earlier decision in the old case of Coker Ogunye (1939) 15 NLR 57 where two documents concerning sale of land were tendered in evidence. The documents were similar in form which was commonly used in Nigeria, which contained four clauses. After the description of parties, and that the parties will sell and buy respectively, description of the land in context, acknowledgment of payment of purchase price, inscription that the land will be surveyed by the purchaser, and that the vendor will execute a conveyance when called upon.

One of the documents was made by a legal practitioner the other was drawn by a letter-writer. Both were stamped but not registered under the land ordinance and while in court, in an attempt at tendering the documents, objection raised against their admissibility was taken on the ground that they were not registered. The court ruled that the document were not such as were required to be registered under the Land Instruments Registration Ordinance and objection based on their non-registration was overruled.

The implication of this was that a document standing in as a purchase receipt is not registrable but will always be admissible in court to establish equitable interest in title to land. Cases of Ojugbele Vs. Olasoji {1982}4 SC. 31, Akintola vs.Solano {1986}2 NWLR{ part 24}598 and Edokpolo Vs. Ohenhen {1994}7 NWLR {Part 358}page 571

The provisions of states laws dealing with non-admissibility of unregistered instruments or documents relating to land in evidence before a court of law received a knock from the Supreme Court in the *loco classico* case of **BENJAMIN V. KALIO (2018) All FWLR (pt 920) 1**. The S.C in the case, while holding on the duty of every law court in every proceeding to admit and act on evidence that is admissible in law under Evidence Act and any other relevant law validly enacted. The Supreme Court referred to the case of Shittu Vs. Fashawe (2005) All FWLR (part 278) 1017, (2005) 14 NWLR (pt 946). The Supreme Court was approached to determine whether section 20 of the Rivers State Land Instruments (Preparation and Registration) Law of 1999, which is *in pari materia* with Kwara and Lagos State Laws on Land Instrument Registration Laws (citations provided above) which bars the pleading and admissibility of unregistered registrable instruments is valid.

The Supreme Court Justice, per Eko JSC, while considering item 23 of the exclusive legislative list and section 4(3) and 5 of the constitution of the Federal Republic of Nigeria, 1999 (as amended), ruled that under the 1979 constitution, evidence was brought into the Exclusive Legislative List as item 23 and that it has remained so since then. It is currently item 23 of the Exclusive Legislative List in part I of the second schedule of the extant constitution. He ruled that Section 4(3) and (5) of the constitution of the Federal Republic of Nigeria 1999 (as amended) states “clearly and in an unambiguous term the undoubted intent of the current constitution, as amended, from section 4(3) and (5) of the same constitution 1999, is that State house of Assembly are precluded and prohibited from enacting any laws on evidence law and/or admissibility of evidence in the proceedings before the law courts in the Federal Republic. The Evidence Act is an Act of National Assembly or an act deemed to have been enacted by the national assembly pursuant to its legislative powers under the constitution. He ruled further that since 1979 to date, it is obvious that upon painstaking and dispassionate perusal of section 20 of the Law, cap 74 of the Rivers State and which per force applies to other States House of Assembly had purportedly enacted a piece of Legislation on evidence. Their Legislative intent or purport is clear and categorical that **no land instrument mandatorily registrable which is not so registered shall not be pleaded or given in evidence in any court as affecting any land**. This clearly is an act of Legislative trespass into the Exclusive Legislative terrain of the National Assembly prescribed by the Constitution, since 1979.

Section 20 of the law, cap 74 of Rivers State has therefore rendered inadmissible **exhibit L** {a piece of evidence that is though relevant and admissible in evidence under the Evidence Act}. The court, further opined that the **Exhibit L** is therefore a piece of evidence which is pleadable and admissible in evidence by virtue of the Evidence Act read together with item 23 of the Exclusive Legislative List and Section 4(3) and (5) of the Constitution. The provisions are *in pari materia* with section 4(3) and (5) of the 1979 constitution, it cannot accordingly be rendered unpleadable and inadmissible in evidence in any proceeding before any court of law by any Law enacted by the State House of Assembly, as the Rivers State House of Assembly had purportedly done by their enactment of Section 20 of the Law Cap 74. A piece of evidence pleadable and admissible in evidence by dint of Evidence Act cannot be rendered unpleadeable and inadmissible in evidence by a law enacted by a State House of Assembly under the prevailing constitutional dispensation.

The pronouncements of the Supreme Court in the case of BENJAMIN V. KALIO (supra) therefore put paid and sealed the effectiveness, enforceability and operational stance of States Laws and provisions relating to non-pleading and admissibility of unregistered registrable instruments in evidence. This is no doubt marked the dawn of a new era and turning point in our judicial foray.

It must be noted that this epochal judgment was given in respect of a cause and matter that happened in River State, the rippling effect of the decision transcends the *locus in quos* as the waive of the Judgment will continue to blow/brew all over the Nigerian states. This, by implication, therefore presupposes that all the documents relating to land even though not registered may be pleaded and admissible in evidence before any law courts in Nigeria. So the judicial pronouncements have swung the pendulum from non-admissibility of pleading of registrable but unregistered instruments in evidence to making all the provisions of the state laws, that make registration of land instruments or instruments condition precedent to pleading and admissibility of evidence before the court of law ineffective and otiose. Hence, the need to remove or review the relevant provisions of the States' Laws.

CONCLUSION AND RECOMMENDATIONS

Some of the provisions of the Land Instruments Registration Laws as applicable in the states appear somehow moribund and archaic and therefore there is the need for both legislative and or judicial interventions. For instance, section 14 of the Kwara State Land Instruments Registration Law, No. 4 Cap L3 of 2006 provides to the effect that any person who contravenes or failed to comply with the provision of section 3 of this law shall be guilty of an offence and liable on conviction to a fine of two thousand naira or imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Sub 2 of the Section further states that when the person who contravenes the provision of section 3 and 7 is a body corporate, he (sic) shall be liable to a fine of ten thousand naira.

Since the time of copying and or enactment of the provisions, the enforceability of same is mostly seen on paper than in the court room. There has never been any case reported and unreported in respect of this provisions and where an individual and or corporate entity has been brought to court by the States' Government on the ground of non-registration of instrument relating to the land upon which they erect their structures. The government would rather prefer to chase the tax evaders than to chase defaulters of non-registration of land instruments. One may therefore imagine the reason for keeping these provisions in our Laws.

It is equally disturbing and it shows to a very large extent the level of States slows pace of development in legislations and legislative experiences. One would imagine that provisions that had been made since 1924 through Order in Council or Ordinance still remain as in original or perhaps nearly original form as they were made during the pre-colonial era without any significant adjustment.

Since the Land Instrument Registration is a way by which state control and manage transactions on land matters and to see that the property of every citizens especially as relate to land are well protected, then using the land as a source of revenue generations should be discouraged or done away with.

The states are to refrain and or make necessary amendments and or adjustment that will reflect the modern trend in our value and cultural system especially as relate to land control and management.

States should not only quickly react positively to Judicial Pronouncements of the Court, especially that of Supreme Court, through Legislative's fiats but look into various laws and provisions that are moribund and archaic vis –a viz modern reality with the view of overhauling them through Legislatives and Executives affirmative action.

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