

**REGISTRATION OF LAND INSTRUMENTS AS A PANACEA TO  
RESOLVING LAND DISPUTES IN NIGERIA**

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**JUNE, 2021**

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**A PROJECT WORK WRITTEN AND SUBMITTED TO THE FACULTY  
OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS  
(LL.B) OF THE UNIVERSITY OF BENIN, BENIN CITY.**

**JUNE, 2021**

## **CERTIFICATION**

**I, Adebamibo Olusegun ALAMU, LAW1504271**, hereby certify that, apart from references made to other people's works as duly acknowledged herein, this entire project is the product of my personal research and has neither in part nor in whole been presented for another degree elsewhere.

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**APPROVAL**

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## **DEDICATION**

I hereby dedicate this work to my daughter, Bethel Omowumi Alamu whose birth during the pendency of this program bathed me with the much needed impetus and encouragements.

## ACKNOWLEDGEMENTS

My profound gratitude is exclusively reserved for the Almighty God, the maker of the heaven and earth whose power provided the strength and grace needed to commence and conclude this program excellently.

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Order 6, Rule (4) of the Supreme Court Rules of 1985 (as amended in 1999)

Property Act 1925

## LIST OF ABBREVIATIONS

All NLR	-	All Nigeria Law Report
All FWLR	-	All Federation Weekly Law Report
LIRL	-	Land Instrument Registration Law
LIRA	-	Land Instrument Registration Act
NWLR	-	Nigeria Weekly Law Report
SC	-	Supreme Court
NSCQR	-	Nigerian Supreme Court Quarterly Review

## ABSTRACT

Land- an immovable and indestructible portion of the earth surface- is undoubtedly an essential required for the socio-economic development of an individual and the society at large. The economic and socio-cultural attachments to land have snowballed into multi-dimensional disputes, relating to the proprietary rights or ownership over land. The result of this is evidence in the litany of cases in our various courts bothering on land disputes. Registration of Land Instruments or title is one of the viable means of proving title to a piece of evidence, but also cloth him with a legal interest, that is higher in ranking, over and above other equitable interests. The cardinal pursuit in this work is to examine the provisions of the Land Instrument Registration Laws (LIRL) of various states, vis-a-vis the role of admissibility and the priority of interests conferred by registration, with a view to resolving land disputes.

## CHAPTER ONE

### GENERAL INTRODUCTION AND DEFINITION OF RELEVANT CONCEPTS

#### 1.1 INTRODUCTION

The property Act<sup>1</sup> defined land as including mines and minerals (whether or not owned separately from the surface), buildings, and most interest in land. Also, land is defined as an immovable and indestructible portion of the Earth Surface<sup>2</sup>. It constitutes the parts of the surface of the earth that are capable in law of being owned and are within the court's jurisdiction<sup>3</sup>. The socioeconomic importance of land in the development of individual life and the society at large cannot be over emphasized. It will not be necessary to travel to the era of Adams Smith (the renowned economist) before one come to term with the importance

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<sup>1</sup> Property Act 1925, S. 305(1)(ix).

<sup>2</sup> Bryan A Garner, *Black Law's Dictionary* ('10th edn' Thompson West, MN 2014)

<sup>3</sup> Elizabeth Martin and Jonathan Law (eds), *Oxford Dictionary of Law* ('8th edn' Oxford University Press 2006).

attached to land as an indispensable factor of production from the days of yore until the modern age.

As a matter of fact, the last decade has seen a dramatic increase in the global demand for land, driven by growing demand for agricultural products, bio fuels, carbon sequestration, and conservation uses<sup>4</sup>. In the same vein , land dispute often arise as a result of several incidence of increase pressure on available land due to socioeconomic exigencies ranging from; Immobility of Land, Geometric Growth in Human Population, Extensive Urbanization, Industrialization, Housing Development, Climate Change etc.<sup>5</sup> Expectedly there have been multidimensional disputes arising over proprietary right to land, resulting in overwhelming litigations in our various Courts.

In practice, when these disputes arises and the parties approach the court for declaration of interests when title is put in issue, *Onus Probandi* in title to land lies on the person who asserts title<sup>6</sup> which he must discharge through evidence that is both relevant and admirable<sup>7</sup>.

A registered land instrument is one of the most viable means of proving title to land. It not only enables a party to a land dispute to have an admissible prove of evidence, but also cloth him with a legal interest that is higher in ranking over and above other interest.<sup>8</sup> In the opinion of Professor Emeka Chianu, registration remains a veritable step in the house of obtaining a valid title to land, it also ensure that the parties have safe custody of the discriminate where the original or duplicate copy of the document is missing, recourse can be had to the registered copy in the Land Registry.<sup>9</sup>

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<sup>4</sup> Karol Boudreaux; ‘Land Tenure and Resources Rights Practice Lead, The Cloud Burst’ <<https://www.land-links.org>> Accessed 10 May 2021.

<sup>5</sup> Babette ‘Land Conflicts: A practical Guide to Dealing with Land Disputes ‘<<http://www.researchgate.net>> Accessed 10 May 2021.

<sup>6</sup> Evidence Act, 2011, s. 171

<sup>7</sup> Ibid.

<sup>8</sup> Land Instrument Registration Law of Lagos State 2015, s. 16.

<sup>9</sup> Emeka. Chianu, *Law of Sale of Land* (Law Lords Publications 2009) 216.

It is contended that besides the revenue which state government derived from the policy, registration of law instruments made it easier for prospective buyers to investigate or trace root of title to land by searching the Land Registry to know if a potential land vendor has authority to sell; and whether there are other encumbrances on the land.<sup>10</sup>

The rule under the Land Instrument Registration of the various states in Nigeria is that for the instrument to be admissible in evidence to prove title to land, such instrument must have been registered. Put differently, under the Land Instrument Registration Laws of states in Nigeria, no instrument affecting any interest in land shall be pleaded or admissible in evidence in any court unless the same has been registered<sup>11</sup>. This principle that was applied by all hierarchy of courts in Nigeria was premised on the proper interpretation of the provisions of Land Instrument Registration Laws (LIRL) made by state Legislatures to regulate admissibility of land documents in Nigeria for many decades<sup>12</sup>.

In practice, it is not in debate that several cases were lost and innocent plaintiffs were handed the bitter pill of losing title to land, where either the land instrument forming the bedrock of their claim of title were not registered at all or were wrongly pleaded<sup>13</sup>. The cardinal pursuit in this work therefore is to examine the provisions of the Land Instrument Laws of states (Lagos and Rivers States in particular), examine the provisions of the land instruments evaluate the legal effects of registered land instruments and to determine the legal and equitable interests confer on holders of registered land instruments. Worthy of attention also

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<sup>10</sup> Anthony A. Ewere, 'The Fallibility of Supreme Court in *Abdullahi v Adetutu* on Admissibility of Unregistered Land Instruments in Nigeria' (2020) Common Wealth Law Bulletin 4.

<sup>11</sup> Land Instrument (Preparation and Registration) Law Cap 74 Laws of Rivers State 1999, s. 20; Land Instrument Registration Law of Lagos State 2015, s. 15.

<sup>12</sup> Anthony A. Ewere, 'The Fallibility of Supreme Court in *Abdullahi v Adetutu* on Admissibility of Unregistered Land Instruments in Nigeria' (2020) Common Wealth Law Pulletin 4; *Akintola v Solano* 1986 All NLR 395; *Cooperative Bank Ltd v Lawal* (2007) 1 NWLR [pt 226] 690; *Abdullahi v Adetutu* (2019) All FWLR [pt1005] 349 at 357.

<sup>13</sup> *Ole v Ekede* (1991) 4 NWLR [pt186] 569; *Commissioner for Land and Housing v. Atanda* (2007) 2 NWLR [pt 1018] 383.

is the controversy generated by the Supreme Court decisions in *Benjamin v Kalio*<sup>14</sup> where the Supreme Court was believed to have reversed the law on admissibility of Land Instruments in Nigeria<sup>15</sup> and the case of *Abdullahi v Adetutu*<sup>16</sup> where the Supreme Court appeared to have departed from *Benjamin v Kalio*<sup>17</sup> on admissibility of unregistered registrable instruments.<sup>18</sup> Efforts will be made in this work to resolve the controversies in the light of judicial authorities.

## 1.2 DEFINITION OF LAND

Land is an immovable and indestructible three dimensional are consisting of a portion of the earth's surface and everything growing on or permanently affixed to it. In its legal significance; land is not restricted to the earth surface but extends below and above the surface.<sup>19</sup>

The Oxford Dictionary of Law<sup>20</sup> defines land as those parts of the surface of the earth that are capable in law of being owned and are within the court's jurisdiction.

Also, the Property Act 1925<sup>21</sup> defined land as including mines and minerals ( whether or not owned separately from the surface), buildings and most interest in land.

Howarth said that in the physical sense, land includes not only the ground soil or earth, but also all buildings on the land, any fixture attached therefore, mines and minerals and any incorporeal rights such as easements<sup>22</sup>.

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<sup>14</sup> (2018) All FWLR [pt.920] 1.

<sup>15</sup> Anthony A. Ewere, '*Benjamin v Kalio: Reversing the Law on Admissibility of Land Instruments in Nigeria*' (2019) 45 (1) Common wealth Law Bulletin 164.

<sup>16</sup> (2019) All FWLR (pt.1005) 349.

<sup>17</sup> (2018) All FWLR [pt.920] 1.

<sup>18</sup> Halima Abiola, '*In Abdullahi v. Adetutu, Supreme Court Departs from Benjamin v Kalio on Admissibility of Unregistered Registrable Instruments*' <[www.loyalnigerianlawyer.com](http://www.loyalnigerianlawyer.com)> Accessed 10 May 2021.

<sup>19</sup> Bryan A Garner, *Black Law's Dictionary* ('10th edn' Thompson West MN 2014).

<sup>20</sup> Elizabeth Martin and Jonathan Law (eds), *Oxford Dictionary of Law* ('8th edn' Oxford University Press 2006).

<sup>21</sup> Property Act 1925, s. 205(1)(ix).

<sup>22</sup> William B. Howarth, *Land Law in a Nutshell* ('5th edn' Sweet & Maxwell 2000) 2.

### **1.3 DEFINITION OF REGISTRABLE INSTRUMENTS**

Registrable instrument is defined as a “document affecting land in the state whereby one party (herein after called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (herein after called the grantee) any right or title to or interest in land in the state and a certificate of purchase and a power of attorney under which any instrument may be executed but not a will<sup>23</sup>.

### **1.4 LAND INSTRUMENT REGISTRATION LAW**

Following the creation of states in Nigeria, the various states in the country have reenacted the 1924 Act<sup>24</sup> with virtually the same provisions under slightly different titles or nomenclature. There is no substantial difference in the provision of the various land registration legislations that were applicable in Nigeria between 1883 and 1924. Similarly the various state laws on land instruments registration are contextually similar in their provision<sup>25</sup> For the purpose of this research therefore, the provisions of the Land Instrument Registration Law of Lagos State 2005 (which is in pari-material with Land Instrument Registration Laws of most states in Nigeria) will be the reference statute.

### **1.5 LAND DISPUTES**

A land conflict or dispute can be defined as social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land; the right to use land, to manage the land, to generate an income from the land, to exempt others from the land, to transfer it and the right to compensation for it. A land conflict therefore can be understood as a misuse, restriction or dispute over property rights to land<sup>26</sup>. Land disputes

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<sup>23</sup> Land Instrument Registration Law of Lagos State (LIRL) 2015, s. 2; Land Instrument (Preparation and Registration) law cap 74, laws of River State 1999, s. 2.

<sup>24</sup> Land Registration Ordinance of 1924

<sup>25</sup> Anthony A. Ewere, ‘The Fallibility of Supreme Court in *Abdullahi v Adetutu* on Admissibility of Unregistered Land Instruments in Nigeria’ (2020) Common Wealth Law Bulletin 6 -7.

<sup>26</sup> Babette Wehrmann, *Land Conflicts; A Practical Guide to Dealing with Land Disputes* (Eschborn 2008) 9.

occur in many forms, it could be boundary disputes between neighbors inheritance conflict or disputes between siblings and multifaceted disputes over the use of land.

Also succession problem, possession by force, false documents, misinformation in record, selling more than one times, unavailable record documents to the processor, lack of updated record or documents have been identified as causes of land disputes.<sup>27</sup>

From legal perspective, the scope of most land disputes is captured under the Tort of Trespass to land which is an injury to the possession of another. Put differently, trespass to land is wrongful invasion of the land of another person without the consent of the owner of the land<sup>28</sup>. In the case of Mohammed *Madumma v. Jambo*<sup>29</sup>, the court described trespass to land as he unjustifiable intrusion by one person upon land in possession of another, and it is actionable at the instance of the person upon land in possession of another in possession.

According to Odigie, the tort of trespass to land can be committed in any of the following ways;

- i. By directly entering or walking upon he land, or remaining on the land
- ii. By placing or projecting any object upon the land in the possession for the claimant;
- iii. Going into the buildings on the land without the owner's consent permission or authority;
- iv. By throwing things such as water, on an adjoining land;
- v. Allowing cattle to stray on to another's land.
- vi. Acting in excess of permission granted by owner, by refusing to leave after the permission granted by owner, by refusing to leave after the permission has been withdrawn<sup>30</sup>.

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<sup>27</sup> Abdubakkor Siddik et al, 'Causes and Consequences of Land Disputes in the Coastal Area of Bang Ladesh' <<http://www.researchgate.net>> 13 April 2021.

<sup>28</sup> Dennis Odigie, *Law of Torts, Text and Cases* ('3rd edn' Ambik Press Ltd 2014) 35.

<sup>29</sup> (2001) 15 NWLR [pt. 736] 461.

<sup>30</sup> Dennis Odigie, *Law of Torts, Text and Cases*, ('3rd edn' Ambik Press Ltd 2014).

Also, Chianu identified the types of trespass to land to include; trespass by entry, trespass ab initio, continuing trespass, overstaying license and use of land for purpose other than initial grant<sup>31</sup>.

## 1.6 CONCLUSION

In this chapter, the socio-economic importance of land in the development of individual life and the society at large cannot be over emphasized. Due to this indispensable nature of land, several disputes usually arises between individuals and groups regarding the proprietary right over land and resulting in the necessity of availing the court with a piece of evidence, which is not only relevant but also admissible, to prove title to land. The relevant concepts forming the bedrocks of this study including Land, Registrable Instruments, Land Instruments Registration Law and Land Disputes have been given clear definitions to set a clear boundaries of their usages in this research work.

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<sup>31</sup> Emeka Chianu, *Law of Trespass to Land and Nuisance* ('3rd edn' Ambik Press Ltd 2014) 216.



## CHAPTER TWO

### REGISTRATION PROCESS AND THE ADMISSIBILITY RULE OF EVIDENCE

#### 2.1 LAND INSTRUMENTS REGISTRATION PROCESS.

Subsequent upon stamping, a conveyance instrument must be registered in accordance with the provisions of the Land Instrument Registration Law of the State in which the land is located<sup>1</sup>.

The procedure for registration is to lodge the original and a duplicate conveyance with the Registry. The land Registry will then file the duplicate and record particular of the instrument in their records<sup>2</sup>.

Land registration process in most States of Nigeria are similar to the process in Lagos State with some necessary variations and notifications. The most common effect is that the Governor of a State or the Minister, in the case of the Federal Capital Territory, must consent to transfer of any interest in land in accordance with the provisions of the Land Use Act<sup>3</sup> before such a land or property can be duly registered in favor of the new owner<sup>4</sup>.

The land registration process involves two systems which are Deed Recording and Title Registration of the ownership. Deed recording system helps to give publicity to land transactions, that a claimed interest already exists on the land, and to establish priority against any subsequent claim to the same interest. The end benefit of this system is to prevent any form of concealed dealing; While Title Registration is an authentication of the ownership or legal interest in a land. This system simply confirms transaction that confer ownership or interest.<sup>5</sup>

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<sup>1</sup> C.O Adubi, Legal Drafting, Conveyancing Law, Wills & Practice (The Lighthouse Publishing Co., 2012) 228.

<sup>2</sup> Ibid; 'Land Instrument Registration Law' cap 62, S. 17.

<sup>3</sup> Land Use Act 1978.

<sup>4</sup> Real Estate Law Department, Resolution Law Firm, 'Nigeria: Overview of Land Registration Process in Nigeria' <<http://www.mondaq.com/nigeria>> Accessed 13 April 2021.

<sup>5</sup> Ibid.

As a case study, the procedure for registration of land in Lagos State involves the submission of application for the Governor's consent at the Land Bureau of Lagos State which will be referred to the office of the Surveyor General for charting. The application will subsequently be returned to the Land Bureau where assessment letter will be issued for necessary payments to be made. Upon receipt of the payments, the Bureau will forward the Deed to any designated Commissioner for Governor's consent. The Deed after the consent will be stamped by the Lagos State Internal Revenue Service and subsequently presented to the Lagos State Land Registry for registration<sup>6</sup>.

## **2.2 SIMILARITIES AND DIFFERENCES BETWEEN REGISTRATION OF INSTRUMENT AND REGISTRATION OF TITLE**

### **2.2.1 Similarities**

Land registration generally describes system by which matter concerning ownership, possession or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title facilitate transactions and to prevent unlawful disposal<sup>7</sup>. Land registration processes involves two system which are;

- i. The Deed Recording system (Registration of instrument): This helps to give publicity to land transaction, that a claimed interest already exist on the land transactions , that a claimed interest already exist on the land, and it establish priority against subsequent claim to the same interest <sup>8</sup>.
- ii. Title Registration: Title registration is an authentication of the ownership or legal interest in a land. This system simply confirm transactions that simply confirm transactions that confer ownership or legal interest in a land. This system simply

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<sup>6</sup> Real Estate Law Department, Resolution Law Firm, 'Nigeria: Overview of Land Registration Process in Nigeria' <<http://www.mondaq.com/nigeria>> Accessed 13 April 2021

<sup>7</sup> Awolaye Adekunle 'Land Registration in Nigeria: Issues and Challenges, Case Study of Lagos State' <<http://www.hg.org>> Accessed on 13 April 2021

<sup>8</sup> Ibid.

confirm transactions that confer ownership or interest<sup>9</sup>. The global land registration systems,, involve both the Deed Recording and Title Registration.

### **2.2.2 Differences**

Adubi identified the distinction between Registration of Titles and Registration of Deeds (instruments) as follows:

- i. Under the system of registration of deeds, abstract or epitome of title is required in deducing investigating title. This is not required under registration of titles.
- ii. Under the system of registration of deeds, entries in the register are not conclusive proof of title. Under the registration of titles, they are
- iii. Under registration of titles, the register of titles is required to investigate the applicant's title before registration. But under registration of deed, the registrar is not required to investigate the application.
- iv. Under registration of titles; a purchaser of value without notice of defect of title of registered owner acquires a title that is indefeasible but under registration of deeds, mere registration does not are defects in vendors title.<sup>10</sup>

### **2.3 REGISTRABLE INSTRUMENTS**

In *Eze v. Akerele*<sup>11</sup> Baje JCA highlighted what constitute registrable land instruments as including

- a. An estate contract.
- b. A certificate of purchase.
- c. A power of attorney under which any instrument may be executed.

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<sup>9</sup> Ibid.

<sup>10</sup> C.O Adubi, *Legal Drafting, Conveyancing Law, Wills & Practice* (The Lighthouse Publishing Co., 2012) 232.

<sup>11</sup> (2019) FWLR [pt. 974] 676 at 688

d. A deed of appointment or discharge of trustees containing expressly or impliedly, a vesting declaration and affecting any land to which section 27 of the Trustee Law extends but does not include a Will.

#### 2.4 NON-REGISTRABLE INSTRUMENT

In Nigeria, land is classified as a residual matter for the states. Hence, the Land Instrument Registration Laws of the States provides for the requirement of registration of instruments. Whether or not a contract of sale of land is a registrable instrument depends on if the document qualifies as a registrable Instrument under the registration law applicable in the State where the property is located.<sup>12</sup>

Instruments which are not registrable include;

1. A mere receipt that evidence payment of money and pleaded as such is not a registrable instrument.<sup>13</sup> However, a document that acknowledges receipt for purchase money and contains a covenant to execute a conveyance on demand is an instrument and if it is unregistered, it cannot be pleaded to found a claim in land.<sup>14</sup>
2. A deed to relate is not a registrable instrument.<sup>15</sup>
3. A document prepared pursuant to contract for the sale of land which is unsigned is not an instruments within the meaning of Section 2 of Land Instruments Registration Laws.<sup>16</sup>
4. Estate Contract: This is an agreement that evidence the payment of rents or purchase price and no more. It is binding only between the payer and payee.<sup>17</sup> It must be noted

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<sup>12</sup> Sylvester O. Imhanobe, *Legal Drafting & Conveyancing with Precedents* (Temple Legal consult 2002) 329; *Akingbade v Elemotho*(1964) 1 All NLR 146.

<sup>13</sup> Emeka Chianu, *Law of Sale of Land* (Law lord publications 2009) 219.

<sup>14</sup> *Ibid*; *Ogunbambi v Abowab* (1951) 13 WACA 224.

<sup>15</sup> *Adeyemo v Idah* (1998) 4 NWLR [pt. 46] 504.

<sup>16</sup> *Faschun v Elerewe* (1981) 1-3 CCHJ 184.

<sup>17</sup> *Araba v Elegba* (1986) 1 NWLR [pt.16] 333.

however that for the states created out of the Old Western Region, Section 2 of the Land Instrument includes estate contracts<sup>18</sup>

5. Where a party admits the opponents title: An elementary principle of pleading and evidence is that what is admitted requires no proof. In the light of this, where a party pleads an unregistered registrable instrument and his opponent at law admits what is pleaded, he cannot turn around to object the admission of the instrument on the ground that it is unregistered.<sup>19</sup>
6. Where the purchaser claims for specific performance against a vendor and tenders a document without registering it. This is because the document does not touch land yet.<sup>20</sup>
7. Documents preceded by oral transfers: fathered by a document evidencing oral transfer of the land, subsequent agreement need not be registered to be admissible in evidence.<sup>21</sup>

## **2.5 RULE OF ADMISSIBILITY OF EVIDENCE.**

Evidence is defined as any matter of fact which is furnished to a legal tribunal, otherwise than by reasoning or a reference in ascertaining some other matter of fact.<sup>22</sup>

In *Awusi v Odili*<sup>23</sup>, Justice Amaizu, JCA adopted the juridical approach of the Black Law Dictionary, to the effect that, evidence means;

*“ Any species of proof, or probative matter,  
legally presented at the trial of an issue, by the  
act of the parties and through the medium of*

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<sup>18</sup> Emeka Chianu, *Law of Sale of Law* (Lords Publications 2009) 224.

<sup>19</sup> Ibid.

<sup>20</sup> *Fakoya v St. Paul Church Shagamu* (1996) 1 All NLR 74.

<sup>21</sup> *Alimi v Obawole*(1998) 6 NWLR [pt. 555] 591.

<sup>22</sup> Lawrence Atsegbua, *Law of Evidence* (Justice Jeco Printing & publishing Global 2012) 2.

<sup>23</sup> (2005) 16 NWLR [Pt. 952] 416 CA.

*witness records, documents, exhibits, concrete objects etc. for the purpose of inducing belief in the minds of the court or jury as to their content*<sup>24</sup>.

Evidence has also been defined as any matter of fact which is furnished to a legal tribunal otherwise than reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact<sup>25</sup>

We may further state that evidence deals with relevant and admissible facts pertaining to testimony, documents and tangible objects.<sup>26</sup>

According to Jerry Amadi<sup>27</sup> Relevance and admissibility can be compared to betrothed friends who can hardly be separated one from another although they are of different sexes, backgrounds, histories and origins. Both are intricately interwoven, but they are not the same, because their strings can be assiduously mostly distinguished. Relevance is based on logic while admissibility flies on the wings of legality. Each most times, needs the other to survive; for a piece of evidence to be admissible, it must be relevant; and for such evidence to be relevant, it must be admissible.

A document is admissible in evidence if it is relevant to the facts in issue and admissible in law. The converse position is also the law, and it is that a document which is irrelevant to facts in issue is not admissible<sup>28</sup>. Admissibility therefore is a rule of evidence and it is based on relevancy<sup>29</sup>.

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<sup>24</sup> Jerry Amadi, *Contemporary Law of Evidence in Nigeria* (Pearl Publishers, 2011) 2.

<sup>25</sup> Lawrence Atsegbua, *Law of Evidence* (Justice Jeco Printing & publishing Global, 2012) 2.

<sup>26</sup> Ibid.

<sup>27</sup> Jerry Amadi, *Contemporary Law of Evidence in Nigeria* (Pearl Publishers, 2011) 29.

<sup>28</sup> Ibid.

<sup>29</sup> *Sadau v The State* (1968) 1 All NLR 124; *Ogunoye v The State* (1997) 8 NWLR [pt. 518] 566.

Similarly, Atsegbua pontificated that the basic principle governing admissibility can be stated thus; facts which are irrelevant or non-existence are inadmissible<sup>30</sup>. However, not every relevant fact is admissible. Section 1 of the Act<sup>31</sup> provides as follows:

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact as are hereinafter declared to be relevant and to no others provided that;

- (a) The court may exclude evidence of facts which though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case; and
- (b) This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

Relevant evidence may be excluded because it is hearsay or of bad character, or similar fact, even though it is relevant, if in the opinion of the courts, the evidence is too remote to be material when all the circumstances of the case are taken into consideration<sup>32</sup>.

The Learned Professor stated further that in Nigerian law, only the following evidence are admissible;

- i. evidence of facts in issue; and
- ii other facts relevant to the facts in issues, provided these are not excluded by the courts as being remote or by any force of law<sup>33</sup>.

It is trite to note therefore that admissibility of evidence is governed primarily by the Act<sup>34</sup>.

However, evidence excluded by the Act or any other legislation validly in force in Nigeria, cannot be admitted under any rules. In this regards, section 2 of the Act provides as follows:

For the avoidance of doubt, all evidence given in accordance with section 1 shall, unless excluded in accordance with this or any other legislation validly in force in Nigeria be

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<sup>30</sup> Lawrence Atsegbua, *Law of Evidence* (Justice Jeco Printing & Publishing Global, 2012) 20.

<sup>31</sup> Evidence Act 2011.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Evidence Act 2011, S. 1.

admissible in judicial proceedings to which this Act applies. Provided that admissibility of such evidence shall be subject to all such conditions as may be specified in each case by or under this Act<sup>35</sup>.

Similarly, it is apposite to note that in determining whether a particular piece of evidence is admissible, it is the relevancy of the evidence that is important and not how the evidence was obtained<sup>36</sup>.

## 2.6 CONCLUSION

The land instrument must be registered in accordance with the provisions of the land instrument registration law of the State in which the land is located. Land registration process involves both Deed Recording and Title Registration which not only give publicity to land transactions but also provide authentication of the legal interest in a land. Therefore there are both similarities and differences between Registration of Instrument may be executed, a Deed of Appointment or discharge of trustees containing vesting declarations etc.

While non-registrable instruments will include; A receipt evidencing payment of money, a document prepared pursuant to contract for the sale of land etc. The admissibility rule of evidence come to play in determining the relevancy and admissibility of registered instruments as prove of title to land, instrument when registered, is admissible to prove title while it is inadmissible when not registered as required by the law.

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<sup>35</sup> Ibid.

<sup>36</sup> *Elias v Disu* (1962) LCN/0965 (SC)



**CHAPTER THREE**  
**PROVINCE OF REGISTRATION OF INSTRUMENT IN RESOLVING LAND DISPUTES**

**3.1 Priorities of Interests in Land**

In *Rice v Rice*<sup>1</sup> the court defined priority as the right of one party in a case to satisfy his claim in property over and above other claimant in respect of the same matter.

A priority dispute is essentially an argument which arises where two or more persons hold property interests in a piece of land which are inconsistent, making it necessary to determine who has the superior right to the land. Priority disputes may arise in a number of different ways. First a priority dispute may arise where a grantor purports to grant two interests, the second of which is either completely or partially inconsistent with the first. These interests may be legal and/ or equitable in nature.<sup>2</sup>

In circumstances where the holder of a legal estate has fraudulently attempted to transfer it to two or more persons, it is important to determine who has the better and prior rights to the estate. Also, the evolution of equitable interests and the acceptance that under the chancery jurisdiction, there is no limit on the number of equitable interests that can be created<sup>3</sup>.

According to Chianu, it deserves emphasis that where two or more persons contest for title over land, the principle relating to priorities apply only where both acquire property from same vendor or his privies. Where A and B lock horns over ownership of black acre and trace their title to two different persons, the issue is not one of priorities but one of the validity of the root of title of each claimant<sup>4</sup>.

Generally, on the basis of priority, the first in time is stronger in law *qui prior est tempore portio est jure*<sup>5</sup>;

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<sup>1</sup> (1853) 61 ER 646.

<sup>2</sup> 'General Law Land and Priority Principles' <<http://lawexplores.com>> accessed 12 April 2021.

<sup>3</sup> Ibid.

<sup>4</sup> Emeka Chianu, *Law of Sales of Land* (Lawlords Publications 2009) 427

<sup>5</sup> Ibid

Priority is determined by reliance on two major factors

- (a) The nature of the interest created i.e. legal or equitable;
- (b) The time at which each of the interests was created.

### **3.1.1 Priorities between Legal and Equitable Interests**

Priority disputes between legal and equitable interests will arise where legal and equitable interests relate to the same piece of land and the rights conferred under their interests are inconsistent. Whether the legal interest arises prior, or is subsequent to an equitable interest, the basic priority rule is that a *bona fide* purchaser of legal estate for value without notice will take priority over the interest of an equitable interest holder<sup>6</sup>. This principle is grounded upon the equitable maxim that says that “where the equities are equal, the law prevails”.

According to James L. J in *Pilcher v Rawlings*<sup>7</sup> “nothing can be clearer than that a purchaser for valuable consideration without notice of a prior equitable right is entitled to priorities in equities and in law<sup>8</sup>.”

In this regards therefore, for this principles to apply, therefore, the legal estate holder must have bought the estate in good faith for valuable consideration and without notice of any prior equities or interests in the property.

### **3.1.2. Priorities between two or more Equitable Interests**

The maxim of equity designed to settle competing interests under the doctrine of priority in this instance is that where the competing interest are both equitable, the general rule is that these interests must rank according to their order of creation. Therefore, the date of acquisition of an equitable interest is of paramount importance. When two parties each have a right to possess a land, then, the one who acquired an interest first would prevail in equity.

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<sup>6</sup> ‘General Law Land and Priority Principles’ <https://lawexplores.com> accessed 12 April 2021

<sup>7</sup> (1872) 7 CHA 259

<sup>8</sup> *Ayorinde v. Scott* (1972) CCHCJ/2/72

An exception to the above general rule of determining priority where the competing equities are equal is the rule laid down in the case of *Dearle v. Hall*<sup>9</sup> where priority between two or more equitable interests is determined not in the order that the successful interests are created, rather, priority is determined by the order in which notice of the successive interest is given to the person entitled to receive such notice.

### 3.1.3 Priority under Land Instrument Registration Law

Section 16 of the Land Instrument Registration Law of most States provides that;

*“subject to the provision of this law every instrument registered under this law shall, so far as it affects any land, take effect, as against other instruments affecting the same land from the date of its registration as hereinafter defined .....”*

According to Chianu, this provision is devoid of ambiguity in its intent. It sets out to make priority of interests contained in all registered instruments dependent on their date of registration. Thus where the transferor conveys a legal estate first to T1 and an equitable interest over the same land to T2, but T2 registers his interest first, he obtains priority over T1’s legal estate<sup>10</sup>. The Act (law) introduces a radical change to the doctrine of priority set out in the maxim *qui prior est portio est jure* and the exceptions thereto under the general law<sup>11</sup>. In the same vein, where two competing deeds are registered, each takes effect as against the other from the date of registration. This is because the benefit of an earlier registration is preserved and ranks in priority over the date of execution<sup>12</sup>.

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<sup>9</sup> (1928) 38 ER 475.

Emeka Chianu, ‘Priorities under the Land Registration Act in Nigeria’ (1992) 36 (S1) Journal of African Law 66 at 70.

<sup>11</sup> *Jammal v Saidi* (1933) 11 NLR 26.

<sup>12</sup> Adubi C. O, *Legal Drafting, Conveyancing Law, Wills and Practice* (Lighthouse Publishing Co. 2012) 180.

However, to ensure that the provision of section 16 is not used by scoundrels as vehicle of fraud, the draftman included section 23 (LIRL) to cure this possibility. The section provides as follow;

*“Registration shall not cure any defect in any instrument or subject to the provisions of this law, confer upon it any effect or validity which it would not otherwise have had”.*

This principle was eminently applied by Akpata JCA ( as he then was) in the case of *Adebiyi v Williams*<sup>13</sup> where he pontificated that "where ab initio a person has invalid title to land, the registration of the invalid title is not sufficient to confer on the ‘registered owner’ any estate in land...”

### **3.2 Proof of Title**

Olong, quoting Black’s law Dictionary defines title as the union of all elements as ownership, possession and custody constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself..... No wonder then that there is no doubt that one of the most seminal areas of land law in Nigeria is the issue of declaration of title to land. He stressed further that given the spate, the panjandrum or coterie of land disputes in Nigeria today, the study of declaration of title to land in Nigeria becomes a worthy cause<sup>14</sup>.

Many writs for damages for trespass to land include a claim for declaration of title to land. Even where title is not claimed, a defendant’s statement of defense may raise the question of the plaintiff’s title to the land. Claims for declaration of title, so common in our land reports and so conspicuous by their absence in English reports, are granted, owing to the complexity of land tenure in Nigeria; English type and Native law<sup>15</sup>

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<sup>13</sup> (1989) 1 NWLR (pt. 99) 611.

<sup>14</sup> Adefi Mathew Olong, *Land Law in Nigeria* (‘2nd edn’ Malt house Press Limited 2011) 153.

<sup>15</sup> Emeka Chianu, *Law of Trespass to Land and Nuisance* (‘3<sup>rd</sup> edn’ Ambik press 2014) 215.

Title is crucial to a declaratory relief in matters relating to land disputes. Proof is strict. There must be exactitude as to the actual location and dimension of the Land. The features on the land must be proved by positive evidence. For a court to grant title to a party, it must be availed as much as possible, a graphical idea of the land in dispute. Failure to adequately create assurance in the mind of the court in these respects is fatal, as the court may be left to speculate on the true identity and dimension of the land. In such circumstances, the aggrieved party can at best be entitled to damages for trespass<sup>16</sup>.

It must be noted that where in an action for trespass the real issue is one of title to the land in dispute, the plaintiff to succeed must establish his title to and legal possession of such land. Also, when there is a claim for perpetual injunction, the title of the parties is automatically put in issue<sup>17</sup>.

According to Olong, the Supreme Court posited in *Yele Oyenehin v Dr. Akinkugbe*<sup>18</sup> that when the issue as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession or occupation to the person who proves a better title<sup>19</sup>. Also in *Okonkwo v. Okonkwo*<sup>20</sup> the court held that the duty to prove identity of disputed land is on the plaintiff.

The law is well defined on the methods of establishing title to or ownership of land by a claimant or counter claimant; that it can be proved by any of the five ways as stipulated in the case of *Idundun v Okumagba*<sup>21</sup> namely;

1. Through traditional history
2. Through production of documents of title

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<sup>16</sup> Dennis Odigie, *Law of Torts; Text and Cases* ('3rd edn' Ambik Press 2008) 41.

<sup>17</sup> *Morenikeji v Adegbosin* (2003) 3 NWLR [pt. 11] 43.

<sup>18</sup> (2010) 41 NSCQR at 421

<sup>19</sup> Adefi Mathew Olong, *Land Law in Nigeria* ('2nd edn' Malthouse Press Limited 2011) 153.

<sup>20</sup> (2010) All FWLR [pt. 535] 252.

<sup>21</sup> (1979) 9-10 SC 227

3. By act of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference that the person(s) exercising such acts of possession are the true owners of the land.

4. By acts of long possession. and;

5. By proof of possession of land adjacent to the land in dispute in such circumstances which render it probable that the owner of the adjacent land is the owner of the land in dispute.

There are scores of other authorities in support of this age-long principle of proof of title to or ownership of land and a person is required to establish only one of them to succeed<sup>22</sup>.

A party claiming a declaration of title to statutory or customary right of occupancy does not need to plead and prove any more than one of the five methods of proving title, where the claimants pleads and/ or relies on more than one method to prove his title, he merely does so *ex abundante cautela*, as proof of one single root is sufficient to sustain the claim. This is because proof of one of the five is sufficient to establishing title to land, it is the minimum that the law requires<sup>23</sup>.

### **3.2.1 PROOF BY TRADITIONAL HISTORY**

A party pleading traditional evidence as prove of title to land has an onerous duty. The party is not only required to plead his historical connection with the land devolved on him through any of his ancestors. The line of succession must be traced without leaving gaps or creating mysterious linkages or allowing the link to break down<sup>24</sup>. A party to a suit for title to land who relies on traditional history must plead the root of his title and the names and history of

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<sup>22</sup> *Mogaji v Cadbury Nig. Ltd* (1985)2 NWLR [pt.7] 393; *Alli v Alesinloye* (2000) 6 NWLR [pt. 600] 177. *Usung v. Nyong* (2010) 2 NWLR [pt.1177] 83.

<sup>23</sup> Adefi Mathew Olong, *Land Law in Nigeria* ('2nd edn' Malt house Press Limited 2011) 153.

<sup>24</sup> *Ibid* 155.

his ancestors. He has duty to trace his title to the original owner and to show how the predecessors acquired title to the land<sup>25</sup>.

Chianu stated that title over much of the land in the countryside is undocumented, so that, for proof of ownership plaintiffs rely on oral testimony. Parliament has long has long recognized the relevance and admissibility of this type of evidence. Section 66 Evidence Act 2011 reads "where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant". What parliament here recognizes as exception to the hearsay rule is not title in family or communal land but evidence of family tradition concerning such title<sup>26</sup>.

### **3.2.2 Prove through Document of Title**

The production of documents of title is one of the recognized methods of proving title to land but such a document of title must be admissible in evidence and be such a character as to be capable of conferring valid title on the party relying on it. It does not mean that once a claimant produces what he claim to be an instrument of grant, he is automatically entitled to a declaration that the property which such an instrument purports to grant is his own<sup>27</sup> production and reliance on a document inevitability carries with it the needs for the court to inquire into some or all of a number of questions including

- (a) whether the document is genuine and valid;
- (b) whether it has been duly executed, stamped and registered ;
- (c) whether the grantor has the authority and capacity to make the grant;
- (d) whether the grantor had in fact what he purported to grant; and

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<sup>25</sup> *Fatoyinbo v. Osadeyi* (2009) 16 NWLR [pt. 1168] 605, 611; see also *Nwonkorobia v Nwogu* (2009) 10 NWLR [pt. 1150] 553 where the Supreme Court held that the law is settled that where evidence of the traditional history is relied on in proof of declaration of title to land, the plaintiff in the case must plead and establish such facts as who founded the land, how he founded the land and the particulars of the intervening owners through when he claims.....

<sup>26</sup> Emeka Chianu, *Law of Trespass to Land and Nuisance* ('3rd edn' Ambik Press 2014) 232-233.

<sup>27</sup> Adefi Mathew Olong, *Land Law in Nigeria* ('2nd edn' Malt house Press Limited 2011) 157.

(e) whether it as the effect claimed by the holder of the instrument.<sup>28</sup>

A document of title is a deed of conveyance, assignment, gift, mortgage( as the case may be) executed by the parties to sale, lease or mortgage; bearing the consent of the governor as required by the Land Use Act and duly registered in accordance with the relevant Land Instrument Registration Law<sup>29</sup>.

Furthermore, a party who seeks declaration of title of land is under an obligation to present all the cogent and credible documentary evidence upon which the claim is founded. The party whose favour the weight of credible documentary evidence preponderates is entitled to the judgment of the court<sup>30</sup>.

Thus, where a party relies on a document in proof of his title to land, he must tender the document in evidence, as oral evidence of its content is not ordinarily admissible in evidence.

In a claim for declaration of title, the onus is on the claimant to establish his claim on a preponderance of evidence and not on the weakness of the defense, except where the defendant's case supports his case. There is no burden on defendant who has not counterclaimed to establish his title<sup>31</sup>.

### **3.2.3 Prove by Acts of Ownership**

Prove by acts of ownership extending over a sufficient length of time numerous and positive enough as to warrant the inference that the persons exercising such acts of possession are the true owner of the land.

In *Jinadu v Esurombi Aro*<sup>32</sup> the supreme court held “that proof of act of ownership is normally provided by acts of person or persons claiming the land such as selling, leasing renting out all or part of the land or farming on it or on a portion of it or otherwise utilizing

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<sup>28</sup> Ibid 158.

<sup>29</sup> U. Frank-Igwe & G. C Okara, ‘Proof of Ownership of Land in Nigeria By Documents of Title: A Critical Analysis’ <<https://www.researchgate.net>> accessed 29 April 2021.

<sup>30</sup> Ibid.

<sup>31</sup> *Madu v Madu* (2008) 6 NWLR [pt 1085] 296; *Momoh v Umoru* (2011) 15 NWLR [pt. 1270] 217.

<sup>32</sup> (2009) 4 M.J.S.C (pt.111) 6.

the land beneficially; all evidence of ownership provided they extended over a sufficient length of time and are numerous and positive enough to warrant the inference that he is the true owner”.

It is only after a party’s root of title is established that consequential acts flowing there from can then properly qualify as acts of ownership.<sup>33</sup>

The act of the plaintiff must be positive and numerous. An isolated act which fails to go on for a sufficient period of time or which is negative will not give rise to an inference that the plaintiff is the owner.<sup>34</sup>

### **3.2.4 Prove by Acts of Long Possession and Enjoyment of the Land.**

When the question is whether any person is owner of anything of which he is shown to be at possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner<sup>35</sup>. It follows therefore that a plaintiff’s acts of long possession and enjoyment of land may be prima facie evidence of ownership of the particular piece of land with reference to which such acts are done<sup>36</sup>.

Otisi J.C.A. (as he then was) while delivering the leading judgement on appeal in *Idundun v. Okumagba*<sup>37</sup> said “ where both parties are unable to satisfactorily and conclusively prove title to the disputed land, the trial judge would usually proceed to decide the case on the basis of numerous and positive acts of possession and ownership. Acts of possession and enjoyment of land may be evidence of ownership of land, it may established positive acts of possession that extend over an appreciate period of time. The position of the law is that a proof of possession amounts to title against the world where no one has proved a better title... although none of the parties may have successfully and conclusively proved title, an order for possession may be made in favour of the party found to be in possession”.

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<sup>33</sup> Adefi Mathew Olong, *Land Law in Nigeria* (‘2nd edn’ Malt house Press Ltd 2011) 161.

<sup>34</sup> Ibid.

<sup>35</sup> Evidence Act 2011, S. 143.

<sup>36</sup> Ibid at 162.

<sup>37</sup> (1976) 9-10 SC 227.

In *Olagunju v Adesoye*<sup>38</sup>, the Supreme Court held that plaintiff claiming a declaration of title to land who succeeds in establishing such acts that extend over a sufficient length of time and are numerous and positive enough to warrant the inference of exclusive ownership of such land is and will be entitled to the declaration. It would be safe and imperative to conclude that the party exercising such acts is the exclusive owner of the land.

### **3.2.5 Proof of Possession of Connected or Adjacent Land**

In a claim for the ownership of land, the fact that the land in dispute is contiguous with other lands belonging to the plaintiff is enough to raise a probability (though not presumptuous) that the land in dispute also belongs to the plaintiff<sup>39</sup>.

By proof of possession of connected or adjacent land in circumstances which make it probable that the owner of such adjacent or connected land is probably the owner of the land in dispute<sup>40</sup>. Where a plaintiff relies on possession of land connected or adjacent to the land in dispute, he must prove proximity of the two pieces of land. He must prove Nexus or contiguity. In other words, the plaintiff must prove that the two pieces of land are very close, touching or almost touching each other; that is, the pieces of land must join or relate to each other substantially or materially. Furthermore, the connection between the adjacent nature of the two pieces of land is determined by the fact of each case.<sup>36</sup>

It should be noted that it is very much possible for a person to go ahead and prove his title using more than one(1) of the ways enumerated above but must bear in mind that each way of proof has its own set of rules to be followed in order to achieve success on trial by discharging that burden of proof placed on him by the law. Unlike criminal burden of proof which is “proof beyond reasonable doubt” the nature of burden of proof placed upon a litigant in the case of proof of title, being a civil suit is nothing but a “balance of probability”

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<sup>38</sup> (2009) LCN/ 3704 SC.

<sup>39</sup> *Jinadu v. Esurombi Aro* (2009) 4 M. J. S. C [pt.11] 5.

<sup>40</sup> *Thompson & Anor v. Arowolo* (2003) LPELR-3240 (SC).

which always tilts from one party to another until the balance tilts favourably upon the successful party after satisfying the court of his interest in the property.

Finally, the general implication of the aforementioned ways of proving title to property is that a person is able to pull together the positive results of resting on a particular means of proof to establish his case in order to obtain judgement in his favour.<sup>41</sup>

### **3.3 Effects of Unregistered Registrable Instruments in the Resolution of Land Disputes – Pre-2017 Era.**

In order to prove title to land by Documentary evidence prior to the decision of the Supreme Court in *Benjamin v Kalio*<sup>42</sup>, a party seeking declaration of title to land was expected to prove title by tendering admissible title documents. One of the crucial conditions for the admissibility of any document relating to title was that the title document must have been registered<sup>43</sup>.

Inadmissibility of unregistered documents is anchored on the fact that by reason of several Land Instrument Registration Laws of various States, no instrument could be pleaded or given in evidence in any court as affecting land, unless same had been registered. The Supreme Court had on this basis rejected admissibility of unregistered documents relating to land<sup>44</sup>. In a long line of cases, the admissibility of unregistered title instrument has met with rejections as a result of various State Laws on the registration and admissibility of land

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<sup>41</sup> Ibid.

<sup>42</sup> (2018) All FWLR (pt. 920) 1.

<sup>43</sup> Land Instrument Registration Law Cap. L58), Laws of Lagos State 2005 s. 13; Land Instrument (Preparation and Registration) Law Cap. 74, Laws of Rivers State, 1999 s 20; *Shittu v Fashawe* (2006) All FWLR (pt. 946) 671, 690-691; *Ogbini v Niger Construction Ltd* (2006) All FWLR [pt 317] 390, 400.

<sup>44</sup> Gbenga Bello, 'Admissibility of Unregistered Title Documents in Nigeria: A Paradigm Shift towards Justice' <<https://www.pressreader.com/nigeria/thisday/20190528/281818580309025>> Accessed on 30 April 2021.

instruments, declaring same not to be admissible in court once it is deemed to be an unregistered documents.<sup>45</sup>

In the case of *Registered Trustees of Muslim Mission Hospital Committee v Adeagbo*<sup>46</sup> Salami J.C.A. (as he then was) pontificated as follows...“Section16 of Land Instrument Registration Law cap. 56 of Oyo State of Nigeria 1978 is in *pari materiam* with Section16 of Land Instrument Registration Law cap. 56 of the Laws of Western Region of Nigeria, 1959. Under the respective enactments, an instrument affecting any land which is registrable but has not been registered cannot be pleaded and given in evidence. If it is pleaded it should be ignored. That is the ratio decided in the cases of *Akintola v. Solano*<sup>47</sup> The fact that was admitted through oversight or inadvertence or that no objection was taken as to its admissibility does not save it from exclusion since it's expunction is enjoined by the provisions of the statutes<sup>48</sup>.

Muhammed J.S.C stressed the point further in the case of *Etajata v. Ologbo*<sup>49</sup> where he captured the point succinctly that “ Another important point is that although the learned trial judge admitted the document i.e. exhibit ‘A’ in evidence (without objection from the defendants), such mere admission of a document which otherwise was inadmissible and even though the opposing party did not object, cannot confer any probative value to that document. It is trite law that admitting a document in evidence whether wrongly or rightly is quite different from its proper valuation.<sup>50</sup>

In *Cooperative Bank Ltd v. Lawal*<sup>51</sup>, the court per Ibiyeye JCA, held that “once a document affecting land qualifies as an instrument, it must be registered. An instrument affecting any

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<sup>45</sup> *Christian v. Oti*, ‘The admissibility of unregistered title instrument in Nigeria: A case for *Benjamin v Kalio* (2018) 15 NWLR (pt. 1641) 38, <<https://Thenigerialawyer.com>> Accessed on the 30 April 2021.

<sup>46</sup> (1992) 2 NWLR (pt. 226) 690.

<sup>47</sup> (1986) 2 NWLR (pt. 24) 598.

<sup>48</sup> *Alade v Olukade* (1976) 2 SC 183

<sup>49</sup> (2007) 16 NWLR (pt. 1061) 554.

<sup>50</sup> *Fadlallah v. Arewa Textiles Ltd* (1997) 7 SCNJ 202.

<sup>51</sup> (2007) 1 NWLR (pt. 1015) 387

land which is registrable but is not registered cannot be pleaded and given in evidence and if pleaded would be inadmissible and liable to be expunged or ignored. In the instant case neither the consent of the Olubadan and Oyo State Governor was obtained nor were exhibits B and C registered. In the circumstance, there was no basis for any probative value being attached to them”. It must be noted that there is no time limit for registration; a purchaser may register an instrument decades after the instrument is prepared. The only financial obligation is at the stamp Duties office where a purchaser may have to pay penalty for late stamping<sup>52</sup>.

The fatal consequences of non-registration of land documents to the case of the party relying on the documents was further emphasized in *Lagos Timber Co. Ltd v Titcombe*<sup>53</sup> where oral testimony on the content of an unregistered registrable instrument was refused by the court even though the document was pleaded. According to the court, allowing oral testimony of contents of an unregistered land document would make nonsense of the statute that required registration of the document as precondition for admitting it in evidence<sup>54</sup>.

It must be noted that the admissibility or otherwise of an unregistered registrable instrument depends on the purpose for which it is being sought to be admitted, an unregistered registrable instrument sought to be tendered for the purpose of establishing or proving title to land on interest in land, would be inadmissible under section 15 of the Land Instrument Registration Law...’’<sup>55</sup>

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<sup>52</sup> Emeka Chianu, *Law of Sale of Land* (Law Lords publications 2009) 216.

<sup>53</sup> (1943) 17 NLR 14.

<sup>54</sup> Anthony A. Ewere, ‘The Fallibility of Supreme Court in *Abdullahi v Adetutu* on Admissibility of Unregistered Land Instruments in Nigeria’ (2020) 8 Common Wealth Law Bulletin 4.

<sup>55</sup> *Abdullahi v Adetutu* (2019) LPELR-47384 (SC).

However, an unregistered land document may be admitted to establish equitable interest of the holder which is an evidence of good title while a receipt of payment is only admissible as an acknowledgement of payment.<sup>56</sup>

In other words, the purpose for which an unregistered registrable land instrument is pleaded determines whether it will be admissible or not. A document, registrable under the land instruments Registration Laws, may be admitted in evidence without registration if it is tendered, not as instrument of affecting land but only to establish evidence of a transaction between the parties, it will be admissible if it is meant to establish a fact which one or both parties have pleaded<sup>57</sup>.

In this vein, while calling the attention of legal practitioner to the need for prudence in pleadings, Chianu<sup>58</sup> wisely stated that “it must be said again and again that a legal practitioner should exercise due prudence in pleading the instrument he wishes to rely on to prosecute his client’s case. If he fails to plead that an instrument is not registrable because it merely records an earlier oral transactions, or that it records a native law transfer, or that he weeds specific performance against his vendor(if the suit is against the vendor), or that the instrument would be relied on as a mere receipt, he would be doing his client a great disservice”

Furthermore, Kalgo JSC, posited in the case of *Nsiegbe v. Mgbemena*<sup>59</sup> that a purchaser of land who has paid and taken possession of the Land by virtue of a registrable instrument which has not been registered has thereby acquired an equitable interest which is as good as a legal estate. The possession of a receipt by a party for payment for the sale of land and the possession of the Land by the party raises an equitable interest which may be converted into a

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<sup>56</sup> *Shell Petroleum Development Company of Nigeria Limited v Okei* (2019) All FWLR (pt. 988)1066

<sup>57</sup> *Okafor v Soyemi* (2001) 2 NWLR (pt. 698) 465; *Obieru v Okeke* (2006) 16 NWLR (pt. 1005) 225; *Agboola v United Bank for Africa Plc* (2011) 11 NWLR [pt. 1258] 375.

<sup>58</sup> Emeka Chianu, *Law of Sale of Land, Law* (Lords Publications 2009) 243.

<sup>59</sup> (2007) 10 NWLR [pt. 1042] 364

legal estate by specific performance. This equitable interest can only be defeated by a purchaser of the Land for value without notice of the prior equity.

### **3.4 Conclusion**

In this Chapter, the issue of priority dispute which normally arise as a result of two or more persons holding a proprietary interest in a piece of land which are inconsistent, making it necessary to determine who has a superior right to the land, was carefully considered, from the lenses of legal and equitable interests. Also, various ways of proving title to a land in the court, ranging from prove by traditional history, through production of documents of title, by act of ownership, by act of long possession and by proof of possession of land adjacent to the land in dispute, were examined. Ultimately, the age long principle of inadmissibility of registrable land instrument which was not registered, as captured under the Land Instrument Registration Laws of the States, was also given detailed attention.

## CHAPTER FOUR

### DETERMINING THE STATUS OF UNREGISTERED INSTRUMENT THROUGH RECENT SUPREME COURT DECISIONS

#### 4.1. Admissibility of unregistered land instrument in the light of *Benjamin v Kalio*<sup>1</sup>

Prior to *Benjamin v. Kalio*<sup>2</sup>, Nigeria courts gave Instrument Registration Laws (LIRL) of various States which provided that land instrument could only be pleaded or given in evidence if the documents are registered<sup>3</sup>.

As result, unregistered land instruments were either not admitted in evidence, or expunged from court records on appeal, where such documents were admitted in evidence by trial court. In line with this rule, many cases failed for non-admissibility of unregistered land documents. This was the norm in Nigeria courts even after 1979 Constitution came into force<sup>4</sup>

For instance, in 1943, the court stated in *Coker v. Ogunye*,<sup>5</sup>a case decided under the Land Instruments Registration Ordinance of 1924, that a document qualified as an ‘instrument’ which was registrable under the ordinance, if the document was the very means by which a right, title, or interest in land was conferred, transferred, limited, charged or extinguished in favour of another party. According to the court, failure to register the document made it unpleadable and inadmissible in evidence. Also, in *Umoffia v Ndem*<sup>6</sup>, the defendant on appeal challenged the trial court’s decision on the ground that the court admitted in evidence a deed of grant of freehold estate which was inadmissible for noncompliance with section 15 of the Land Instruments Registration Law of former Eastern Nigeria 1963, as applicable to South

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<sup>1</sup> (2018) All FWLR [pt. 920] 1

<sup>2</sup> Ibid

<sup>3</sup> Land Instrument (Preparation and Registration) Law Cap 27 of River State 1999, s 20; Land Instrument Registration Law of Lagos State 2015, s15).

<sup>4</sup> Anthony A. Ewere, ‘The Fallibility of Supreme Court in *Abdullahi v. Adetutu* on Admissibility of Unregistered Land Instruments in Nigeria’ (2020) Commonwealth Law Bulletin 7

<sup>5</sup> (1943) 15 NLR 57

<sup>6</sup> (1973 )8 NSCC 691

Eastern States. According to the Supreme Court, when allowing the appeal, plaintiff's case was bound to fail since rejection of plaintiff's unregistered land document destroyed the foundation upon which the claim was laid<sup>7</sup>.

In *Gibinijie v. Odji*<sup>8</sup>, the court of Appeal held that the lease agreement tendered by appellant was not registered and that it was inadmissible as proof of any interest in land since it had no probative value.

Furthermore, it is of enormous importance to state that if an unregistered registrable instrument is pleaded as a mere receipt evidencing that some money was paid, that there is a pending transaction with the assignor, the unregistered registrable instrument could be pleaded and admissible for that purpose.<sup>9</sup>

In *Atanda v. Commissioner for Lands and Housing, Kwara State*<sup>10</sup>, Sanusi JSC held that

*“it is trite and in fact established and settled law, that instrument that are registrable but were not so registered are still admissible in evidence, if only it was meant to serve the purpose of evidencing payment of purchase price or fees but certainly not for the purpose of creating or establishing title to a land. A registrable instrument which has not been registered is also admissible only to establish or prove equitable interest or to prove payment of purchase money”.*<sup>11</sup>

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<sup>7</sup> Anthony A. Ewere, ‘The Fallibility of Supreme Court in *Abdullahi v. Adetutu* on Admissibility of unregistered Land Instrument in Nigeria (2020) Commonwealth Law Bulletin 8

<sup>8</sup> (2011) 4 NWLR [pt 1236] 103

<sup>9</sup> Peter Ifeoma, ‘Case Preview on Admissibility of Unregistered Registrable Land Instrument in Nigeria’ <<http://www.dnlllegalandstyle.com/2019>> accessed 16 May 2021; *Benjamin v. Kalio* (2018) All FWLR [pt 920]1

<sup>10</sup> (2017) All FWLR [pt. 902] 929

<sup>11</sup> *Savage v. Sarrough* (1937) 13 NLR 141; *Ogunbambi v. Abowab* (1951) 13 WACA 222; *Okoye v. Dumez Nig. Ltd & Ors.* (1985) 1 NWLR [pt. 4] 783.

However, in *Moses Benjamin & Ors v. Adokiye Kalio & Anor*<sup>12</sup>, in its revolutionary decision, the Supreme Court put paid to the perennial issue of admissibility of unregistered land documents. The court held that once the document is pleaded and relevant, it is admissible. In doing so, the court overruled decades of authorities on the point on the premise that the various Land Instruments Registration Laws in the country, which makes registration sine qua non for admissibility, are unconstitutional. The court reasoned that admissibility is governed by the Evidence Act and cannot be made inadmissible under State law<sup>13</sup>.

The plaintiffs/appellants in *Benjamin v. Kalio*<sup>14</sup> claimed that the land in dispute belonged to the Gobo Family of Abuloma Town in Port Harcourt City Local Government Area of Rivers State, in their counterclaim, the defendants/respondents admitted that the said land originally belonged to the appellants but that the appellants sold the land to the respondents' benefactor in 1979. In support of their claim, the respondents tendered the Deed of Conveyance evidencing the transfer of the disputed land to the respondents and the trial court admitted the said document in evidence as exhibit L. Appellants unsuccessfully challenged the admission of exhibit L on the ground that the document was inadmissible in evidence by virtue of Rivers State Land Instrument Law<sup>15</sup>. At the end of the trial, the court dismissed appellants claim and granted respondents' counterclaim. Appellants appealed to the Court of Appeal in protest of the admissibility of exhibit L failed. In an appeal to the Supreme Court, the sub-issue on appeal which became the nucleus of the matter before the court, was whether exhibit L that was not registered as required by the Rivers State Law(LIRL) was admissible in evidence? In resolving the issue, the Supreme Court thoroughly examined the provisions of Section 37 and 20 of the Rivers State Land Instrument Registration Law which renders

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<sup>12</sup> (2018) All FWLR [pt. 920] 1

<sup>13</sup> Elvis Asia, 'Admissibility of Unregistered Title Documents; *Benjamin v. Kalio* Remains the Law' <<https://www.linkedin.com>> accessed 16 May 2021.

<sup>14</sup> (2018) All FWLR [pt. 920] 1

<sup>15</sup> Land Instrument (Preparation and Registration) Law Cap 74 Laws of Rivers State 1999, s 20.

unregistered land instruments inadmissible. The apex court also considered the act that ‘evidence’ as a legislative matter is contained in the exclusive legislative list in the Second Schedule of the Nigerian Constitution. The court stated that section 4 (3) and (5) of the 1999 constitution which gives the National Assembly exclusive power to the legislate on matters contained in the exclusive legislative list, makes any law enacted by a House of Assembly void to the extent of its inconsistency. In the final analysis, the full court of seven Justices of the Supreme Court unanimously came to conclusion that the Rivers State House of Assembly (and other state Houses of Assembly) is not competent to make laws with respects to matters pertaining to evidence which is within the exclusive preserve of the National Assembly. The court therefore declared Section 20 of the Rivers state Land Instrument Registration Law void.

Eko, JSC held inter alia

*“...Because in my view, exhibit L is a piece of evidence 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 of the Federal Republic of Nigeria, 1999 (as amended) which is 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 proceedings 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...In my judgment, piece of evidence pleadable and admissible in evidence by dint of the Evidence Act cannot be rendered unpleadable and inadmissible by a law enacted by a State House of Assembly under the prevailing Constitutional dispensation. The learned trial judge (Mary Peter-*

*Odili, J as She then was) was therefore right when she stated at page 141 of the records that exhibit L was ‘properly pleaded and cannot therefore be said to be inadmissible’*

There is no gain saying in the fact that decision of the Supreme Court in *Benjamin v. Kalio*<sup>16</sup> was a paradigm shift from its previous decisions on the admissibility or otherwise of an unregistered registrable instrument. It is trite law that anything place on nothing cannot stand. The legal basis for the previous position of admissibility of such documents having been impugned, they became untenable by virtue of the Supreme Court’s finding<sup>17</sup>

In a nutshell, the position of the law as established by *Benjamin v. Kalio*<sup>18</sup> is that an unregistered registrable land instrument is admissible (if properly pleaded) to prove title to land. In an unanimous decision delivered by a full panel on 15th December 2017, the supreme court jettisoned the requirement of registration as a precondition for the admissibility of land documents in evidence to prove title. That as far as they are properly pleaded, land documents are admissible as proof of title, even if not registered <sup>19</sup>.

The effect of this Judgement is clear, the first being, that a State law cannot purport to render inadmissible a piece of evidence which is admissible under the Evidence Act (a legislation enacted further to the exclusive legislative list of the National Assembly). By this token, the Supreme Court restated the cascading hierarchy of our laws. It would also appear that the apex court as by implications overruled its earlier decisions in *Shittu v. Fashawe*<sup>20</sup>; *Ogbimi v.*

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<sup>16</sup> Ibid

<sup>17</sup> Recent Supreme Court Decision on the Admissibility of Unregistered Registrable Instruments – a brief commentary <<https://www.academia.edu>> accessed may 16 2021

<sup>18</sup> (2018) All FWLR [pt. 920]I

<sup>19</sup> Unini Chioma, ‘Nigerian Supreme Court Departs from its Recent Decision on Admissibility of Unregistered Registrable Land Instruments <<https://www.thenigerialawyer.com>> Accessed 16 May 2021

<sup>20</sup> (2006) All FWLR [pt. 946] 671

*Niger*<sup>21</sup> and others which hitherto decided that an unregistered title document cannot be pleaded and was inadmissible<sup>22</sup>.

Secondly, the relevant provisions of the various Land Instrument Registration Laws of the various States which states, that unregistered instruments cannot be pleaded and admitted to prove title, are now void for being inconsistent with the Constitution, as such objections to their admissibility for the purpose of proving title to land are no longer tenable in our courts, based on the Supreme Court's decision in *Benjamin v. Kalio*<sup>23</sup>.

Furthermore, this decision brings an encouraging comfort to purchasers of land or property who are yet to register their title to use conveyances to prove their title in court, and thereby doing away with technical objections to admissibility of such instruments. This decision lends support to commercial pursuit, as it will encourage transfer of property with relative ease, so that a purchaser who is yet to register his with title will, nonetheless, be able to prove his title by evidencing the sale and conveyance without technical objections. This is a move to towards achieving justice over technicalities, in our courts<sup>24</sup>. Flowing from above, to so clear that beginning from 2017 and until April 2019, all unregistered registrable instrument became admisticable for all purposes to prove title, to prove existence of transaction and to prove payment or transfer of other valuable. Similar decision was also reached by Supreme Court in the case of *Anagbado v. Faruk*<sup>25</sup> where the court per Sanusi JSC upheld the admistibility of the letter of allocation of land which was not registered in contravention of section 15 of the Kaduna State Land Instrument Registration Law.

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<sup>21</sup> (2006) All FWLR [pt. 317] 390

<sup>22</sup> Gbenga Bello 'Admissibility of Unregistered Title Document in Nigeria; A Paradigm Shift Towards Justice' <<https://www.pressreader.co/nigeria/thisday/20190528>> 17 May 2021

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> (2019) 1 NWLR [pt. 1653] 292

#### 4.2 ADMISSIBILITY OF UNREGISTERED REGISTRABLE LAND INSTRUMENT ON THE AUTHORITY OF *ABDULLAHI v. ADETUTU*<sup>26</sup>

When the full panel of the Supreme Court in *Moses Benjamin & Ors v. Kalio & Anor*<sup>27</sup>, on 15 December, 2017, jettisoned the requirement of registration as a precondition for the admissibility of land documents in evidence and also held that as far as they are properly pleaded, land documents are admissible as proof of title, one thought that the Supreme Court has finally laid to rest the act of legislative trespass into the exclusive legislative list by State Houses of Assembly<sup>28</sup>.

However, as if it was a judgment delivered per in curiam that was never contemplated and without any amendment to the Constitution and the Evidence Act, the same Supreme Court, not long after the decision in *Benjamin v. Kalio*<sup>29</sup> was given, again considered the case of *Alhaji Aminu Jubrillah Abdullahi & Ors v. Christiana Iyabo Adetutu*<sup>30</sup>, in a shocking decision, held that registrable instrument not registered as required by the Instruments Registration Laws, will be inadmissible notwithstanding the fact that evidence is in the Exclusive list. The Supreme Court went further to state that; when a court is determining whether or not to admit or reject an unregistered registrable instrument, it has to consider the purpose and the use to which it is being put as it is stated in *Ole v. Ekede*<sup>31</sup>. That the pleader has a duty to show that the document was pleaded as an acknowledgement of payment and not as an instrument of title as it was held in *Ogunbambi v. Abowab*<sup>32</sup>. That if a document is pleaded, it must be for a

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<sup>26</sup> (2019) All FWLR [pt. 1005] 349

<sup>27</sup> (2018) All FWLR [pt. 920] 1

<sup>28</sup> Unini Chioma, 'The Need for the Supreme Court to Revisit the Decision in *Alhaji Aminu Jubrillah Abdullahi & Ors v. Christiana Iyabo Adetutu* (2019) LPELR – 47384 (SC) <<https://thenigerialawyer.com>> accessed 17 may 2021

<sup>29</sup> (2018) All FWLR [pt. 920] 1

<sup>30</sup> (2019) All FWLR [pt. 1005] 349

<sup>31</sup> (1991) 4 NWLR [pt. 187] 569

<sup>32</sup> 13 WACA 222; *Agwunedu v. Onwumere* (1994) 1 NWLR [pt. 321] 375;

particular purpose. As such, a document pleaded as transferring interest in land to a party cannot be considered for other purposes not pleaded<sup>33</sup>.

The facts of *Abdullahi v. Adetutu*<sup>34</sup> is as follows; The original Plaintiff (deceased and substituted by order of court), filed an action in the High Court of Lagos State against the respondent and another, claiming ownership of the land situate at Onipetesi, Idimango, Agege, Lagos State, claiming that he acquired the land from his predecessor – in – title and had been in Possession and that the disputed land did not form part of the land granted to the respondent. The respondent counter-claimed. While the suit was pending, the respondent commenced an action against the 4th and 5th appellants in the trial court, claiming declaratory and injunctive reliefs to the effect that she was owner of the disputed land, injunction restraining them from trespass, special and general damages. The actions were consolidated by order of court. The trial court subsequently granted the reliefs sought by the respondent and the appellants were dissatisfied and appealed to the court of appeal to the court of Appeal. Following the dismissal of their appeal, the appellants appealed to the Supreme Court contending that the lower court erred in affirming the trial court’s decision made without a required visit to the locus in quo. Nwese, JSC (dismissing the appeal) held inter alia that

*“...the admissibility or otherwise of an unregistered registrable instrument depends on the purpose for which it is being sought to be admitted. When a court is determining whether or not to admit or reject an unregistered registrable instrument, it has to consider the purpose and the use to which it is being put. The pleader has a duty to show that the document was pleaded as an*

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<sup>33</sup> Unini Chioma, ‘The Need for the Supreme Court to Revisit the Decision in *Alhaji Aminu Jubrillah Abdullahi & Ors v. Christiana Iyabo Adetutu* (2019) LPELR – 47384 (SC) <<https://thenigerialawyer.com>> accessed 17 may 2021

<sup>34</sup> (2019) All FWLR [pt. 1005] 349

*acknowledgement of payment and not as an instrument of title. In the instant case, where the 1<sup>st</sup>-3<sup>rd</sup> respondents tendered an unregistered instrument of title as proof of their ownership of the disputed land, the lower courts properly held it was insensible<sup>35</sup> (Pp. 380-382; Paras. G-D). Justice Nwese further Pontificated... By the provisions of Section 15, Land Instrument Registration Law, the admissibility or otherwise of an unregistered instrument depends on the purpose for which it is being sought to be admitted. An unregistered registrable instrument, sought to be tendered for the purpose of proving or establishing title to land or interest in land, would be inadmissible. Such document is not receivable in evidence for the purpose of establishing any right, title or interest in land being unregistered. If it is, however tendered to show that there was a transaction between the lessor and the lessee, it will be admissible as a purchase receipt. It will also be admissible if it is meant to establish a fact which one or both parties have pleaded. Under these two conditions, such a document does not qualify as an instrument as defined in the Land Instrument Registration Law. A document, registration under the Land Instrument Registration Law, may be admitted in evidence without registration, if it is tendered not as an instrument affecting land, but only to establish evidence of a transaction between the parties. In the instant case, where the appellants tendered the unregistered title document as proof of their title,*

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<sup>35</sup> *Akintola v. Solano* (1986) 2 NWLR [pt. 24] 598; *Oredola Okoya Tradings v. Attorney General Kwara State* (1992) 7 NWLR [pt. 254] 412; *Co-operative Bank Ltd v. Lawal* (2007) INWLR [pt. 1015] 287; *Gbinijie v. Odji* (2011) 4 NWLR [pt. 1236] 103.

*the lower court rightly upheld the trial courts decision deeding the document in admissible*<sup>36</sup> (P. 382; paras. E-F).

As can be deduced from *Abdullahi v. Adetutu*<sup>37</sup> the implications of the decision of the Supreme Court is that for an unregistered document to be admissible in evidence, it will not qualify as a registerable instrument as defined by the Land Instrument Registration Laws of various States. Generally, the purpose of tendering a document is as contained in the pleadings and this will determine its admissibility. What this means is that, the purpose of tendering such document whether same is a registrable instrument or not. An unregistered title document has been described as ‘amorphous’ since it is constantly changing depending on the purpose for which it is tendered. If its purpose is to prove title, it comes under the definition of registerable instrument; its non-registration thereof will make it inadmissible. However, where it is pleaded to show that a transaction occurred or to prove the existence of a fact, then it is no longer a registrable instrument, but a mere document and therefore admissible<sup>38</sup>.

#### **4.3 RESOLVING THE LEGAL CONTROVERSIES ARISING FROM *BENJAMIN v. KALIO*<sup>39</sup> AND *ABDULLAHI v. ADETUTU*<sup>40</sup>**

The controversies surrounding the decisions of the supreme court in *Benjamin v. Kalio*<sup>41</sup> and *Abdullahi v. Adetutu*<sup>42</sup> started like an unquenchable inferno among legal practitioners and

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<sup>36</sup> *Obienu v. Okeke* (2006) 16 NWLR [pt 1005] 225; *Monkom v. Odili* (2010) All FWLR [pt. 536] 542; *Agboola v. United Bank for Africa Plc* (2011) 4 NWLR [pt. 574] 74; *Gbinijie v. Odji* (2011) 4 NWLR [pt. 1236] 153.

<sup>37</sup> (2019) All FWLR [pt. 1005] 349

<sup>38</sup> O.M Atoyebi, ‘The current position on Admissibility of unregistered title documents: a review of the decision of the Supreme Court in *Abdullahi v. Adetutu*’ <<https://omaplex.com.ng>> accessed 17 May 2021

<sup>39</sup> (2018) All FWLR [pt. 920] 1

<sup>40</sup> (2019) All FWLR [pt. 1005] 349

<sup>41</sup> Ibid

<sup>42</sup> Ibid

scholars focused at determining the current position of the law regarding the admissibility of unregistered registrable land instrument in Nigeria.

Agbo<sup>43</sup> opened up the discussion on this raging issue in this way “...Good Morning learned colleagues. May we be guided on the position of the law on admissibility and effects of unregistered registrable land instrument”. A careful reading of *Abdullahi v. Adetutu* shows no mention was made of the earlier case of *Benjamin v. Kalio*, and that the thrust of the decision in *Abdullahi v. Adetutu* was the failure of the appellants to prove the authenticity of the unregistered deed of conveyance of 1969, the survey plan drawn in 1969 but signed and dated in 1986, and the purchase receipts which the court held were made in anticipation of the litigation. To that extent, I will submit that *Benjamin v. Kalio* still stands (though I have my reservations on the legal and practical application of this case). May I most humbly suggest that we take a position on these cases... our students have begun to ask questions as to the correct position of law on this issue following the decision of the court in *Abdullahi v. Adetutu*.

In this regards, there have been several arguments for and against the backdrop of whether the decision of the Supreme Court in *Abdullahi v. Adetutu*<sup>44</sup> has dislodged the principle in *Benjamin v. Kalio*<sup>45</sup> in admissibility of unregistered registrable land instruments in Nigeria.

Ewere<sup>46</sup> posited that “contrary to the position advanced by Udemezue and other proponents of *Abdullahi v. Adetutu* ratio on admissibility of unregistered land instruments, it is obvious, as argued in part 5.2 of this paper, that all the established parameters for reversal of previous judgements by the apex court were missing in *Abdullahi v. Adetutu*, considering the premise upon which the decision was based. It is evident that the most recent authorities relied on by

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<sup>43</sup> Peter Ifeoma, ‘ Case Review : on Admissibility of Unregistered Land Instruments in Nigeria’ <<https://dnlegalandstyle.com/2019>> accessed 17 May 2021

<sup>44</sup> (2019) All FWLR [pt. 1005] 349

<sup>45</sup> (2018) All FWLR [pt. 920] 1

<sup>46</sup> Anthony O. Ewere, ‘ The Fallibility of Supreme Court in *Abdullahi v. Adetutu* on Admissibility of Unregistered Land Instrument in Nigeria’ (2020) Common Wealth Law Bulletin 22

the court in upholding the defunct principle on admissibility of unregistered land instrument in *Abdullahi v. Adetutu* were decided in 2011. So *Abdullahi v. Adetutu* could not possibly have overruled *Benjamin v. Kalio* which was decided in 2017 in the circumstance. Besides, the fact that the issue of reversing the decision in *Benjamin v. Kalio* was not before the Supreme Court in *Abdullahi v. Adetutu*, the principle established in the above cases of *Bucknor-Maclean v. Inlaks Limited*, *Odi v. Osafile* and *Ememoh v. Omokpite* shows that a regular court of five justice of the Supreme Court cannot validly upturn a previous decision reached by a full court made up of seven justices of the apex court. It is strongly believed the Supreme Court panel that decided *Abdullahi v. Adetutu* may have decided the case differently if the compelling authority of *Benjamin v. Kalio* was brought to its attention. There is no doubt that the approach adopted by the court in *Abdullahi v. Adetutu* will have adverse effect on the application of the rule of admissibility of unregistered land instruments in Nigeria if urgent steps are not taken to correct the error which the court inadvertently fell into in that case”.

In the same vein, Oti<sup>47</sup>, opined that “the decision in *Benjamin v. Kalio* was not overruled by the case of *Abdullahi v. Adetutu*. This is because if that were to be the intention of the court, it would have mentioned the case, reviewed it, before reaching its current position. This is as the Benjamin’s case was only recently made and overruled the other cases on the point, making it conflicting with the past precedents. The Supreme Court has a right to overlook its own decision and set it aside, but when it intends to set aside a precedent, it ought to have reviewed the said decision.

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<sup>47</sup> Christian N. Oti, ‘ The Admissibility of Unregistered Title Instruments in Nigeria: A case for *Benjamin v. Kalio* (2018) 15 NWLR [pt. 1641] 38 <<https://thenigerialawyer.com>> accessed 17 may 2021

On his part Asia<sup>48</sup> also believed that “the watershed decision in *Benjamin v. Kalio* is alive and kicking, the darts of Abdullahi’s case notwithstanding. Abdullahi neither overruled Benjamin nor conflicted with it. For Benjamin’s case to be overruled, another full panel of the court must be invited to do so expressly. Such an attempt will not succeed because the decision was founded on sound constitutional premise. Lower courts will have no problem refusing to apply Abdullahi’s case when the issue of constitutionality of the Land Instrument Registration Law is raised.

However, on the flip side, Udemezue<sup>49</sup> submitted “...I respectfully submit that the case of *Abdullahi v. Adetutu* (2019) has departed from *Benjamin v. Kalio* (2017). The two cases are contradictory. *Abdullahi v. Adetutu* must therefore be taken to have implicitly overruled *Benjamin v. Kalio*. It is only cases of express overruling that requires a consideration of the constitution of the court. The issue in the present scenario is not a case of express overruling since *Benjamin v. Kalio* wasn’t considered in *Abdullahi v. Adetutu*. In conclusion I humbly suggest that *Abdullahi v. Adetutu* is the current law regarding admissibility or otherwise of unregistered registrable land instruments in Nigeria. It is further submitted that where two similar decisions of a court are in conflict, the later in time must be followed. However, a conflict must first be established to exist before this can apply, and the cases must be similar or substantially so...”

In my opinion and for the purpose of this research work, I align myself with the argument of the school of thought that holds that *Abdullahi v. Adetutu*<sup>50</sup> is the current law regarding admissibility or otherwise of unregistered registrable land instruments in Nigeria, and had by

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<sup>48</sup> Elvis Asia, ‘Admissibility of &Unregistered Title Document: *Benjamin v. Kalio* Remains The Law <<https://www.linkedin.com/pulsedaccessed> 17 May 2011.

<sup>49</sup> Sylvester Udemezue, ‘Case Review: On Admissibility of Unregistered Registrable Land Instruments in Nigeria’ <<https://dnllegalandstyle.com/2019>> accessed 17 May, 2021).

<sup>50</sup> (2019) All FWLR (pt 1005] 349

implication over ruled the novel decision of the apex court in *Benjamin v. Kalio*.<sup>51</sup> This conviction is born out of the facts stated below;

- (1) The Supreme Court in deserving cases is competent to depart from its earlier decisions if it was shown that the earlier conclusions was reached per incuriam, and in the interest of justice which supercedes the rule of precedent, if and when circumstances so dictate<sup>52</sup>. The party who intend to invite the Supreme Court to depart from its earlier decisions, must state this clearly in a separate paragraph of the brief and draw attention to it.<sup>53</sup>
- (2) It is also trite that where two similar decisions of the Supreme Court are in conflict, the latter in time must be followed.<sup>54</sup>
- (3) The position of the Supreme Court in *Abdullahi v. Adetutu*<sup>55</sup> is not strange. It followed the earlier decisions of the apex court in litany of cases<sup>56</sup>and which has been applied for decades, before its decision in *Benjamin v. Kalio*.<sup>57</sup> The position of the law as established by *Abdullahi v. Adetutu*<sup>58</sup> is that an unregistered registrable land instrument is not admissible (even if properly pleaded) to prove title to land, is the current position of the law.

#### 4.4 Conclusion

In this chapter, the landmark decision of the Supreme Court in *Benjamin v. Kalio*<sup>59</sup> which overruled the age long creed of inadmissibility of any registrable land instrument which is not

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<sup>51</sup> [(2018) All FWLR [pt 920]1.

<sup>52</sup> *Adegoke Motors Ltd v. Adesanya* (1989) 3 NWLR [pt 109] 250; *BucknorMaclean v. Inlaks Ltd* (1980) 8-11 SC 16

<sup>53</sup> Order 6, Rule 5 (4) of the Supreme Court Rules of 1985 (As amended in 1999)

<sup>54</sup> *Central Bank of Nigeria v. Okojie* (2015) 250 LRCN 44 at 89

<sup>55</sup> (2019) All FWLR [ pt. 1005] 349

<sup>56</sup> *Jammal v. Saidi* (1933) 11 NLR 36; *Coker v.Ogunye* (1943) 15 NLR 57; *Umoffia v. Ndem* (1973) 8 NSCC 691; *Ogbimi v. Niger Construction Limited* (2006) 9 NWLR [ pt. 986] 474

<sup>57</sup> (2018) All FWLR [pt 920] 1

<sup>58</sup> (2019) All FWLR [pt 1005] 349

<sup>59</sup> (2018) All FWLR [pt 920]1

registered, for proving title to land, was examined. However, the revolutionary effect of the judgment was short lived as a result of the supreme court decision in *Abdullahi v. Adetutu*<sup>60</sup> which brought back the old position of the law which renders a registrable instrument that is not registered, inadmissible to prove title to land. Sequel to these contradictory decisions, there arose fierce debates among legal luminaries on whether the decision in *Abdullahi v. Adetutu*<sup>61</sup> had actually overruled *Benjamin v. Kalio*. The resultant effect of the various arguments has culminated in the fact that, since *Abdullahi v. Adetutu* is a more recent decision of the apex court, then it remains the extant law on admissibility of unregistered registrable instrument affecting interest in land.

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<sup>60</sup> (2019) All FWLR [pt 1005] 349

<sup>61</sup> (Ibid)

## CHAPTER FIVE

### SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

#### 5.1 Summary of Findings

This work is channeled on understudying registration of land instrument as a panacea to land dispute in Nigeria. The components of the work have been divided into five chapters:

Chapter one centers on the general introduction and definitions of relevant concepts.

It is reflected that as a result of increase in the global demand for land for social and economic development, there have been a surge in disputes bothering on proprietary right to land. Land has been captured as an immovable and indestructible portion of the earth surface. Registrable instrument is defined as a document affecting land in the state whereby one party transfers any interest or right in the land in favour of another party, a certificate of purchase and a power of attorney under which any instrument may be executed but not a will. Land instrument registration laws constitute the laws of the states which regulate registration of land instrument within the state. Land dispute is seen as a social fact in which at least two parties are involved, the root of which are different interests over the proprietary right to land.

In Chapter Two, the process and procedure for registration of land instrument which commences with submission of application for registration together with original and duplicate copy of the Deed at the land Bureau (or Land Registry) were examined. Also, it was found that there are land documents that are registrable and those that are not registrable by the law, depending on whether they transfer interest in land or not. The admissibility rule of evidence came to play in determining the relevancy and admissibility of registered instrument as proof of title to land.

In Chapter Three, the emphasis is on the issue of priority disputes which usually arise as a result of two or more persons holding a proprietary interest in a piece of land which are

inconsistent. This makes it necessary to determine who has superior right to the land. In addition, various means of proving title to land in court which include; proof by traditional history: proof through production of title documents; proof by acts of ownership; proof by act of long possession and proof by possession of land adjacent to the land in dispute were examined. Also the age long creed bothering on the inadmissibility of registrable land instrument which is not registered as required by the Land Instruments Registration Laws of the States was given due attention.

In chapter four, the landmark decision of the Supreme Court in *Benjamin v. Kalio*<sup>1</sup> which overruled the age long principle of the inadmissibility of unregistered registrable instruments, was critically examined. The “overruling” effects of the subsequent decision of the apex court in *Abdullahi v. Adetutu*<sup>2</sup> was also x-rayed. Furthermore this chapter weigh the controversies generated by the decisions on the table of judicial and academic authorities coming to an informed conclusion that, since the decision in *Abdulolahi v. Adetutu*<sup>3</sup> came later in time, it remains the extant authority on admissibility of unregistered registrable instrument

## **5.2 Recommendations**

In line with the various discoveries made in the course of this research work, the following recommendations are hereby made;

### **1) Need for Prudence and Clarity in Pleadings**

Great importance is attached to the pleadings of the parties to a land dispute with respect to the admissibility of unregistered registrable land instrument. It is advised that legal practitioners should show due diligence in proper pleading of an unregistered registrable instrument as a mere receipt evidencing a transaction between parties, rather than as a means of proving title to land. This is to avoid undeserved loss of title to land, where the land

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<sup>1</sup> [(2018) All FWLR [pt. 920]1

<sup>2</sup> [(2019) All FWLR [pt. 1005]349

<sup>3</sup> Ibid

instrument forming the bedrock of a claim for title was not registered or wrongly pleaded. More so, proper pleading will at least entitle the client to equitable proprietary right over the land which can only be impeached by a bonafide purchaser for value without notice.

2) **Supreme Court to Make Categorical Statement on *Benjamin v. Kalio*<sup>4</sup>:** The controversy generated by the purported overruling of the ratio of the Supreme Court in *Benjamin v. Kalio*<sup>5</sup> by its subsequent decision in *Abdullahi v. Adetutu*<sup>6</sup> (where the court restored the old order disallowing the admissibility of unregistered registrable instrument) is still raising dust within the legal family in Nigeria. It is recommended that the apex court should for the certainty of law, when the opportunity presents itself, make a categorical pronouncement on whether its decision on admissibility of unregistered registrable instrument as held in *Benjamin v. Kalio*<sup>7</sup> was actually overruled in *Abdullahi v. Adetutu*<sup>8</sup>.

3) **Admission of The Latest Decisions of the Supreme Court as Template for Admissibility of Unregistered Registrable Instruments.**

Until the dust is settled on the recent decisions of the Supreme Court on admissibility of unregistered registrable instrument, it is recommended that the lower courts (Court of Appeal and High Court), legal practitioners and academicians alike should align themselves with the principle enunciated in *Abdullahi v. Adetutu*<sup>9</sup> regarding inadmissibility of unregistered registrable instruments being the later in time. This is in line with the admonition of the court of Appeal in *Oji & Anor v. Ndukwe & Ors*<sup>10</sup> where the Court held that "the Supreme Court made it abundantly clear that in line with the principle of stare-decisis and strict recognition

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<sup>4</sup> (2018) All FWLR [pt 920]1

<sup>5</sup> Ibid

<sup>6</sup> (2019)All FWLR [pt1005] 349

<sup>7</sup> (2018) All FWLR [pt 920 ]1

<sup>8</sup> (2019)All FWLR[pt 1005]349

<sup>9</sup> Ibid

<sup>10</sup> (2019) LPELR.

of its supremacy as it were, this court must follow its decision that is later in time in the event that any of its conflicting decisions are placed before this court in respect of any matter before it (i.e. Court of Appeal)".

**(4) Enactment of All Encompassing Federal Law on Land Instrument and Title**

**Registration:** The National Assembly should as a matter of urgency and in the exercise of its power under section 4 (3) Constitution of the Federal Republic of Nigeria 1999 (as amended) and in line with item 23, part 1, 2nd Schedule to the Constitution enact an act to cure the controversies generated by section 15 of the Land Instruments registration laws of the States with a view to determining a principle of admissibility applicable all over the country.

**5) Increase Advocacy and Publicity on Land Registration Policy Among the Populace:**

It is recommended that an extensive advocacy programme be launched by the government and private organisations in both print and electronic Media to educate land owners and speculators on the legal advantages inherent in the registration and perfection of land title documents. This will enhance effective land transactions in Nigeria and will eventually lead to economic advancements and reductions in workloads in courts.

**6) Simplification of land Registration Procedure and Cost Reduction:**

High cost of registration coupled with a very complex registration procedure have been identified as some of the reasons why Nigerians shy away from registering their title documents. It is recommended therefore that the various State Governments should put machineries in place to address these challenges.

### **5.3 Conclusion**

The social, economic and cultural significance of land in the development of the society have resulted in myriad disputes. This is evidenced in the litany of cases in various courts in Nigeria relating to proprietary rights over black acres. In order to succeed in asserting title and ward off trespassers, a land owner must vest himself with documents relating to the piece of land which must not only be relevant but also admissible to establish his title. Land instruments that transfer an interest in land must be registered before they can be admissible to prove title to land, as required by section 15, of the Land Instruments Registration Laws of the various States in Nigeria. Consequently, land Instruments which are registrable under the law will be inadmissible to prove title to land if it is not registered. Registered land Instruments therefore confers relevance and admissibility status on land documents and ultimately cloth the holder with interest that can be held up against any person claiming inconsistent interest in the piece of land.

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