CRITICAL EXAMINATION ON CONTRACT FOR THE SALE OF LAND IN NIGERIA

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DECLARATION

I hereby declare that the work in this project entitled: The Critical Examination on Contract for the Sale of Land in Nigeria is written by me; and it is a record of my research work in the department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria under the supervision of Dr. A.M. Madaki. This work has not been presented in any previous application for a higher or diploma in any institution.

The information and material used in this work, including quotations, have been specifically acknowledged by way of reference provided in the footnotes and bibliography.

_____ _____

Aisha Aliyu SHEHU **Date**

CERTIFICATION

This project entitled: Critical Examination on Contract for the Sale of Land in Nigeria by Aisha Aliyu Shehu meets the regulation governing the award of the degree of Master Arts of law, M.A Law of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to Almighty Allah (S.W.T) for making it possible for me to finish this work.

ACKNOWLEDGEMENT

My supervisor deserves my special appreciations. I owe much to Dr. A. M. Madaki who is not only the Chairman of the Supervisory Committee for this project, but also my teacher both at undergraduate and post graduate levels; its tutelage and criticisms have fine-tuned my perception and knowledge of this work, and greatly shaped some of the views I share.

I also want to extend my gratitude to my husband, Lt. Cdr. Armaya'u Yusuf for being my support and pillar, for encouraging me to achieve my dreams. You are the wind beneath my wings and with you I know I can fly. Thank you for your resources and also for taking care of the children while my attention was on this project.

My friend and colleague in the office, contributed immensely with her insightful and critical analysis of issues pertaining to Contract for Sale of Land in Nigeria.

I appreciate the support of my father Mallam Shehu for his encouragements and also for the financial support.

I appreciate the support of my siblings whose names I don't want to mention for taking care of my children while I was always in Zaria for my programme.

I want to thank my children Yusuf A. Yusuf, Khadijat A. Yusuf and Aliyu A. Yusuf for their co-operation as they don't get to see me often because of the programme.

I want to also acknowledge Risek business center for taking their time to type this work and edit it.

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25. Ogunmiyewa v. Odukoya (2009) ALL FWLR, part 454, p. 1526
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37. Yandle v. Suttor (1992) 2 CH. p. 199

38. Yusuf v. Dada (1990) 4 NWLR, p146 p. 657

39. Yusuf v. Oyetunde (1998) 105. CNJ, 1

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1. Illiterate Protection Law Cap.67 laws of Lagos state 2003.
2. Land Instruments Registration Law vol.3 Laws of Ogun State 2006
3. Land Registration Law, Cap. 85 Laws of Kaduna state, 1991
4. Land use Act 1978 (Cap. L5 Laws of the Federal Republic of Nigeria 2004)
5. Property and Conveyancing Law Cap. 100 Laws of Western Region of Nigeria, 1959
6. Stamp Duties Act cap. 58 Laws of the Federation of Nigeria 2004
7. Statute of Fraud of 1677

LIST OF ABBREVIATION

AC	-	Appeal Cases
ALL ER	-	All England Law Report
ALL NLR	-	All Nigeria Law Report
CAP	-	Chapter
CH	-	Chancellor
Etc	-	et cetera/and so on
L.F.N	-	Laws of the Federation of Nigeria
LR	-	Law Report
N.L.R	-	Nigerian Law Report
NRNLR	-	Northern Region of Nigeria Law Report
NWLR	-	Nigerian Weekly Law Report
OP.CIT	-	*Opere Citato*
Q.B.D	-	Queen's Bench Division
S.C.R	-	Supreme Court Report
SC	-	Supreme Court
SCNJ	-	Supreme Court of Nigeria Judgment

WLR	-	Federation Weekly Law Report
WACA	-	West African Court of Appeal
WWW	-	World Wide Web

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

A contract of sale of land is the first stage in a conveyancing transaction by which the purchase acquires equitable interest on the property and legal interest in acquired later at the completion stage. Unfortunately, this important stage in conveyancing is usually ignored by Nigerians.

The parties must have capacity; there must be an offer, an acceptance, a consideration an intention to enter into a legally binding relationship, in addition to the above, the special nature of the commodity on sale makes the sale of land to be regulated very closely by common law, the general principles of equity. Customary law, and statutes. Conveyancing is a generic property or interest in real property from one party to another.

Sale or contract for sale of land is a major part of property law practice in Nigeria. In the process, interest in land is transferred from a party to another, it is not just a mere agreement to purchase such land or the payment of price, but a complete procedure which has to be

followed such as, the agreement to transfer interest in land, agreement and the payment of agreed price.

The Collens Gem English Dictionary defines contract as "The entering into agreement formal document recording agreement or agreement enforceable by law[1]".

In Nigeria there are two clear and distinct ways in which land is sold and title validly transferred following a sale.

(a) Through customary law or,

(b) Through received English law.

The two ways are distinct and mutually exclusive and it is important for a party claiming title to kind to show clearly, carefully, and fully the nature of the sale transaction in order to establish the applicable law to the transaction[2] While a valid sale of land under customary law does not require a conveyance as obtained under English law,3 a valid transfer or sale under English law requires payment of the money or consideration, acknowledgement of the money or consideration, acknowledgement of receipt of purchase money and execution of deed of conveyance in favour of the purchaser **4**

Applicable Law

[1] Black, H.C., Black's Law Dictionary (6th Ed.) St. Paulminn: Wesr Publishing Co., 1990
[2] Onafowokan v. Shopitan (2009) All FWLR pt 450 p. 685 p.703
[3] See Elema v. Akenzua (2000) 6 SCNJ 226 at p. 237
[4] Onafowokan v. Shopitan supra

The principal statute on the formation of contract of sale of land is section 4 of the statute of frauds 1677 (U.K) and its local equivalent section 5 of the law Reform (contract) Act (No 64) of 1961.[5]

> Section 4 of the act provides
>
> No action shall be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought or some memorandum or note thereof, is in writing and signed by the party to be charged or by some person thereunto by him lawfully authorized.

The act does not apply to a contract for sale of land under native law and custom. Under native law where the indigene are predominantly illiterate the requirement of writing is not essential in fact document are unknown to nature law.[6] But every valid sale of land under native law satisfy the following [7]

a. The payment of the purchase price;

b. The purchaser is put in possession and

c. The transaction is in the presence of witnesses

In Alake v. Awawu[8] the court held that:

"This court asked to lay down a strict rule of law that land the property of an illiterate native cannot be disposed of by him or her

[5] section 67 of the Property and Conveyancing Law, 1959.
[6] Izang Arin v. Bala Musa Chaka (2001) 14 N.W.L.R (pt 734) 612
[7] Manya v. Idris (2001) 8 NWLR (pt716) 627 Cole v. Folani (1956) 5 SCNLR 180
[8] (1932) 11 NLR 39

without complying with the statute of frauds. I am not prepared to do this the circumstances of each case must be taken into consideration.

1.2 STATEMENT OF PROBLEMS

The principles and Effect for selling land is what this study deals with the transfer of interest in land that has already been in existence for a long time, even before the introduction of General law (known as the English law). This aspect of contract has been abused, and misunderstood therefore this study seeks to throw light on such aspect.

This study seeks to highlight the various problems in this area such as:

a) The various stage in conveyancing transactions
b) The need for pre contract enquiries
c) The various means and places where titles to land could be investigated.
d) The procedure for and effect of exchange of contract.
e) The procedure for completion of sale of land and perfecting title to land
f) Remedies and effects for breach of contract for sale of land.

1.3 AIMS AND OBJECTIVES OF THIS STUDY

The objective of this study is to beam the search light of practitioners view to the existing laws, with a view to ensuring faster and better method for contract of the sale of land in Nigeria. This study is also aimed at ensuring that the purchaser should make adequate enquiry on the land purported to be bought either by the vendor or through a lawyer.

1.4 SCOPE AND LIMITATION OF STUDY

This study as already stated deals with the contract for sale of land in Nigeria. This will also cascade down to the applicable laws in this area of law necessary in the transfer of interest in land. This study will also examine the nature of the contract for sale of land as to the fact that land is a vital issue in Nigeria. In order to make this research more elaborate, all the aspect of contract for sale of land cannot be discussed fully. Therefore, this study will be limited in order to give or provide a conclusive understanding of this topic. This project will also throw light on the effects of exchange of contract.

1.5 RESEARCH METHODOLOGY

The method used in the collection of data in this research is based on doctrinal research which is a wide range consultation of books written by eminent scholars in the field of conveyancing law and

practice, contract for sale of land statutory laws, case laws and also practitioners in the field who equally provided additional insight on the topic. It is hoped that all these will give added justification on this exercise.

1.6 LITERATURE REVIEW

The topic contract generally has generated a lot of literature. However contract for sale of land has not enjoyed attention from scholars in Nigeria. The few literature that are available to the research are viewed below

While under going this study I can make a selection of different books so that I can do a proper research of the contract for sale of land but these books have some little short comings in elaborating the study.

The book property law practice in Nigeria by Y.Y.D Dadem. In that book the author elaborated very well on the laws and legal restriction on sale of land, and also gave full details on the stages of contract of sale of land, types of contract in which sited the case of Adedeji v. Oloso[9] which gave full explanation in proofing customary sale of land. Also the author gave the full facts and holding of the case

[9] (2007) ALL FWLR, part 356 p. 510

of Etajata v. Ologbo[10] in that case customary law exception to the requirement of writing was affirmed.

However the author did not state the remedies that a party can get when there is a breach of contract for sale of land.

The book Barnsley conveyancing law and practice by D.G Barnsley was very elaborate in everything that has to do with the contract for sale of land from contract stage to post completion and remedies in case of brech of the contract for sale of land but there was a small lapse in the book which the old cases used by the author also the author used foreign cases instead of our own indigenous Nigerian cases.

Finally the book understanding legal drafting and conveyancing by S.O Imhanobe the author elaborated on the contract of sale of land he also explained the special causes to be inserted in a formal contract but the author did not make provision for the breach of contract and their remedies.

1.7 ORGANIZATIONAL LAYOUT

[10] (2007) ALL FWLR part 386, p.584

There are five chapters in this project:

Chapter one deals with the general introduction, problems of study, Aims and Objectives of the study, scope and limitations of the study and the Research Methodology.

Chapter two provides a detailed discussion on the nature and scope of contract for sale of land, that is the contract stage, exchange of contract and obligation of the parties under the contract.

Chapter three considers the completion and post completion matters which is where the parties to the transaction conclude all processes that vest the legal title on the purchaser.

Chapter four on the other hand deals with remedies under uncompleted, completed breach of contract and also the effect.

Chapter five ends the research work through an apt conclusion based on the research of this study and an objective recommendation.

CHAPTER TWO

ANALYSIS OF NATURE AND SCOPE OF CONTRACT FOR SALE OF LAND

2.1 INTRODUCTION

Validity of contract for sale of land depend on the ordinary rule of contract like offer, acceptance and consideration, a contract for sale of land is a preliminary step in the transfer of titles in land from one party (the vendor) to the other (the purchaser), whereby the purchaser acquires equitable title only, while the legal interest is required on completion.

In practice, a contract usually comes first and a conveyance afterwards. The law in Section 4 of the Statue of Frauds 1677 and S.5 (2) Law Reform. Act 1961 and s.67 (1) Property and Conveyance law 1959, states that a contract for the sale of land is not enforceable against either party unless all the terms of the agreement are put into writing and signed by the party to be charged or his agent.

Generally, a vendor is under duty to disclose to the purchaser before contracting any latent defects in title, but not those that are patent, or for which the purchaser is aware, or which or more inspection of the

property, he could discover.[2] The obligation is hinged on the agreement that the vendor's title is a matter that is within his exclusive knowledge and the purchaser relies upon him to disclose any latent in it [2] This makes the need for carrying out pre contract inquires on the state of the property before the parties enter into a contract for transfer of the land. The aim of preliminary of pre-contract inquiries is to obtain the fullest information to enable the purchaser to decide whether or not to sign the contract.[3]

The questions submitted as preliminary inquires by the purchase's solicitor should be those that are very relevant, for "it is the height of professional discourtesy, even arrogance, to expect the vendor's solicitor to do his work for him by deciding what is or is not relevant,[4] preliminary inquiries in practice are usually contained in a standard printed form prepared by the solicitor and used in each law firm. It varies form one firm to another but should contain the most relevant question on the property. The following are some of the examples of pre-contract inquiries.

- Boundaries of the property.
- Disputes over the property
- Notices in respect of the property

[2] Harpum L; Megarry and Wade. The Law of Real Property London: sweet and Maxwell, 2000 at p.687
[2] Ibid
[3] Barnsley, D. G. Barnsley's Conveyancing Law and Practice, London, Butterworth, 1988 at p. 181.
[4] ibid

- Guarantees in respect of the property.
- Services supplied on the property
- Facilities of the property
- Any adverse rights and restrictions on the property
- Planning schemes for the property
- Outgoings charged on the property
- Method of sale of the property
- Covenants and their breaches
- Service charges
- Insurance provisions
- Reversionary title or interest
- Any other additional inquiries in which the special circumstances of each transaction requires[5]

2.2 TYPES OF CONTRACT

There are three types of contract by which land could be sold in Nigeria. There are Oral contracts, Open contracts, and Formal contracts.

2.2.1 Oral Contract

[5] Deduced from Barnsley Supra, at p. 655-657

Generally speaking, an oral contract for sale of land is prohibited, and where such contract exists, it will not be enforceable. The reason for this rule is Because of the provisions of the Statutes of Fraud 1677 (which is reflected in some Other local legislations), that requires that there must be a contract for the sale of land, otherwise such contract is unenforceable.

However, where the sale of land is conducted under native law and custom of a particular community, such sale may be undertaken orally and a written document may not be required. The minimum requirements for such a contract are:

i. Payments of the purchase price.

ii. Possession by the purchaser and,

iii. The presence of witnesses during the transaction[6] where a party alleges that the sale was conducted under customary law, he must plead and lead evidence on the "names of such witnesses and the facts of their having witnessed the sale transaction and the handing over of the land to the purchaser[7].

[6] Adedeji v. Oloso (2007) ALL FWLR, part 356, p.610@640. See also Ogunmuyiwa .v. Odukoya (2009) ALL FWLR part 454, p1526

[7] Adedeji v. Oloso supra

2.2.2 Open Contract

An open contract can be deemed to be an implied contract; this is due to the fact that both an open contract and implied contract carry the same requirements. The terms in such contract are not clearly expresses or stated. An open contract for the sale of land is one that contains the basic requirements of

a. Parties, which means that there must be parties to the agreement, they must be clearly ascertained by their names and other descriptions.

b. Property which means that the property must be sufficiently described by its particulars, leaving no ambiguity on its location and what it contains.

c. Price, which is the consideration paid for the purchase or sale of the property. The fact of payment of the price distinguishes the transaction from a mere gift of land. In Jodi V. Salami[8] the court held that there can never be a sale of land on credit, that even where a person is in possession there is no sale except the purchase price is paid.

[8] (2009) ALL FWLR, Part 458 p. 385

Open contracts may be contained in written notes or memoranda. A simple receipt issued to the purchaser by the vendor may also be evidence of such note or memorandum.

2.2.3 Formal Contract

A Formal contract is also known as a contract under seal. It is also called a deed. A Formal contract for sale of interest in land is a standard contract which contains basic requirements of the parties, property, price etc. It also contains other terms, which the parties may decide to include in the agreement.

Formal contract are always in writing, although the parties "may agree a few special conditions and leave the rest to the rules of the general law, thereby creating a contract which is in part formal and as to the remainder an open contract[9].

[9] Oakley, A. J Magarry's Manual of the Law of Real Property (8th ed) London: Sweet and Maxwell, 2002 @ p. 257

2.3 MAIN CONTENTS OF A FORMAL CONTRACT

2.3.1. Deposit

A Deposit is money paid as security by the purchaser to the vendor as evidence of his intention to complete the purchase of the property before the exchange of the contract; it may be forfeited if the depositor fails in his undertaking[10].

Deposit is forfeitable where the purchaser changes his minds; payment of it therefore serves as impetus on the purchaser to complete the purchase of the property since he stands the risk of losing the deposit if he fails to complete the transaction.

2.3.2 Balance of Purchase Money

The balance of purchase price should be paid on completion. Some parties may also agree in a contract on the balance of the purchase price and what interest is to be charged in the event of a delay.

[10] Black Law Dictionary (Bryan A. Garner) Editor in chief Ninth Edition @p. 438

2.3.3 Capacity of the Vendor

The contract should expressly state the capacity in which the vendor is conveying the interest in the title. He can convey as beneficial owner, mortgages, trustee, seller or personal representatives.

2.3.4 Vacant Possession

There is implied obligation on a vendor to give vacant possession of the property on the day of completion. This is especially required where the premises are residential.

2.3.5 Fixtures and Fittings

Fixtures are things in the nature of personal property which has been so annexed to reality that it is regarded as part of the real property. There is no obligation for the purchaser to pay for them unless the contract provides for that.

2.3.6 Possession Before Completion

The general rule is that the purchaser takes possession of the premises when the transaction is completed. Where the parties intend that it should be otherwise, they should expressly provide for that.

2.3.7 **Insurance Pending Completion:**

Where risk and liability should lie.

2.3.8 Completion Date

Where a contract fixes a date for the completion of the sale the contract must be performed by that date; otherwise the non- defaulting party could terminate.

2.4 EFFECT OF EXCHANGE OF CONTRACT

While a deed takes effect upon delivery, a contract takes effect when it is exchange.[11] Exchange is the situation whereby the buyer pays a non-refundable deposit to the seller usually up to ten percent of the purchase price.[12] Also exchange of contract is defined in the English case of Domb v. Isoz[13] to mean:

… each party shall have such a document signed by the party in his possession or control so that, at his own need, he can have the document available for his own use. Exchange of a written contract, signed by the vendor or the purchaser… is in the actual or constructive possession of the other party or his solicitor.

[11] Awojugbagbe Light Industries Ltd. v. Chinukwe (1995) 4 SCNJ, 162; (1995)4 NWLR Part 390, 379.
[12] www.findlaw UK.
[13] (1980) Ch. 548 at 557.

A contract is said to be exchanged if there exist the following.

(1) The parties to it have signed the contract

(2) The signed contract is in the actual possession or control (constructive) possession of the parties.

Once contract is entered and exchanged, certain results occur, some of which are:

1. An equitable interest is vested in favour of the purchaser and a subsequent purchaser of the estate acquires it subject to the equity of the original purchaser.
2. If the purchaser is not in default of any of the terms of the contract he can prevent the transfer of his estate to a subsequent purchaser by way of action in court.
3. He can sue the vendor to specifically perform or complete the transfer.
4. He can sue against voluntary waste, which depreciates the property.
5. A lien is created in favour of the vendor over the property for payment of the balance by the purchaser[14].

[14] Adubi, C.O., Drafting Conveyances and Wills, Lagos State Light House Publishing Company Limited 1995 p70

2.5 RIGHTS AND OBLIGATION OF THE PARTIES UNDER THE CONTRACT.

In a contract for sale of land, there are mainly two (2) parties. There are those willing to sell the proper land. Both “The vendor” and “Purchaser” have different roles to play in the contract for sale.

The vendors are those who have the power to the kind property. The vendor therefore has the right to sell or to convey land or property. He is also to disclose all encumbrances except patent defects as can be understood in Yandle v. Suttor[15].

The vendor’s solicitor at the satisfaction of the title is obliged to prepare a contract for sale. It should be noticed, that any one (agent) who works for the vendor is also deemed to be a vendor or a vendor’s solicitor.

The vendor has a substantial and personal interest in the property or land; he is entitled to the purchase money against which he has a right of lien. He is obliged to maintain the property, and also have the right to retain possession or collect rent until the completion of the contract.

[15] (1992) 2C.H p 199

The purchaser has a right to receive complete description of the property or land, bought from the vendor; he has the right to know in what capacity the vendor is setting the property or land. The purchase is obliged to pay a deposit for the property and also the balance of purchase price at completion or to pay.

The Totality of the obliged to make preliminary enquiry on the title of the kind, also the physical state of the land before the completion of the rule of “caveat emptor” applies (the purchaser takes what he sees). As earlier explained in the case of a vendor, anyone who works together with a purchaser or an agent is also a purchaser in view of that contract, or a purchaser’s solicitor. A purchaser is a beneficiary who may assign or transfer his equitable interest to another person. Therefore, in the event of death of either party, it will not affect the transaction as their personal representatives may be compelled to complete the contract.

2.6 ADVANTAGES FOR ENTERING INTO A FORMAL CONTRACT

1. The purchaser protects himself by having more time to investigate the title being transferred before the execution of the deed of conveyance.

2. The death of either party does not terminate the contract as their personal representatives can proceed with the transaction[16]

3. It is easier to enforce the terms of the contract they are clearly state.

4. The vendor cannot unilaterally and subsequently increase the purchase price since this has already been fixed in the contract.

5. None of the parties can withdraw from the contract in the last minute without being liable for breach of the terms of the contract.

[16] Yusuf .v. Dada (1990) 4 NWLR P146. p. 657

CHAPTER THREE

POST COMPLETION MATTERS IN RELATION TO CONTRCT FOR SALE OF LAND

3.1 INTRODUCTION

The completion stage of the conveyance in where the parties to the transaction conclude all process at vests the legal title on the purchaser. In the words of an author," for the Parties this normally signifies cash For the vendor and keys i.e. possession for the purchaser. From the legal stand point, the vital element is the Passing of the legal estates[1]. The following things usually signify completion.

a. Payment of the balance.
b. Execution of the formal contract.
c. Handling over of the title deeds and other document to the purchasers.
d. Taking over possession of the property by the purchaser.
e. Vesting of legal estate in the purchaser[2]

3.2 POST COMPLETION MATTERS

After the execution of the contract, it is imperative that the purchaser's solicitor acts promptly to ensure that the legal title passes

[1] Barnsley, D.G; Barnsley Conveyancing law and practice, London: Butter Worths 1988 p. 367
[2] Killer .v. France (1946) 2 ALL ER 83@86.

to his client. To achieve this he must ensure that the state Governor's consent is obtained, the writer contract of sale is stamped and finally registered. A completion statement is also prepared by the solicitors involved in a sale of property. It is a statement of the financial commitment of the parties and any financial obligation they are expected to meet towards a successful completion of the transaction. The statement computes in detail the financial movements in respect of the transaction, that is monies received, monies paid out and to be paid out and monies left.

3.2.1 The Requirement of Governors Consent.

Section 22 of the Land Use Act

Provides:

"It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by Assignment, Mortgage, transfer of possession sublease or otherwise howsoever without the consent of the Governor first had and obtained.[3]

Section 26 of the Act provides that:

[3] Land Use Act 1978 (Cap L. 5 Laws of the Federal Republic of Nigeria 2004).

Any transaction or any instrument which purports to confer on or vest in any person interest or right over land other than in accordance with the provisions of this Act shall be null and void[4].

The consent of the Governor is important before the actual alienation or the sale of any interest in land in Nigeria. Any alienation or sale of interest in land without the consent of the Governor makes the transfer null and void. The solicitor for the purchaser should ensure that consent is sought for and obtained. Where the property is subject to a statutory right of occupancy, the owner of the right of occupancy has the duty to seek for and obtain the consent of the Governor of the State.

Before consent is granted, there must be evidence of payment of all outstanding ground rents and other charges on the land.

The provisions of the Land Use Act have been very controversial; it seems that their full import has not been fully understood. Some of the Nigerian authorities have created confusion in their interpretation and application of these provisions to commercial transactions. The position is clear in Okunneye v. FBN Plc.[5] where the issue was the applicability of section 22 and 26 of the Land Use Act to a transaction that involved the deposit of title deeds with the bank to obtain overdraft. Uwaifo, J.C.A. (as he then was) held:

… It has been held that where a statute requires the consent of a specified authority before property can be alienated by way of sale,

[4] Supra.
[5] (1996) 6 NWLR (pt 457) 749.

sublease, does not include and agreement to sell or lease, which therefore does not need such consent.

Onu J.S.C. reaffirmed this position in Awojugbagbe Light Industries Ltd v. Chinukwe[6] where he said.

"although section 22 of the Act prohibits the alienation of a right of occupancy without the consent of the Governor first had and obtained, it does not prohibit agreement so to do for preparation for the purpose of effecting such alienation."

Flowing from the above cases, it is clear that a contract of sale of Land will not require the Governor's consent notwithstanding, it is important that a clause, which states that the contract is conditional upon the Governor's consent being sought and obtained, is inserted in the contract of sale.

The consent of the Governor is important before the actual alienation or the sale of any interest in land in Nigeria. Any alienation or sale of interest in land without the consent of the Governor makes the transfer null and void.[7] Where the property is subject to a statutory right of occupancy, had the duty to seek for and obtain the consent of Governor. Where the property is subject to a customary right of

[6] (1995) 4 NWLR pt 390
[7] Section 22 Land use Act Savannah Bank.v. Ajio (1989) INWLR Part 97, @ 305

occupancy, the consent required is that of the local Government where he the land is located[8]. To prevent a situation where he may later deny that he never applied for consent or authorise his solicitor to do so, the purchaser should ensure that the vendor personally the letter applying for consent.

3.2.2 **Stamping of Contract**

It is important that any document relating to land in Nigeria, such as a receipt for money paid, written contract for sale of Land, a deed of conveyance, lease e.t.c. should be stamped with the appropriate duty payable within 30 days of its execution. In practice the written contract for sale of Land is often left undated until when the stamp duties has been paid.

Any written contract of sale which is not properly stamped cannot, except in criminal proceedings, be given in evidence or be available for any purpose whatsoever[9] Where a contract of sale is not stamped, apart from being a criminal offence, the document will not accepted for registration nor admitted in court to prove title.

[8] Section 21 Land Use Act.

[9 7] Section 22 Stamp Duties Act Cap 191 Laws of the Federation. (2004)

The principle for assessing duty varies according to the nature of the document. A written contract of sale is chargeable upon an advalorem basis, the value of the property being represented by the consideration stated in the documents.[10]

After the Governor's grants consent, the solicitor must ensure that stamp duties charged on the transaction is paid. It is advised that consent be obtained before the payment of stamp duties since if the Governor refuses consent, the duties paid cannot be recovered. To avoid this loss, it is better to wait for the consent before duties are paid.

Stamp duties are taxes imposed on certain transaction, one of which is alienation of interest in land. After the Governor grants consent, the solicitor must ensure that stamp duties charged on the transaction is paid. It is advised that consent be obtained before the payment of stamp duties since if the Governor refuses consent, the duties paid cannot be recovered. To avoid this loss it is better to wait for the consent before duties are paid. Where the transaction is chargeable ad volorem, stamp duties must be paid within 30days of its execution[11]

3.2.3 Registration of Contract.

[10] Section 51 Stamp Duties Ibid.
[11] Section 23(3) (a) Stamp Duties Act cap 58 LFN. 2004

Land Registration Act 1924 of Nigeria defined "registrable instrument as a document affecting land whereby one party called the grantor confers, transfers, limits, charges or Extinguishes in favour of another party called the grantee any right or title to the interest in land and includes a certificate of purchase, a power of Attorney under which any instrument may be excluded but does not include a will".

Therefore, it is generally agreed that a registrable instrument is a document, which transfers or creates a right, title or interest in land to or in favour of the grantee.[12]

The Lands Instrument Registration Law of the states provides for the requirement of registration of instruments. Whether or not a contract of sale of Land is registrable instrument depends on where the property is located. For this purpose there are three Jurisdictions.

(a) **States of the Northern Nigeria & Lagos**:- A contract of sale of Land is not a registrable instrument.

(b) **States of the Old Eastern Nigerian:** The Land Instrument Registration Law applicable in these states is silent on the

[12] Lamudi. Com.ng

registration of contracts, but in **Okoy v. Dumez**[13] the court held that a contract of sale of land is a registrable instrument.

(c) States of the Old Western Nigeria

In these states the applicable Laws in these states provides that a contract of sale of Land is an Estate Contract that is registrable.

In the Jurisdiction where the contract of Sale is registrable, the legal consequences of the failure to register the contract are:

a. The contract is inadmissible to prove title;
b. It will loss priority against a previously registered contract.
c. If the contract were registered, it would be notice to the world.

But in the jurisdiction where the contract is not a registrable instrument there is no adverse consequence for the non registration of the contract.

The procedure for registering deeds is broadly the same in all the states, but may defer in little details. The procedure is set out as follows.

1. The original and the counterparts of duly executed and stamped deeds are forwarded to the deed Registrar for registration.
2. You pay and fill all necessary forms

[13] (1985) 65. C. 3.

3. The contract for sale of Land is registered as an registrable. Instrument
4. The certificate of registration is endorsed on the instrument for contract for sale of land.

The importance of registering the contract or conveyance which alienates interest in land is that it is a document affecting land in which one party confers transfers, limits, charges or extinguishes in favour of another party a right or title to or interest in land[14]. In the states of the Former Eastern, Western and Mid- Western regions of Nigeria a contract for sale of land is viewed as “estate contract” and hence registrable[15]. A deed must be registered within 60 days of execution.

[14] Section 2 land Instrument Registration law of Kaduna State
[15] Section 2 Land instrument Registration Laws, Vol. 3 Laws of Ogun State, 2006.

CHAPTER FOUR

REMEDIES FOR BREACH OF CONRACT FOR SALE OF LAND

4.1 INTRODUCTION

The vast majority of vendor purchaser transactions proceed smoothly to completion without any major dispute arising between the parties. Sometimes, however the contract is never completed; sometimes it is completed only after litigation between the parties and occasionally it may be necessary to have recourse to the courts after completion of the transaction. A variety of factors determine what these right are: which party is in default, why the contract has been broken, and whether a particular remedy is available under the general law or only exercisable by virtue of some contractual provision.

4.2 REMEDIES UNDER UNCOMPLETED CONTRACT

4.2.1 Specific Performance

Specific performance is an equitable remedy by which the defaulting party is compelled to fulfill his own part of the bargain. It is applicable only when there is a concluded contract. The court has discretion whether or not to grant specific performance of the contract. This discretion is exercised after considering the conduct of the parties and circumstances outside the contract generally. Notwithstanding that

there is a valid contract the court may refuse to decree specific performance of a doubtful contract, or where the decree will impose hardship on the defendant, or the plaintiff is guilty of delay or other acts or default such that it will be inequitable to decree specific performance or where the decree will adversely affect the rights of a third party[1]

Land has a special character of it own, and in the eyes of equity a purchaser ought not to have to be content simply with common law remedy of damages for breach of a contract for sale of land[2]. The main part of the doctrine of specific performance is that the purchaser is actually to get the land. Nevertheless this remedy is available to a vendor, even though his claim is essentially monetary[3]. In practice a vendor is usually content to forfeit the deposit and resell the property. In some situations a decree of specific performance is of no avail to him, as where the purchaser has no fund to pay for the property.

A contract for a loan whether secured or unsecured, is not specifically enforceable[4]. (Unless, it seems, the money has actually been advanced on the strength of the browser's promise to execute a

[1] Biyo v. Aku (1996) 1 NWLR part 442p.1; Yusuf .v. Oyetunde (1998) 10 SCN J 1, Hope v. Walker (1900), ch257; Awasi v. Chabasaya (2000) 6 NWLR (pt 661) 408.
[2] Re Scotland Alvarez's contract (1895) 2 Ch 603, C.A@p.615 per RIGBY [ ]
[3] Adderley .v. Dixon (1824), 1 SIM & ST. 607
[4] Rogers .V. Challis (1859), 27 Beav 175

motgage[5]), equity regard the award of damages for breach of this type of contract as a sufficient remedy. This rule does not prevent specific performance being decreed of a contract for the purchase of land[6].

4.2.2 Damages

Breach of a contract or sale or purchase of land give rise to a right of action of law for damages. The breach may take different forms, with varying consequences. Breach of term of vital importance, such as the vendors inability to show a good title in accordance with the contract, entitles the innocent party to treat himself as discharge from the contract. He may elect to rescind the contract, alternatively he can choose to affirm it and sue for damages for its breach. Breach of non essentially term merely gives rise to an action for damages.

The breach may also take the form of a repudiation of the contract by one party's conduct as, for instance where the vendor puts it out of his power to perform the contract by conveying it to another[7]. Again the innocent party is put to his election.

Damages are not confined solely to cases where the contract is not performed. A purchaser, for instance, may seek after completion

[5] Hermann .V. Hodges (2873) L.R. 16 Eq. 18

[6] Starkey .V. Barton (1909) 1 CH 284.
[7] Goffin .V. Houlder (1920), 90 L. CH. 488

but, because of the rule that conveyance the contract and any remedies under it become merged in the conveyance, damages are not normally recoverable after completion.

4.2.3 Rescission

Strictly speaking this is not a judicial remedy; it is a unilateral right[8] whereby one party can in certain circumstances set it aside and be resorted to his former position as if the contract had not been made. This, it will be observed, is the exact reverse of specific performance. Rescission brings the contract to an end and thereafter the parties cannot revive it except by something amounting to a new agreement[9]. Rescission can be exercised without recourse to the courts but in practice, their aid is frequently sought to uphold or enforce the plaintiff's right, or to obtain in consequential relief. The right to rescind may arise under the general law or by virtue of some stipulation in the contract.

The position under Nigeria law is summarized in Manya v. Idris[10] in that case, the court held

"if a party to a contract commit a breach or breaches and such breache or breaches are fundamental terms, the innocent party has an option. He may accept the breach or breaches as repudiation and treat

[8] . Re Stone and Saville's Contract (1962) 2 ALL E.R 114@P. 121
[9] Farrant v. Olver (1992), 127 L.T 145, Lowe v. Hope (1970) ch.94 (1969) 3 ALLER 605
[10] (2000) LPELR-10172 (CA) , [2001] 8 NWLR pt 716 p. 627

the contract at an end and no longer binding or that the contract is still existing, continuing and enforceable by seeking specific performance.

4.2.4 Forfeiture of Deposit

Deposit acts as a guarantee of performance on breach by the purchaser, the vendor may be entitled to forfeit the purchaser's deposit. A vendor who elects to forfeit the deposit is really exercising his right to rescind the contract compared with the purchaser, the vendor is in a much superior position forfeiture of the deposit frequently enables him to obtain adequate compensation (and often more) without the assistance of the court, save where the purchaser can only recover the deposit he has paid, assuming he is entitled to its repayment, by means of legal proceedings, should the vendor refuse to return it voluntarily.

4.2.5 Vendor and Purchasing Summons

A statutory procedure exists for the settling of disputes between vendor and purchaser that may arise during the course of the transaction. This procedure enables either party to obtain a decision upon some particular point, without having to commence an action for specific performance for example, the summon may ask the court to declare whether the vendor has sufficiently answered a requisition, whether he has a right to rescind under the contract, or whether he has

discharge his obligation to show a good title in accordance with the contract.

The court can make such order as it thinks appropriate in the circumstances. It may be for the return of the deposit with interest and costs (including cost of the summons), should the court declare that the vendor has failed to show a good title[11] and the costs can be ordered to be a charge on the vendor's interest in the property[12].

4.2.6 Lien

Both the vendor and purchases have their respective lien. Pending the payment of the balance, the law protects the vendor by allowing him a right of lien on the property, for unpaid purchase-money is paid. But a bona fide purchaser without notice of the lien may take free of it and the vendor may waive this right either expressly, or impliedly. Thus the vendor waives or abandons his lien where it is shown that the intension of the parties is that there should be no lien.[13] A lien does not give a right to possession, rather it is enforceable in court by an action seeking an order that the property be sold.

[11] Re Hargrecules and Thompson's contract (1886), 32 ch. D 454 C.A. Re Davis and C (1888), 40 ch. D. 601
[12] Re Higgins and perciual (1888), 57 L.J C. 807.
[13] Kettlewell v. Watson (1884), 26 D501; Capital finance co. ltd v. stokes (1969), Ch 261

As for the purchaser's lien, where he is entitled to recover his deposit, the law protects him by allowing him a lien over the property until the return of the deposit. This lien is only exercisable if the vendor of his agent holds the deposit. Where a stakeholder holds the deposit, the purchaser should turn to the stakeholder for the return of the deposit.

Where a party has a right of lien, the best way to protect it is to retain the title documents. This will forestall any dubious dealings.

4.3 POST COMPLETION REMEDIES

Once the contract is executed and the legal title vested in the purchaser, the Parties remedies in the event of a dispute are somewhat restricted. Usually, it is the purchaser who wishes to sue and in the main he is confined to his action (if any) on the covenants for title.

4.3.1Covenants for Title

The doctrine of merger, whereby on completion, the contract is superseded by the conveyance, ensures that the purchaser's only mode of redress if his title proves to be defective is an action for damages on the covenants for title implied in the convenience.

Fraud apart, he cannot recover the purchase even though the conveyance turns out to be worthless[14]. Notwithstanding completion, a purchaser can however still maintain an action for damages for breach of contract. If he establishes a breach of some collateral warranty such as failure to build a house in a proper and workmanlike manner, or breach of a contractual term that how survived completion e.g. a clause which provides for compensation for errors in the contract[15]. Similarly, completion of the transaction is no bar to the vendor's right to sue for any unpaid purchase money or to enforce his seller's lien.

4.3.2Setting the transaction aside

The right to set aside the transaction on account of some initiating factor, such as fraud or common mistake of a fundamental nature, survives completion and the court can, on sustaining the plaintiff's plea, set aside the conveyance or declare it to be void, and may order it to be delivered up and cancelled. Usually, it is the purchaser who will institute such proceedings, but a vendor or grantor may also be desirous of having the deed set aside on account undue influence, or because he was mistaken as to the nature of the

[14] Clare lamb (1875), L.R 10 C.P 334
[15] . Palmer V. Johnson (1884), 13 Q.B.D 351, CA, P568

document which he executed. The setting aside of a transaction after completion is commonly termed rescission.

4.3.3Rectification

Where the conveyance does not correctly give effect to the terms of the contract, either party may seek equity's aid to rectify it so as to make it accord with their real intention. Equally it may be that the written contract fails to express what the parties orally agreed. In no sense is this remedy which can only be sought after completion.

4.4 EEFECT OF BREACH OF CONTRACT

4.4.1Innocent Party put To Election

The following example may help to illustrate the various possibilities suppose that after the making of a contract for sale of land by V to P, V notifies P that he has decided not to proceed with the transaction. P is entitled to treat this repudiation as terminating the contract if he adopts this course, not only is he discharged from further liability to perform his obligations under the contract, but he can immediately enforce the appropriate remedy. If he elects to treat the contract as discharged, he may either sue for damages i.e. seek to be put in the same position so far as money can do this as if the contract

had been fully performed, or alternatively he may be content to seek restitution to the pre- contract position.

This right of a party discharged by breach to rescind is well established. Thus in the case of **Flight V. Booth**[16], a purchaser was held entitled at law to rescind the contract and recover his deposit as money had and received on account of a material misdescription contained in the contract.

4.4.2Trivial Breach

Not every breach of contract entitles the innocent party to treat the contract as discharge, but only one that goes to the root of the consideration. Various expressions have been used to describe the governing principles.[17] In the main there must be a breach of an essential obligation. Breach of non essential term gives rise to an action for damages but does not entitle the injured party to treat the contract as discharge. If he does, he may find himself in breach of contract, as happened in Cornwall V. Henson[18] where the purchaser's failure to pay the last of twelve equal instalments of the purchase price did not constitute a repudiation of the contract and the vendor was

[16] (1834), 1 Bing, N.C. 370; (1824- 34) ALL E.R. Rep43, p, 566.
[17] Cheshire & Fifoot, The Law of Contract (8th Edn), 567
[18] (1900) 2 Ch. 298, C. Az

held liable to pay damages to the purchaser for having let the land to a tenant in the meantime.

CHAPTER FIVE

SUMMARY CONCLUSION AND RECOMMENDATIONS

5.1 SUMMARY

This project is mainly armed at analyzing the contract for sale. This mainly explains the form in which a binding contract for sale of land can be entered into, and also the rights the various parties to such a contract are entitle to. This is to say that for there to be a binding contract, there must be mutual agreement between both parties involved in such a contract. It also should be noted that for a contract to be justified by law in Nigeria especially as valid it must be stamped and registered at the Registry.

This project further elaborates the procedures of conveyancing and also, the way by which legal transfer of title or interest in land can be done. This is to say that the process of entering into a legal and binding conveyance has also been discussed here it has gone a head to explain the importance and advantages of a formal contract in which all matters or agreements of the contract are discussed in full details.

It also explained that all contract for sale of land or conveyancing must get the approval of the Governor i.e. governor's consent and it must be stamped after all charges are fully paid. The project also

stated the importance of registration because without all these the contract may not be admissible at law.

Also the project explained the remedies to contract for sale of land extensively.

5.2 FINDINGS

Based on the foregoing discussions on the critical examination for contract for sale of land, the study arrived at the following major finds.

First and foremost, people in Nigeria enter into an agreement to purchase land without including a legal practitioner or practitioners in their dealings they feel they will have to bear extra expenses by engage one, so as such they enter into a contract without a legal practitioner and then later on they start having problems.

Also most people think that certificate of occupancy is the highest document you need for transaction for sale of land the do not think it deems it fit for a formal deed of conveyance to be drafted and those who know about the deed do it themselves then later they give it to a legal practitioner to affix his signature who will not read it or peruse it before affixing his signature.

Multiplicity of laws affecting property, particularly with respect to customary law. There is the duality of tenure that makes certain interest in properties to originate from family ownership to individual ownership again to family property depending on the circumstances of the previous holder in relation to the purchaser. This situation generates controversy and consequent uncertainty of the title in issue.

Professional incompetence and lack of diligence among conveyancers evident in uncritical dubbing of precedents by many lawyers and non-lawyers contribute to many faulty drafts Archaic mode of record keeping at the lands registries create avoidable difficulties in the investigation of title.

Financially, lack of documentary evidence of title and weakness of proving traditional title where there is no written evidence makes proof of title difficult.

5.3 RECOMMENDATIONS

In an attempt to address the problems faced in this area of study recommendations are made and their implementation will act as a catalyst to providing solutions to such problems. First, it is recommended that a clear agreement of contract for sale of land

should be entered into in order to avoid misunderstanding. Secondly, persons entering into contract for sale of land should be knowledgeable, this will help to avoid misunderstanding in the procedure of entering into a binding contract and also in the preparation of conveyance and also people who have no knowledge of law should not draft the contract or deed of conveyance.

Thirdly, in the case of illiterate person, legal official should be present in order to witness such a transaction, and to make sure that such a transaction is a valid transaction.

Fourthly, it is recommended that appropriate procedures be followed in the contract for sale of land, and also in the procedure of conveyance in order to avoid breach in such agreements which can further lead to a non-binding contract. It is further recommended that an agent or commission be set up strictly to deal with the aspect of Governor's consent on land issues. It would also be of great relief if the Governor can appoint someone to sign on his behalf due to his tight schedule. This will help the cumbersomeness of seeking the Governor's consent in the transaction for the sale and conveyance of land.

Furthermore lawyers or legal practitioners should make proper research on the multiplicity of laws and know which law is applicable to the place or state where the land is so that it will not course problems or litigation and also they should avoid dubbing of precedents.

Finally, in the transaction for sale of land, the title which the vendor holds out to sell or to transfer should be confirmed by the purchaser or his solicitor at the land Registry of the state where the land is located, in other to confirm such a title this is of great importance mainly to avoid fraud in such transactions, as has been a basic problem especially in Nigeria.

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