# DEED OF ASSIGNMENT AS A MEANS OF TRANSFER OF REAL PROPERTY IN NIGERIA, ISSUES, CHALLENGES AND PROSPECTS

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**BEING A RESEARCH PROJECT SUBMITTED TO THE SCHOOL OF POSGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF ARTS LAW DEGREE (M.A)**

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**ZARIA.**

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## DECLARATION

I declare that this project titled: **"**Deed of Assignment as a Means of Transfer of Real Property in Nigeria, Issues, Challenges and Prospects**"** has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this project has been previously presented for another Masters Degree at this or any other institution.

**_____** **_____**

**Aisha KABIR** **Date**

## CERTIFICATION

This Project Report entitled: "Deed of Assignment as a Means of Transfer of Real Property in Nigeria, Issues, Challenges and Prospects" by Aisha KABIR meet the regulatory governing the award of the Master of Arts Law Degree in Public Law of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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## DEDICATION

This work is dedicated to my mum Hajiya Halima Baba Pate, my loving husband Capt. S.I. Hassan, my baby Fadimatu Aneeysa, and my lovely sisters and brothers for their support. May Allah (SWT) bless you all.

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## ABSTRACT

*Acquisition of real property in Nigeria is a right enshrined under the constitution of Nigeria 1999 (as amended). Transaction in land formed part of the economic sector of the country. Transfer of interest in land or acquisition of real property can be through state grant, gift, purchase (conveyance), inheritance (probate) and allotment of family land. Of all these means of acquisition real property in Nigeria only purchase and gift are demanded to be by deed. This factor gravel affects the titles acquired by customary grant, probate, state grant and allotment of family land. As a legal requirement transfer of interest in land must with up with the requirement of governor's consent o the state were the land is situated or the local government authority within jurisdiction. The law also requires payment of stamp duties and the registration of the instrument (deed of assignment). Deed of assignment is the instrument that transfers interest in land from one party of another. The instrument contains the date, parties and terms of sale. It must be executed by the two parties and attested by witnesses. The law specifically requires that a deed must be signed, sealed and delivered for it to be valid. Transfer of interest in land is governed by many laws which differ from state to state of the federation. There are also various steps to be taken in the registration of title deed. This renders the transaction difficult and cumbersome. This research examined the means of acquiring real property in Nigeria, deed of assignment in particular and the challenges pose by the bureaucracy in the registration of title deed. The way forward has been proffered such as harmonization of conveyancing laws in Nigeria, review of the Land Use Act to make the requirement of governor's consent unnecessary, reducing the time frame within which to register title deeds, reduction of fees payable for the registration of title deed and the such other similar problems.*

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# CHAPTER ONE

# GENERAL INTRODUCTION

## 1.1 Introduction

There can be no society without law (ubi societa ibi jus):- there are rules that are designed to guide behaviour and decisions of individuals either oral (tradition) or written such as constitution, parliamentary bills, legislative orders, executive ( executive ) orders court decisions etc, are intended to regulate and control human activities and or transactions.

Some contracts, covenants, agreements, appointments, conveyances are required in law to be by deeds (written form and formally).[1]

A deed of assignment can be said to be a document or agreement in which an assignor (the transferor) promises to, from the date of assignment or any date provided in the document assign his ownership in that property to the assignee ( transferee). The deed of assignment stipulates the type of right that has been assigned and usually, in the case of the sale and purchase of immovable property, full rights are assigned. It also documents the flow of ownership from the owner to the buyer and subsequent purchasers, where applicable. So, if a property has changed hands, the deed of assignment in the hand of the last owner would have a recital, usually on the last page which takes about history of the property changing hands from 'A' to 'B' up to the current owner[2].

[1] www.jsor.org/pass.accessed on 10th February 2014; Section( 77) of Property Conveyancing law cap. 100 Laws of Western Region of Nigeria 1959.

[2] www.Wisequeek.com/what is title deed. htm accessed on 10th February, 2014; see also Dadem Y.Y., Property Law Practice in Nigeria; University of Jos Press Limited,(2012) 2nd ed., page 78

It therefore goes without saying that deed of assignment is a very important document which should be kept in a very safe and secure place because they are legal document and getting new copies, if they are lost or stolen can be painful and hard. Many people made many copies of title deeds in case of lost, damage or destruction so that they have temporary measure on ground. Because title deeds can be used to initiate the transfer of ownership, it is good to keep such deeds in safe places and location so that they cannot be stolen[3].

## 1.2 Statement of the Problem

Over the years, there have been much reliance on customary land law regime, judicial precedents and legal instruments in making decisions on real property related issues without taking cognizance of the legal drafting and conveyancing techniques most needed in the design and construction of document involved (deeds of assignment) and other challenges created by statutes, particularly with the promulgation of the Land Use Act in 1978,[4] and other related statutes with respect to real property transaction in Nigeria .

As a result of the much reliance placed on oral tradition and testimonies without compliance with the requirement of the statute both client and draftsmen do run into problems in the course of effecting transaction in land. Mere agreement of sale of land is never an instrument of transfer which most clients do not know.

The deed of assignment which is the instrument used in the transfer of interest in land must be stamped and registered having obtained the required Governor's consent. The procedure is never swift and easy due to challenges bedevilling the system of land administration in Nigeria

[3] www.realestate.com; accessed on 10th February, 2014.
[4] Land Use Act 978 Cap. 202 Laws of the Federation of Nigeria, 1990

It is in view of this, that this study seeks to examine deed of assignment as an instrument of transfer of real property in Nigeria.[5] And to further consider and expose the issues, challenges and prospects.

## 1.3 Objectives of the Study

This study on deed of assignment as a means of transfer of real property in Nigeria issues challenges and prospects shall have the following objectives:-

1. To broaden the understanding of property buyers and owners on the need to pay close attention to the details of the contents of the deed of assignment on the property they own (possess) or purchases with the view of minimizing litigation.
2. To identify the various means of acquiring real property in Nigeria.
3. To discuss the nature of deed of assignment with the consideration of the important features (of deed of assignment).
4. To examine the issues and challenges in perfection of deed of assignment.
5. To offer recommendations that can guarantee the security of titles or property.
6. To add to the available literature in the area of real property law transaction in Nigeria, particularly on deed of assignment.

## 1.4 Justification

A study on the deed of assignment as a means of transfer of property in Nigeria is very vital and important in view of the central role that the ownership of properties plays in contemporary Nigeria. This is particularly with the enactment of the Land Use Act and other relevant legislation. Hence, the study will make academic contribution to the knowledge of the

[5] Dadem, Y.Y., op. cit

concept (deed of assignment) and it's content with the view of assisting legal draftsmen, law students, solicitors, property owners, estate agent and others.

The above background therefore provided the necessary basis and justification for this research.

## 1.5 Scope of the Study

The study appraises the content of a deed of assignment as a means of transfer of real property in Nigeria under various relevant laws and also to examine the issues, problems and implication associated with the perfection of deed of assignment (title). Due to the time, financial literary materials and other constraints, this study is set out to cover Nigerian jurisdiction under real property administration or transaction.

## 1.6 Research Methodology

The research methodology adopted for this study is the doctrinal method which involves the appraisal of the applicable principle of law such as statutes, decided cases, conveyance and research findings of other researchers in the subject of deed of assignment. Also, other secondary sources of data such as text books, magazines, law reports, journals, newspapers etc. will be consulted during the course of the research.

## 1.7 Literature Review

Prior to the enactment of the land use Act in 1978[6], legal practitioners acquired and got free-hold interest for their clients on landed property, while adoring and litigating on cases there from. With the enactment of the Act, there has been a shift from the practice to the use of deed of assignment as a means of transfer of property which has continued to gain prominence especially

[6] Land Use Act 1978, Cap. 220 LFN 1990.

in the volume of work been done by legal practitioners. In appraising the deed of assignment as a means of transfer of property in Nigeria, some related documents and work of some other researchers and authors will be reviewed.

According to Odgers, D.G., a deed is a document which passes interest property or which binds a person to perform or abstain from doing some act. It furnishes evidence or information about something.[7] One common and vital document in property practice is deed of assignment, which is used in assigning interest in land. A deed is also defined as a legal instrument with a probative value which signifies an agreement or pact on the parties who have entered into it. It is defined as a conveyance of realty by writing sign by the grantor in which title to reality is transferred from one party to another.[8] As a written document, it is signed, sealed and delivered by the person who conveys land, tenements or hereditaments to another.[9]

According to Ihamnobe S.O, there are four part of a deed. This includes the introductory, operative part miscellaneous part and the concluding part. There are transactions that must be by deed and others which require deed.[10] For instance, transaction lacking in consideration e.g. deed of gift, conveyance of interest in land, when an attorney is appointed to execute a deed vesting declaration, voluntary surrender's, a lease for term exceeding three years and when a deed is required to be cited.[11] While there are transaction that do not require deed such as asset by personnel representation, surrenders by operation of law, a lease for term less than three years, receipts not required by law to be under seal, vesting order made by a court to create or transfer a

[7] Odgers D.G. ,Construction of Deed and Statutes ; Sweet & Maxwell, London, 1967 p.1
[8] Daddem Y.Y. op. cit p. 74-75.
[9] United Bank for Africa Plc v. Jimmy King (Nig.) Ltd. (2008) All FWLR, pt. 429, p. 696.
[10] Imhanobe S.O: Understanding Legal D rafting and Conveyancing Sylvester Imhamnobe Legal Research Limited, Abuja 2002.
[11] See Dadem (Supra) P. 68 section 77 (1) PCL 1959

legal estate in land to a person, conveyances taking effect by operation of law, disclaimer's and transaction covered by the role in **Walsh v. Lonsdale**[12].

The validity of a deed of assignment is dependent on the factors such as signatures, sealing, delivery and attestation.[13] According to Oluyede P.A. the requirement of signing, sealing and delivery cannot be undermined. He further stated that signing of document is a sine qua non for its validity.[14]

The use of forms and precedents in drafting deed of assignment is essential and vital. The forms and precedent are not comprehensive and conclusive. A draft man must adopt it with necessary modification as may suit each case. Consultation of many other legal materials on forms and precedents will do best in the business and act of drafting deed of assignment[15].

A daily executed deed can only protect title to property if registered. According to Daddem Y.Y., the importance of registering the contracts 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 right or title to or interest in land.[16] Registration indicates that the title is incumbered, where it is not registered, it cannot be pleaded and thus inadmissible in evidence and courts cannot give effect to it, and if registered, it gives priority.[17]

[12] (1882) 21 ch. D.9; Section 77(2) PCL 1959.
[13] Dadem Y.Y , op. cit p. 70-74; Section 84 Evidence Act.
[14] Oluyede P.A.O., op. cit
[15] Adubi, E.O., Drafting Conveyances and Wills, Light House, Pub. Co. Ltd., Lagos (1995).
[16] Section 21 Land Instruments Registration Law of Kaduna State.
[17] Akinduro v. Alaya (2007) All FWLR part 301, p. 1653; Atufe v. Oghomienor (2004) All FWLR pt. 224 & 206.

Be that as it may, the procedure for acquiring real property using deed of assignment is cumbersome and pose challenges. The issues of governor's consent, stamping and registration post difficultly in acquiring and protecting title to landed property[18].

Lastly, Daddem Y.Y, succinctly identifies the features of deed, when it may be required, conditions for its validity and then forms and content of a deed. The issues and challenges in the use of deed of assignment as an instrument of transfer of interest in property has been given judicial pronouncement in Nigeria.[19] While much has been not been done scholarly to addressing the issues, challenges and prospects of a deed of assignment in Nigeria.

## 1.8 Organizational Layout

For the purpose of clarity, orderly presentation and organization, this research work has been arranged into five chapters.

Chapter one contains the background which deals with general introduction to the study, statement of the problem, objectives of the study, the scope of the study, justification of the research, the methodology employed and review of the works of different authors on relevant literature and other document on the content of a deed of assignment as a means of legal transfer of interest in property in Nigeria etc.

Chapter two deals with the meaning of real property, means of acquiring real property in Nigeria such as state-grant, gift, purchase (sale) inheritance (probate) and allotment of family land.

[18] World Bank Doing Business, www.doing business/data/explore countries/Nig./ registering property 2011.
[19] UBA Plc v. Jimmy King (Nig.) Ltd. All FWLR part 429, p 56; Ajilo v. Savvannah Bank (1989) 1 NWLR pt 97, 305.

Chapter three examines the nature of deed of assignment, its meaning and main features such as the introductory part, operative part miscellaneous part and concluding part.

Chapter four examines the issues and challenges in perfection of deed of assignment, taking into consideration the application requirement governor's consent under land use act, payment of stamp duties and registration of deed of assignment.

While chapter five contains the summary and conclusion of the research. This takes into account the findings and recommendations to the study.

# CHAPTER TWO

# MODERN MEANS OF ACQUIRING REAL PROPERTY IN NIGERIA

## 2.1 Introduction

Transaction in land and interest in land are a major sector of the Nigeria economy. Many Nigerians desire to own properties to meet the need for shelter, as mans of investment are as symbol of status. Government over the years has also, through various policies and legislation, encourage Nigerians to own properties. Legal practitioners in Nigerian are major players in the process of land transfers – they advise on the legal requirements, prepare the instruments conveying land and register them. More so, there are various ways by which persons can acquire real properties in Nigeria. And "real property" herein refers to land. This research work deals with property transactions as applicable to tangible property or real property, particularly the use of deed of assignments as a means of acquisition of real property.

## 2.2 What is Real Property?

The term "property" had myriad of meanings, but it is generally regarded as an aggregate of rights belonging to a person which is guaranteed and protected[1]. The word is commonly used to denote everything which is in subject of ownership, corporeal and incorporeal, tangible and intangible, visible or invisible, real or personal[2]. Property may mean the right of a person to something tangible and physical such as a parcel of land. It may also relate to something intangible such as a right in a work protected by copyright. This view finds support in Section 2 (i) of Conveyancing Act 1881. The aforesaid provision defines "property" (unless contrary

[1] Daddem Y.Y., op. cit p. 1.
[2] Black H.C; Black Law Dictionary, St. Paul-Minn. West Publishing Co., 1990,9th ed. p. 1216

intention appeared in the legislation) to include real and personal property, any estate or interest in any property, real or personal, any debt, anything in action and any other right or interest.

From the foregoing, it thus means that real property is land, anything attached to land or any interest in land. Land is depicted to mean and include land of any tenure, tenements, hereditaments corporeal and incorporeal and houses and other buildings and also undivided share in land[3]. Land includes building and any other thing attached to the earth or permanently fastened to anything so attached, though it does not include minerals.

### 2.3.1 State Grant-Right of Occupancy

State grant is one of the means of acquiring property in Nigeria and it is governed by the Land Use Act promulgated in 1978 by the then Military Government of Nigeria. It was intended to make lands available for the benefit of the citizens. The Act made all lands within a state tenured; the Act also seeks to enhance the principle of leaseholds by which the land in each state is vested in the Governor of a state to hole in trust for the benefit of Nigerians within the state. The Governor of a state is a Trustee of all lands in that state all Nigerians are left with the equitable interest in the land and become the beneficial owners of the land subject to the provisions of the Act[4]. The tenor of the Act was to nationalize all lands in the country by vesting its ownership in the state and the maximum interest preserved in the lands of private individuals is a right of occupancy[5]. In pursuance of the trust the Governor may grant to a Nigerian citizen a term, of years in a land to hold, use and occupy subject to payment of rent to the state and the observance of conditions and covenant of the grant.

[3] Daddem Y.Y. Op.cit, p.1
[4] Abioye v. Yakubu (1991) 5 NWLR (pt. 190) p.130
[5] Kachalla v. Banki (2006) All FWLR of 309, p.1420.

The grant of terms of years to a citizen to hold, occupy and use land is a right of occupancy which is the highest and greatest legal interest a holder can have[6]. To certify the grant of a right of occupancy the Government grant a certificate of occupancy to the holder. A certificate of occupancy creates a term of years absolute or a lease for a number of years. A certificate of occupancy which is properly issued by a competent authority raise a rebuttable presumption that the holder is the owner in exclusive possession of the land[7].

The Governor of a state can grant a right of occupancy.[8] The Act allows the Governor to revoke a right of occupancy or customary right or occupancy of land on ground of public interest and subject to the payment of compensation[9].

It is worth of note that a certificate of occupancy granted to a holder of a right of occupancy pursuant to the provisions of the Land Use Act is not necessary a good root of title, particularly where there are already existing interests on the land.

Grant of a right of occupancy does not require conveyancing or deed of assignment.

### 2.3.2 Gift

This is the voluntary transfer or conveyance of any interest in land made gratuitously to a recipient and without any consideration paid by the recipient. The essential quality of a gift is that it lacks the character of bargain based on grid pro quo by which a sale is characterized.[10] A declaration of title to land can be made by courts based on a gift of land. A gift of land is *"inter*

[6] Section 5(1) Land Use Act; Ezenwah v. Atta (2004), All FWLR, pt. 202, p. 1858 at 1884.
[7] Ibid
[8] Section 5(1) (a )and (b) Land Use Act supra.
[9] Section 43 of the Constitution of the Federal Repulic of Nigeria 1999 (as amended).
[10] See Section 9 (0) land use act 1978

*vivos"* that is gift made to living persons which becomes absolute during the life time of the grantor. Certain conditions exist to make a gift valid. These are:

i. Intention of the donor to make a gift.

ii. Complete act of delivering to the recipient; and

iii. Acceptance of the gift by the beneficiary (recipient).[11]

A gift of land is absolute and the grantor title is directed in favour of the grantee. Where it is conditional, for instance, where it is subject to forfeiture, it amounts to tenancy not a gift[12]. Once a gift of land had been made and accepted, the grantor's right over the property is destroyed and he cannot lay claim to it thereafter.[13] There are circumstances in which a gift may be set aside, the reasons for this may be due to fraud, mistakes, misrepresentation or perhaps a total failure of the object of the gift[14]. The Supreme Court has given judicial pronouncement in the case of **Anyaegbunam v Oska**[15] that the "essential thing to consider is that the gift is complete when the donee has accepted it. If that condition is satisfied, the donor has no right to revoke the gift".

Where the gift is made in formal transaction, the agreement will be reflected in the deed of gift. Where the gift is made under Customary law no deed is required, neither is it required to

[11] Drug V. Chollom (1992) 1 NNLR 66 220 P. 738 at 745
[12] Achollo v, Akagha (2003) FWLR pt. 186, p. 612.
[13] Smith I.O., Practical Approach to Law of Real Property in Nigeria, ECOWAS CH Publications (Nig.) Ltd. Lagos 1999 p. 57.
[14] Daddem Y.Y Supra, p. 5
[15] See Tmah V. Okogbe (1993) 12 Scoy 57 at 1957 – 1958

be in writing. Since the customary gift of land is an incident of native law and custom to which writing is alien[16]. Only witnesses will be required to prove the transaction.

It is therefore worthy to note that a gift of land requires to be by deed in compliance with the statute.[17] The advantage is that income tax is not paid on the property, and estate fee will not also be paid[18].

### 2.3.3 Purchase (Sale)

Land like any other property can be sold. Contract of sales of land is therefore another way by which real property can be acquired. Contract of sale is a major part of property law practice in Nigeria. In the process, interest in land is passed or transferred from a party to another. In Nigeria, there are two clear and distinct ways in which property is sold and title validly transferred to following sale. These are (i) through Customary law and (ii)through received English Law[19].

The two ways are distinct and mutually exclusive and it is important for a party claiming title to land to show clearly, carefully and fully the nature of the sale transaction in order to establish the applicable law to the transaction[20]. While a valid sale under Customary Law does not require a conveyance as obtained under received English Law[21], a valid transfer or sale under English Law required payment of money or consideration, acknowledgement of receipt of purchase money and execution of deed of conveyance in favour of the purchaser[22.]

[16] (2002) PWLR P6 27 1942
[17] Kwano v. Rago (2000) FWKR pt, 22 p.1129.
[18] Section 77(1) Property and Conveyancing Law of the Old Western Region of Nigeria 1959.
[19] Daddem Y.Y., op. cit. 206.
[20] Onafowokan v. Shopifan (200( All FWLR pt. 450, p. 685 at 703.
[21] Eleme v. Akenzua (2000) 6 SCNJ 226 at 227.
[22] International Textile(Nig.) Ltd. V. Aderemi.

There are broadly two stages in the process of transfer of interest in land in Nigeria which the Supreme Court affirmed in **International Textile Industries Nigeria Limited V Aderemi**[23]. A transfer or sale of land or an estate is divisible into two stages:

i. The contract stage, ending with the formation of binding contract for sale, and

ii. The conveying stage culminating in the legal title vesting in the purchaser by means of the appropriate instrument under seal.

The Court observed in the case that it is only after binding Contract for Sale is arrived at that the need to pursue the procedure for acquiring title will arise. That is when obtaining of the necessary consent to alienation of the property becomes an issue in order to make alienation valid.

The above two stages may be further broken into three for convenience of discussion only:

a) The contract stage

The conveyance stage subdivided into two stages

(a) The completion stage, and

(b) The post completion stage [24.]

**a. The Contract Stage**

Under this stage, the following processes such s preliminary inquiries, types of contract, deduction of titles, requisitions on titles and exchange of contracts are very vital and necessary.

[23] Daddem Y.Y. op. cit. 210.
[24] Ibid p. 211.

Pre-Contract Inquiries: As a general rule, a vendor is under duty to disclose to the purchaser before contracting, any latent of defects in title. Defects which are obvious or for which the purchaser is …or which on mere inspection of the property he could discover are exceptions to the duty of disclosure.[25] This argument is predicated on the reason that vendor's title is a matter that is within his exclusive knowledge and the purchaser relies on him to disclose any latent defects. This is why there is need for pre-primary inquiries before the purchaser signed the contract. Questions that may be asked during pre-contract stage include the followings:

i. Boundaries of the property
ii. Dispute over the property
iii. Guarantees in respect of the property
iv. Notices in respect of the property
v. Services supplied on the property
vi. Facilities on the property.
vii. Any adverse right or restriction on the property
viii. Planning scheme of the property
ix. Outgoings charged on the property
x. Method of sale of the property
xi. Details of lease, lessor and head lessor
xii. Covenant and their breaches.
xiii. Service charges
xiv. Insurance provisions and policies
xv. Reversionary title or interest.

[25] Bansley Op. Cit

xvi. Any other additional inquiries in which the circumstances of each transaction is required[26].

A vendor is not under any obligation to reply to enquiries and if he wishes to do so should be tactful so that he does not give a wrong or inaccurate reply which may constitute a misrepresentation of facts as held in the case of **Sharneyford Supplies Ltd v. Edge**[27].

Types of contract for sale of land: There are three types of contract by which land could be sold in Nigeria. These are oral contracts, open contracts and formal contracts.

**Oral Contracts** are not allowed by statute[28] because of the requirements of a memorandum or some note in writing in respect of contract for the sale of land. However, where the sale of land is conducted under native law and custom of a particular community, such sales may be undertaken orally and a written document may not be required the minimum requirements for such contract are: payment of purchase price, possession by the purchaser, and the presence of witness during the transaction[29]. Absence of the requirement of writing does not vitiate contract of sale of land conducted under customary law[30]. The transaction is valid and enforceable.

It is worthy of note that apart from the sales of land under Customary law as an exception to the requirements of writing, Courts in some occasion specifically enforce oral contract not made under customary law. The Court of appeal in Adeniran v. Olagunju noted that:

[26] Ibid p. 181.
[27] (1987) All E.R. 588.
[28] Statute of Fraud 1977.
[29] Adedeji v. Oloso (2007) All FWLR p. 556 p. 610 at 640, Ogunmuyiwa v. Odukoya (2009), All FWLRM pt. 454 p. 1526.
[30] Section 5(3) Law Reform (Contract) cap 2, 517 Law of the Federal Capital Territory 2006 of Staita v. Ologbo.

> It is trite that in order to for an action to be brought for specific performance of a contract for the sale of land or any interest in land these must be a written memorandum of the contract signed by the defendant or by his duly authorized agent. It is observed, however, that in certain circumstances, a court may enforce an agreement caught by the above statutory provision notwithstanding that there is no note or memorandum in support of such agreement. This exception, however, applied within defined limits.[31]

Situations in which Court can specifically enforce a contract based on part performance of the contract are when:

i. There is proper oral evidence to prove or establish the terms of the oral contract.

ii. The contract must be specifically enforceable in the sense that it is not a contract for personal service (employer-employee contractual relationship).

i. The act constituting part performance must be un-equivocal and consistent with or reference to the contract alleged to be breached.

ii. The plaintiff has wholly or in part executed his parts of the oral agreement with the confidence that the defendant would do the same.

A claim for specific performance cannot be granted where the vendor sold property belonging to family and is jointly inherited and owned with other persons since a Court cannot compel a person to do that which is impossible[32].

**Open Contract**: An open contract for the sale of land is one that contains the basic requirements of parties, property and purchase price. In **Edosa v. Zaccala**[33], the Court of Appeal noted that open contract for sale of land exist and is complete when there is a final and complete agreement of the parties on the essential terms of the contract, *namely; the parties to*

[31] Per America JCA.
[32] Muhammed v. Klargester (Nig.) Ltd. (2002) FWLR pt. 127, p. 1087 at 1095.
[33] (2009) All FWLR pt. 458 p. 385.

*the contract, the property to be sold, the consideration for the sale and the nature of the interest to be granted.*[34] An open contract is not oral; it is contained in some note or memorandum in writing with the basic requirements of a contract for sale of land. The contract is open because apart from these basic terms agreed to the contract, other terms are not agreed to.[35] An Open Contract is different from oral contract because it is in writing. An Open Contract is different from formal contract because it does not contain the detailed terms usually contained in formal contract.

**Formal Contract**: This is a standard contract which contained not just the basic requirements of the parties, property, the price and nature of the interest to be granted, but goes further to include detailed terms of what the parties have agreed to such as capacity in which the party is contracting, payment of deposit, payment of balance of the purchase price, interest on balance and other terms which the parties may decide to include in the agreement. In a formal contract, the parties agree on such terms as they see fit, subject to the rule that contain provisions contrary to the policy of the law are void.[36] The main features of a formal contract are deposit, interest on purchase money, capacity of vendor, vacant possession, fixtures and fittings, possession before completion, insurance pending completion (where risk and liability should be) and completion date[37].

[34] The words in italics are for emphasis.
[35] See Y.Y. Dadem p. 217.
[36] Adubi C.O., Drafting, Conveyancing and Wills, Light House Publishing Limited, 1995 p. 70.
[37] UBA Plc v. Tejumola (supra).

**Exchange of Contracts:** While a deed takes effect upon delivery, a contract takes effect when it is exchanged.[38] This brings the contact into existence.[39] Exchange of contract is defined in the English case of **Domb v. Izoz**[40] to mean:

> …each party shall have such 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 for sale is…. effected so soon as each party of the contract, signed by the vendor or the purchaser... is in the actual or constructive possession of the property or his solicitor.

A contract is said to have been exchanged if there exist the following: (1) the parties to it have signed it (2) and the signed contract is in the actual possession or control (construction) possession of the parties.

The effect of exchange of contract is that, "there is an equitable interest vested in favour of the purchaser and a subsequent purchaser of the estate acquires it subject to the equity of original purchaser; a purchaser can prevent the transfer of his estate to a subsequent purchaser by way of action to convey; he can sue the vendor to specifically perform or complete the transfer; he can sue against voluntary waste which depreciate the property, he can transfer his equity to another person; the vendor is made impliedly the trustee of the purchase; until completion the vendor is entitled to rent and profit accruing on the property, though he must account to the purchaser; a lien is created in favour of the vendor over the property until the balance is paid, and[41] the death of one of the parties does not affect the contract.

**Correspondence "Subject to Contract":** It is a common practice for intending purchaser making offer to purchase to make their offer in form of 'Subject to Contract' with the

[38] Awojugbagbe Light Industries v. Chinukwe (supra).
[39] Eccls v. Brant (1948) ch. 93.
[40] (1980) ch. 548 at 557.
[41] UBA Plc v. Tejumola (supra).

result that they not any time bond and have a *locus poenetentive*, until the formal contracts are exchanged[42]. Generally, the phrase *'Subject to Contract'* in documents mean no rights or privileges of the party concerned are to be considered as lost or waived in the documents headed "Subject to Contract". This means that until a formal contract is drawn up and executed, everything is in the negotiation stage. The offer means an offer to purchase, subject to the preparation and execution of a formal document or contract.[43] But the interpretation or the phrase subject to contract must be on the merit of it as it will be open to Court to decide the property or otherwise of its use.

**Deducing Title to Land:** After the exchange of contract, the vendor is required to show that he has a good root of title, that is, he is in position to transfer what he has contracted to convey... and the manner in which he discharges the duty in practice[44]. This is because, before these contract is exchanged, there is no obligation on the vendor to establish that he is the owner of the title which he intends to convey, but once the contract has been exchanged, he is under duty to do so.[45] The obligation is dependent on whether the title is registered under registration of Title Law or not.

Under RTL, there is no obligation on the vendor since the purchaser may inspect the register of titles which is conclusive evidence of title to land in that jurisdiction.

Where the title is not registered under the R T L, but registered as an instrument or deed under, the vendor is obliged to deduce his title. In order to satisfy himself that the title is good,

[42] Ibid
[43] International Law Textiles Ltd. v. Aderemi (supra)
[44] Barnsley, op. cit at p. 245.
[45] MPC Ltd. V. Christian Edward (1998) 3 All EK 795.

the purchaser should search back at a certain period. A good title is one which dates back to a certain number of years.

In states of the former Eastern and Northern Regions the requirement is 40 years.[46] In Abia, the period has been reduced to 30 years as the period of commencement of title which a purchaser of land may require.[47] In the former states of Western Region, a vendor is required to deduce his title for a period of 30 years.[48] And in Lagos State, the right of an owner of land becomes extinguished after 12 years of adverse possession. But it must first be established that the owner has been disposed or has discontinued possession[49].

Generally speaking, facts or statements recited in a document, which is 20 years old, raised presumption of regularity of the documents and the person named in the document will not be allowed to deny the facts recited in the document.[50] The requirements are included to help vendor in deducing his title and also to satisfy the purchaser (where it is shown that the vendor has been in occupation of land for these years) to have the effect of passing the original rights of the overlord of the land to the occupiers[51]. In respect of the required number of years, the purchaser of a property will not require the production or any abstract or copy of any deed, will or other document dated or made before the time prescribed by law for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser[52]. Such purchaser shall not require any information or

[46] Section 2, Vendor & Purchaser Act 1874.
[47] Section 70(1) Abia State Law of Property.
[48] Section 70(1) PCL.
[49] Majekotunmi v. Obina (supra) pt. p. 1358.
[50] Sections 17 and 21 of the Limitation Law of Lagos State.
[51] Imhamole (supra) p. 232.
[52] Section 71 (1)(a) PCL; Section 71 (1)(a) Abia State Law of Property.

make registration, objection inquiring with respect to any such deed, will or document or title prior to that time[53].

One means by which the title of the vendor is deduced is by his production of abstract/epitome of title – both documents being summary of evidence of the history and types of the title of the vendor[54]. But while *abstract of title* contains "a review of previous owners, liens, encumbrances, mortgages, easements or any other matters that affect the ownership of the property;" while the *epitome* contains "a schedule of documents and event which constitute the title and is accompanied by photocopies of the documents[55].

A solicitor should satisfy himself if the abstract/eptome has a good root of title by careful perusal and investigation[56].

**Requisition of title:** This refers to the questions arise in the mind of the purchaser or his solicitor. The purchaser has rights to demand for clarification to the questions raised. The effect of this is to confirm or clarify certain issues that might have arisen.

**Completion Stage**

In a contract of sale of land this is the stage where the parties to the transaction conclude all process that vest legal title on the purchaser. According to Barnsley,[57] *"for the parties this normally signifies cash from the vendor and keys (possession) for the purchaser. From the legal state point, the vital element… is the passing of the legal estate,"* the following things signify completion:

[53] Dadem Y.Y., op. cit p. 235.
[54] Oakden v. Pike (1865) ch. 620 at 622.
[55] Ihamnobe op. cit. p. 230-231.
[56] Section 12 (1&2) Abia State Law of Property.
[57] Barnsley, op. cit. p. 367.

(a) Payment of the balance of the purchase price following the initial deposit.

(b) Execution of the formal conveyance by the parties.

(c) Handing over of the title deeds and other documents (receipts, building plans etc.) by the vendor to the purchaser.

(c) Taking over possession of the property by the purchaser.

(d) Vesting of the legal estate in the purchaser which is the most important in acquisition of land of sale[58].

**Root of Title**

This is a very important thing to consider in contract of sale of land. It means the point at which the title can properly commence. In deducing title, the vendor should be able to establish a good root of title. A good root of title varies from transaction, circumstance or dealing or other. The Supreme Court held in **Akinduro v. Alaya**[59] that a good root of title would depend on whether:

i. The document is genuine and valid.

ii. The document has been duly executed, stamped and registered.

iii. The grantor has the authority and capacity to make the grant;

iv. In fact, the grantor had what he purported to grant; and

v. The document has the effect claimed by the holder of the instrument.

Examples of documents that convey good root of title in Nigeria are:

1. A deed of gift, an

2. A deed of assignment which transfers the unexpired term in the lease.

3. A deed of legal mortgage by which a legal interest is transferred.

[58] Kilner v. France (1946) 2 All BR 85 at 86.
[59] See Dadem Y.Y Supra P. 243

4. Title acquired by a subsequent purchaser of registered estate pursuant to the registration of titles law[60].

5. Certificate of purchase, which constitutes the sale of land pursuant to a court process, vesting on the buyer the legal estate in the property[61].

There are documents that are examples of bad root of title such as lease, will, power of attorney, an equitable mortgage and certificate of occupancy[62].

Investigation and search on title: This is the job of the solicitor involved in a sale of land transaction. After the vendor deduced title the purchaser solicitor would confirm the title of the vendor. The aim is to see whether there is any defect in the title deduced by the vendor. Searches are usually conducted in the following places:

i. Lands registry

ii. Probate registry

iii. Corporate Affairs Commission

iv. Courts (for existence of any Court Judgment)

v. Inquiry of traditional leaders, community heads and family heads facts.

vi. Physical inspection of the property[63].

**Lands Registry**

This is the most important place to conduct search over property in a state. The registry administers lands in the states. Where the land is located and or registered, the registry would reveal the following details on the property:

(a) The grant, nature of the grant and the holder of the interests over the property.

[60] Daddem Y.Y.,op. cit. p. 243.
[61] Section 2 Land Instrument Registration Law vol. 3 Laws of Ogun State, 2006.
[62] Dadem Y.Y op. cit. P. 244-253.
[63] Section 51(2) Land Use Act.

(b) The description of the property – size, survey plans, beacons, maps, charts, intelligence sheets, cartographic details.

(c) Details of fee, and charges paid on the property, such as fee for grant, ground rents and other charges or taxes as the State Government may impose.

(d) Any fact or details of registered transfers on the property, such as previous deed of assignment, contracts of sale, assent, leases etc.

(e) Any previous or existing encumbrances on the property such as mortgages, charges and pledges.

(f) Any act of government acquisition of the property.

(g) Any judgment that may have been obtained and registered over the property. Letters of protest by rival claimants may also be found in the file/registry of the property

(h) Counter parts of right or occupancy on the property.

The process of conducting search in lands registry varies from state to state. For example; Abuja, the Abuja Geographic Information System (AGIS) is where the search is conducted and it is done in the following manner:

i. Written application to conduct search is made to AGIS stating the particulars of the property.

ii. The application is accompanied by a letter of consent by the owner of the title authorizing the purchaser's solicitor to conduct the search of the file/property.

iii. The application must be accompanied with evidence (blank ship) of payment of search fee paid in a designated bank.

iv. The official of AGIS would conduct the search and complete the search report which is signed by the registrar of deeds. The report contains the findings on the file/property.

In states such as Abia, Kaduna and Ogun the procedure for conducting search is as follows:

i. A written application to conduct a search addressed to Commissioner for lands in the state. The application should indicate the holder, the number of the property (file). A photocopy of the certificate of occupancy may be attached to the application.

ii. The application is accompanied by evidence of payment of search fee. It varies from state to state.

iii. The application is processed and the permission of the Commission is obtained to conduct a search.

iv. The file on the property (title) is produced from the strong room and given to the solicitor to peruse the entries, examine documents in it and make a record of his observation and findings.

It is worthy of mention that apart from state land registries, search of Federal Lands registry becomes important where the land is own by the Federal Government but is located in any state of the Federation or the Federal Capital Territory. There is a Federal Lands registry established to do many things but principally to register all titles to Federal Government Land[64].

Search at Probate Registry becomes necessary if there is any fact in the abstract/epitome of title of death of any of the predecessors in title to the property. The search at probate registry may answer the followings: (a) whether the property is a subject of bequest by Will or letter of administration; (b) who are the personal representatives entitled to convey title in the property?

[64] Federal Land Registry (Miscellaneous) Provisions/Act, cap F.15 LFN, 2004.

(c) who are the beneficiaries under probate or letter of administration and whether any consent has been executed? (d) whether there is any challenge on the will or letter of administration in Courts and the terms of any judgment in respect of them.?

The search could be conducted at Corporate Affairs Commission if the property belongs to Companies in which case the following discoveries could be made:

a. Whether the company or incorporate trustee is registered and has the capacity to undertake the transaction;
b. Whether there is record of the property of the company in the register of the commission; and
c. Whether there is a registered resolution of the board of directors or trustees to effect the transaction[65].

Search at the Court for existence of any Court judgment is also carried out to determine whether:

(a) The property is a subject of litigation;

(b) Whether there is an appeal filed against the judgment and the result of the appeal;

(c) Whether the sale is to be conducted through the process of court, whether the rule governing such sales was complied with and also to enable consent of the Governor to be obtained pursuant to Section 21(a) of the Land Use Act and;

(d) Whether the vendor is a personal representative or beneficiary in a probate dispute which entitles him to convey the property.

[65] Dadem Y.Y., op. cit. p. 252.

More so, inquiry of traditional, community and family facts is necessary. Consent of the heads and principal members of the family is important. Even where the property is not communal or family own, it is safer to inquire from the community heads.

More still, physical inspection of the property is necessary so that the purchaser could find out the following factors:

(a) Extent of development on the land;

(b) Actual size of the land;

(c) Any act of government services on the property;

(d) Any damages caused by elements (example erosion) that affects the property and;

(e) The general condition of the property. The importance of physical search was demonstrated in the case of **Briggs v. C.L.O.R.S.N**[66].

**Post Completion Stage:** Matters that comes under post completion stage of a sale of land is the application for Governor's consent, payment of stamp duties and registration of the conveyance. These are requirements that complete a valid sale and vesting of a valid title to a purchaser. The requirements of Governor's consent, stamping and registration shall be discussed in detail in Chapter four of this research.

### 2.3.4 Inheritance (Probate)

Probate is one of the ways by which property or interests in property may be transferred to another. Under wills regime, arrangement can be made to ensure that the properties of a person devolves on his heirs according to his express wishes and directives. This makes a will

[66] (2005) 12 NWLR pt. 938 p. 59.

very important document in property transaction. In Nigeria, a will may deal not only with personal or movable property, but real or immovable property[67].

Where a will is not proved or made at all, all properties would by operation of the native law and custom which is practiced in an area devolve on those entitled or intestacy until grants is vested in the courts for the purpose of realization, preservation and prevention of waste in an estate. Where a person or deceased is a Muslim and subject to Islamic law, his estate will be shared in accordance with Islamic law[68].

One way by which property may rest in a person is by grant of assent by personal representatives of a deceased person after his death. An assent is a conveyance in the same sense as other conveyances. Its legal effect is that it vests in a beneficiary the legal estate to which it relates to[69]. It is a document of title but it passes title to a beneficiary under a will or one under the rules of intestacy, but not to a purchaser whose title passes by deed of conveyance[70]. If rather than using a covenant to pass legal title or estate, the personal representatives make use of assent by deed, the assent will vest legal estate once the intention to pass the legal estate is clear[71].

It is worth noting that, in practice, a written assent is made under seal, though an assent need not be made under seal. Where it is made by deed, it is not a registered instrument and does not attract stamp duties payment[72].

The requirements of a valid assent were provided in Renner v. Renner,[73] thus:-

[67] Omewokel v. Omewokel (2007) All FWLR pt. 356, p. 788.v. Abuna (2000) FWLR, pt. 24
[68] Jidun v. Abuna (2002) FWLR pt. 24, p. 1405 at 17, 1416.
[69] Bone, S. Osborn's Concise Law Dictionary; Street & Maxwell) London 38.
[70] In the Stirrup Contract (1961) 2 WLR 449.
[71] Sections 77(1) and 88(1), PCL 1959.
[72] Section 40(II) Administration of State Law, Lagos State; Adubi C.O. supra p. 94.
[73] (1961) All NLR 244.

(a) It must be in writing;

(b) It must be signed by the personal representatives;

(c) It must name the person in whose favour it is made; and

(d) It must state the property.

The legal effect of assent is that, it vests in a person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate[74].

It is another note that search at probate registry is vital and essential[75].

### 2.3.5 Family Land (i.e. Allotment of Family Land)

One of the processes of acquisition of land in Nigeria is by customary grant or allotment of family or allotment of communal land[76]. Customary grants is made with the prior consent of family heads or community heads.

Customary grant of land is a transaction that is usually oral and does not require a deed. This is because it is a customary practice which is not covered by the requirement of the status[77].

The requirements of customary grant are: (a) consent of the family heads or the communal heads; (b) intention of the family to make the gift; (c) complete act of delivery to the recipient; and (d) acceptance of the grant by the beneficiary or recipient[78].

[74] Section 40(5) Administration of State Law of Lagos State.
[75] Dadem Y.Y., op. cit. p. 287.
[76] Dadem YY Supra p.5
[77] Section 77(1), PCL 1989.
[78] Achollo v. Akagba (2003) FWLR pt. 186, p. 62.

This is usually practiced in the rural communities far away from the areas within which local government authorities exercise much authority. The territories within the state capital required the consent of the Governor[79] to transfer or alienate property and so the local government territories.

It is worthy to note that allotment of family or communal land under customary practices must not be by deed. Lack of a memorandum in writing does not render the grant or transaction invalid. A grantee can lay claim to the title granted to him. It was held in **Ajiboye v. Ishola**[80] that the method of requesting of land is different from the way by which title to land is proved before a court of law. These are by traditional evidence; by production of duly authenticated documents of title by act of selling, leasing, renting out all or part of the land or farming on it; by acts of long possession and enjoyment of the land and by proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute[81]. This follows that customary grant may be passed with or by traditional evidence.

In view of the land regime under Land Use Act, the scope of family allotment of land is very limited, but it is not totally out of practice. Therefore, the validity of a grant under customary law depends on the following factors:-

(a) That the gift is made;

(b) That the gift is concluded;

(c) That the gift is made in the presence of witnesses;

[79] Section 5, Law Use Act 1978.
[80] (2006) All FWLR part 331, p. 1230.
[81] Idudun v. Okumagba (1976) 9-10 SC.

(d) The witness must be in the actual handing over of the property; and

(e) That consent of family heads or community heads is sought and obtained[82].

In conclusion, it is noteworthy that among the various means of acquiring properties, state grant, inheritance (probate) and family land (allotment) do not need the requirement of sealing, while a gift and purchase require to be by deed(.).

[82] The Principles for Validity of Titles under Customary Law are similar for sale under Customary Law; Section 77(1) PCL 1959; Dadem Y.Y., op. cit., p. 67.

## CHAPTER THREE

## NATURE OF DEED OF ASSIGNMENT

### 3.1 Introduction

Widely speaking, a deed is a document which posses itself in property or which binds a person to perform or abstain from doing some action. It furnishes evidence or information about something.[1] Deed is a major instrument used in real property transaction in Nigeria. This is so because the conveyance of legal interest in land is affected by use of deeds. Examples are deed of lease, deed of gift, deed of legal assignment[2]. A deed of release of mortgage may be used to discharge a legal mortgage created by deed.

A deed is very essential in transfer or creation of a legal estate. The exception to this rule includes assent by personal representatives, a lease for three years in compliance with Section 79(2) of Property and Conveyancing Law 1959. A deed is also necessary if an action is a promise unsupported by consideration or a power of attorney, vesting power on attorney to execute the deed.

A deed of assignment refers to a document which an assignor (transferor) states his promises to the effect that the date of the assignment or any other date stipulated therein, he assigns the ownership of his property to the assignee (transferee),[3] the deed of assignment states the kinds of rights that have been assigned and usually in the case of sale of immovable property, full rights are assigned. It also records the flow of ownership from owner to purchaser and subsequent purchaser where applicable. Because of the importance of deed in property

[1] Odgers D.G. (Construction of Deeds and Statutes; Sweet & Maxwell, London, 1967, P.1
[2] Section 77 Property and Conveyancing Law of Western Region of Nigeria 1959.
[3] www.formatt.com/2007/2010, accessed 10th February, 2014.

transaction in Nigeria, this research is set to examine deed of assignment in particular as a means of transfer of interest in property to another[4].

## 3.2 Meaning of Deed of Assignment (Distinguished from others such as Deed of Gift and Deed of Conveyance)

### 3.2.1 Meaning of Deed of Assignment

One common and vital document in property purchase is the Deed of Assignment which is used in assigning interest in law. A deed of assignment is referred to a legal instrument with a substantive value which signifies agreement or pact binding on the parties who have entered into it. It is defined as a conveyance of realty by writing signed by writing signed by the guarantor in which title to realty is transferred from one party to another. As a written instrument, it is signed and delivered by the person who conveys land, tenements or hereditaments to another. A deed of assignment is an agreement under which some or all assets of an insolvent debtor are assigned to a trustee for selling them and distributing the sale proceeds equitably among creditor[5]. It therefore, means that a deed is a writing that is signed, sealed and delivered when any parchment that is devoid of writing and it is delivered as one's deed is not to be considered by the principles of conveyance or it is written but not sealed at the time of delivery as a deed because it will be deemed to be a scroll and not a deed of someone. In the works of Sir Henry Finch, "if I make and seal a deed and the party takes as without my delivery, I may plead that it is not my deed"[6].

A deed of assignment is particularly employed where a holder of a term of years in property assigns his interest to another usually for a consideration. In leases in particular, the holder of the remainder of term may assign his interest for consideration to a person purchasing the remaining estate. Where a leaser or sub-leaser has assigned his right to do a number of

[4] UBA Plc v. Jimmy King Ltd. (2008) All FNLR pt. 429.
[5] www.businessdictionary.com/definition, accessed in February, 2014.
[6] Powell v. London Provincial Bank (1893) 2 Ch. 555.

things including the taking of legal action to an assignee, the right to bring any action across to the assignee who invariably is a third party[7]. In a deed of assignment the assignee undertakes to observe the condition in the head lease and also to indemnify the assigns in the event of his default and a successful claim made against the assignor by the overlord. Since there is no privity of contract between the overlord and the assignee[8].

Examples of situations in which deed of assignment may be employed are:-

(a) Assignment of remaining interest in a statutory right of occupancy granted by the Governor pursuant to Land Use Act.

(b) In the creation of legal mortgage by assignment[9].

### 3.2.2 Scope of Deed of Assignment

The requirements of valid and good deed are in its definition. Essentially, one of the most important features of deed of assignment is that, it must be signed, sealed and delivered. According to Daddem Y.Y., the basic requirements of a deed are the signature of the parties, the seal of the parties and the delivery of the deed. He added that attestation is also needed[10]. These requirements will be examined seriatim.

1. Signature: A document should be signed by party making it. Signature is the act of putting one's name at the end of the deed to attest its validity. Signature has a wide meaning and whatever mark, symbol or dense one may choose to employ as representative of himself is sufficient[11]. It may include writing by hand, a print, a stamp,

[7] Osasaoma v. Idowu (1989) 8 CNLR, 97.
[8] See Y.Y. Dandem Supra p. 75.
[9] Tobi N. Cases and Materials on Nigerian Land Law; Mabrochi Books, Lagos, 1992 P. 129.
[10] See Y.Y. Dedam supra p. 70-74.
[11] Black H.C op. cit. p. 1281.

and may also be typewritten, engraved, photographs or cut from an instrument and attached to another. Statute has made signature important in documents; Section 97(1) PCL for example provides that where an individual executes deed, he shall either sign or place his mark upon it and sealing alone shall not be deemed sufficient. The result of not executing a deed also makes it inadmissible in evidence[12].

Where a party to a deed is an illiterate, his signature on the deed to the effect that the deed was first read and interpreted to him in the language he understood before fixing his name or thumb impression makes it a condition for such deed to be admitted in evidence. The Supreme Court held in **Ituama v. Akpe-Ime**[13]. that an illiterate guarantor did not sign the deed or lease in question and accordingly vitiates it on the basis of Section 8 of Illiterate Protection Law of Cross-Rivers State which requires a statement in a document that the content of the deed were first read and interpreted to the maker.

1. **Sealing:** A seal is a one time honoured and requirement for the execution of deeds but it is practically becoming obsolete. The procedures for the need of sealing of documents are now largely reduced and replaced by a mere indication of an attempt to provide a deed with a seal which is taken to be accepted for the purpose of due execution as can be seen in the case of **Stondale & Ball v. Burden (1952) ch. 223.**

   A seal is the red adhesive wafer that is fixed to a deed when the document is engrossed with a signature. Where a company's seal is fixed, it is equivalence of the red wafer and

[12] Section 83*4) of Evidence Act 2011.

[13] Itauma v. Akpe-Ime (2006), FWLR pt. 16, p. 2280; (2000) 12 NWLR, Part 680 p. 156.

under Section 80(1) of the Registration of Title Law[14], sealing is not strictly required on deeds of registered land. Also when any document purporting to be stamped as a deed appears or is proved to be or to have been signed and duly attested, it is presumed to have been signed and duly attested, although, no impression of a seal appears thereon.[15] The position of the Evidence Act has put to rest any further arguments that the absence of seal on a document renders it invalid as it was further held in the case of **Carling (Nig.) Ltd. V. University of Jos**.[16] There is a shift in the strict Common Law position as demonstrated in the case of **First National Securities v. Jones**[17]. The fact were that the plaintiff-company drawn-up the legal charge on its standard printed form which contained the usual legal testation, testimonium and attestation clauses. At the end of the document, there was a printed circle contained letters "LS" (Locus Sigile – place of the seal).

The first defendant signed across the printed circle but there was no wax or wafer seal or any impression on the document. The latter fell in arrears whereupon the plaintiff brought an action for possession and recovery of the sum outstanding. The plaintiff failed before the Registrar and Deputy Judge in the County Court, apparently on the simple ground that the document was not under seal.

A unanimous decision of the Court of Appeal in the case was that the document was in fact very effective as a deed and as such a legal charge. Buckley L.J. regard letters "LS" (the

[14] Cap. 121 Laws of Lagos State 2004.
[15] Section 159 Evidence Act 2001.
[16] 1994) 1 SCNJ 4.
[17] (1978) 2 WLR 475.

mortgagor's signature across that circle) attestation as being sufficient enough to establish its validity.

The requirement of sealing is now regarded as artificial and no real significance and therefore makes a document that is signed and delivered good and valid. However, companies are still required to have their common seal, a mark that should be attributed to the business dealing of the company[18].

In the United States jurisdiction, for instance, Courts do not require either way or impression directly on the paper were either recognized and are still common for national and corporate seals gummed wafer have been widely used. In the absence of seals, decisions have varied effectiveness of the written or printed initials "LS" aforesaid, there must be intention to be bound by it.

A plethora of cases and statutes in operation prove that sealing is an essential requirement of a deed but has lost its strict Common Law requirement. It is no longer too significant. The only execution for its existence nowadays is found in the professionalism of the lawyers involved.

1. **Delivery:** The placing of a seal on the lands of an assignee or within his control is referred to as delivery. By this act, the assignor shows his intention to allow the deed to take effect immediately a conveyance. A deed may also be held to be delivered where the grantor manifests the intention to complete the conveyance regardless of the actual delivery.[19] Delivery of a document, as used in the Evidence Act is technical in nature

[18] Section 4 of Company & Allied Matter Act Cap 20 LFN 2004.
[19] Jegede v. Citicon (Nig.) Ltd. (1001) 4 NWLR Part 702, p. 112 at 139

since it does not bear the dictionary meaning of "handing over" rather, it means the intention to be bound.

A deed cannot be said to be binding on the parties unless it is delivered and usually takes effect from the date of delivery. The determination of the time is a question of fact, until its delivery. A deed is imperative and takes effect not necessarily from the date contain therein, usually on the top of page, but from the date and time of actual delivery. Delivery in its true form is signified by the passing of an interest or right and not necessarily parting with the physical possession of the deed itself. Mere delivery of the deed with the requisite intention to pass the interest to be conveyed but leaves the execution incomplete. Delivery is unilateral and may be interpreted to be absolute or conditional. In **Brossette Manufacting (Nig.) Ltd. (Automobile & Engr. Industrials Ltd.) v. Ola Itemobola Ltd. & Ors**,[20] the question whether a deed that was not stamped, not dated and the Governor's consent not obtained has actually alienated the interest in land contrary to Section 22 of Land Use Act. The Supreme Court held that the agreement had not been delivered and a deed becomes effective in law at the time delivered. That a contravention of Section 22 of the Land Use Act will occur in the case of a proper conclusive alienation of a right of occupancy carried out by a deed at the time when relevant deed was delivered and not at the time when it was executed or even sealed. The Governor's consent was a condition (escrow) which makes a deed effectively delivered once it is obtained. So, if a deed is delivered after Governor's consent, there is no contravention of Section 22 of the Land Use Act. The Court further held that a transaction created by deed will not come into effect prior to the delivery of the deed and that until the time specified has arrived or the condition had been performed or the Governor has given consent, the instrument will not

[20] (2009) Al FWLR pt. 379, p. 1340

be a deed so to speak, but a mere escrow. The rational for the above is that, in practice, it is on the deed that the Governor's consent is usually endorsed[21].

It is worthy of note that if delivery is absolute, the deed then becomes effective immediately to pass the property in question, but if found to be conditional, the delivery consequently of the document does not become effective until the condition is fulfilled[22]. Delivery in escrow is conditional and does not imply that the party executing it can withdraw from the deed in the period between execution and the date in which the party must comply with the condition which will render the delivery incomplete.

Once a deed has been executed, even in escrow, it is too late for the executing party to escape from its effect if the other party fulfills the condition within a reasonable time or within such time as specified. Thus, a deed executed and delivered in connection with alienation of land prior to the Governor's consent is in escrow, even before stamping and registration until consent is obtained as it was decided in **Awojugbagbe Light House Industries Ltd. vs. Chinukwe[23].**

**Attestation:** Attestation refers to the witnessing of a document, though not a strict requirement of the law. It is however, desirable because it facilitates proof of due execution of a deed.[24] It refers to witnesses that are related to either party although there is a rule that prevents such persons from attesting. This is however, of evidential value for the purpose of credibility. Attestation is mandatory in the case of documents that are executed by illiterates or visually

[21] Iragunima v. River State Housing and Property Development Authority (2003) FWLR, pt. 169, p. 1233 at p.1242.
[22] (1995) 4 SCNJ 162.
[23] Section 163 Evidence Act 2011.
[24] Nubia v. Ali Rivers (1999) NWLR pt. 593 at 82; Section 163 Evidence Act 2011, Section 98 PCL. See also Article II Table 'A' Part 1 Company and Allied Matters Act Cap C20 Laws of the Federation of Nigeria 2004.

impaired persons, etc., as it will not be accepted for registration unless it is witnessed by a magistrate or justice of peace. Section 8 of Land Instruments Registration Act also provides that persons who can be a witness to a power of attorney are Notary Public a Magistrate or Judge. For documents executed by companies, the directors and secretaries are to attest to ensure validity.

### 3.2.3 Difference between Deed of Assignment and Other Deeds

Deeds are said to be documents, though not all documents are deeds, because a deed must fulfill some requirements for that purpose. Any instrument under seal is a deed if made between private persons and must either:-

(i) Effect transfer of an interest, right or property;

(ii) Create an obligation binding on some persons;

(iii) Confirm some acts whereby an interest, right or property has already been transferred.

There are different types of deeds that serve some or different purposes under the law, some of which are:-

1. **Deed of Assignment:** This is a situation where a person or persons transfers his ownership in a property to a third party and is interpreted as such even when the parties intend to operate it on a sublease. The general rule is that an assignment of any nature should be by deed.

Under the Land Use Act[25] an assignment of Statutory Right of Occupancy is allowed under circumstances provided that the consent of the Governor is sought and obtained. A deed of assignment when properly executed are perfected in a good root of title that may even be better than a Certificate of Occupancy and this includes all assignments that are prior to 1978 because they are protected under the Law[26] as Deed Rights.

2. **Legal Mortgage:** This type of deed conveys title to a property that is released as collateral for the repayment of a debt or a debt or for the performance of a duty and that will become void upon performance or payment according to the stipulated terms. A legal mortgage may be created by assigning the borrower's interest in the property in favour of the lender with provision for redemption upon payment. This implies that the borrower who usually owns property passes his interest in the said property while still retaining the use of the property itself to the lender who collects the interests in the property for an agreed condition. The former may redeem his interest in such a property when the conditions that it falls under are fully discharged by him; usually in the payment of an earlier agreed sum. A legal mortgage may be created where a sub-demise of the borrower's interest in the property in favour of the lender is made with a provision for redemption upon payment.[27] A legal mortgage is created by way of statutory legal charges under registration of title law.[28] Legal mortgage are created by way of a charge in a title. In all these, a specific form is required and it faces the form of Deed.

[25] Sections 22 and 26
[26] Section 34(2) Land Use Act 1978.
[27] Daddem Y.Y., op. cit., p. 148-151.
[28] Registration of Title Law Cap 121 Law of Lagos State 2004.

3. **General Warranty:** A real estate buyer is protected by a General Warranty Deed. The seller conveys the property with certain covenants or warrantees. Whether expressly written into the law or implied by certain statutory words, basic warrantees include:-

   a. Covenant of which means possession and that the grantor own the property and have the legal right of conveying it.

   b. Covenant against encumbrances which the grantor warranties that the property is free of any encumbrances;

   c. Covenant of brief enjoyment of the property against any third party; and

   d. Covenant for further assurance where the warrantor provides to make the good title good, that he will deliver any document or instrument necessary. The warrantors are general warranty deed and do not only convey the period of ownership of the grantor. They to the origin of the property. Each grantor of a general warranty deed in the title chain tabled for the title problems before they go through their ownership[29].

4. **Lease:** This refers to an agreement as that which is made between two or more persons (parties) whereby an owner of an estate grants by means of a contract between the parties the right to the exclusive possession of the land or part of it to another person to hold under the grant for a number of years[30]. The grant called a lease, demise or tenancy. The grantor is called the landlord while grantee is the lessee or tenant.

   The period granted is called term or years and interest which the landlord retains which include the right to possession at the end of the term that is granted is called reversion.

[29] www.realestate.about.com/ownership and rights/a/warranty accessed 10 August, 2014.
[30] Prudential Assurance Co. Ltd. V. London Residency Body (199) 2 AC Ltd., UBA v. Tejumola supra.

It should be noted that while a lease has to be under seal (by deed), a tenancy agreement for the term granted of a term less than three (3) years not to be in a deed, it suffices if it is in writing.

The consideration that flows from Landlord to tenant is the demise premise, exclusive of which gives to the tenant, while the tenant's consideration is payment of rent and observation of other covenants contained in the ease. A lease must be for a fixed term and must not contemplate perpetuity,[31] because where a lease is devoid of continuity of terms, it will be invalid as it was decided in **Lace v. Chandler**[32].

A base must also confer exclusive possession on the lease because any document that fails to confer exclusive possession on the lease is not a lease.[33] A lease also contain usual covenants and if it is by deed, it is also a registrable instrument just as a deed of assignment. A lease is for a fixed term while a deed of assignment for an outright transfer of interest of the unexpired term of a lease.

5. **Power of Attorney:** This is granted to another person to act as an agent or attorney for whoever that grants the authority. It is an instrument in writing usually but not necessarily a deed by which the principal called the "donor" appoints an agent called "donee" and confers authority on him to perform certain specific acts or kinds of acts on behalf of the principal[34]. A power of attorney is useful for many purposes; it may be to collect money on behalf of the donor to prosecute a case in court or other forms of power of attorney. Where the authority conferred on the donee empowers him to execute a deed,

[31] Statute of Fraud 1677 and Section 79 PCL 1959.
[32] (1594), KB 368, UBA Plc. V. Tejumola & Sons Ltd. Supra.
[33] Umezurike v. (1975) OCTH 62.
[34] Chima v. Chime (2001) 3 NWLR (PT. 707) 527.

his appointment must be by deed. Appointment which was made verbally could be enforced without a deed[35].

A power of attorney does not transfer interest in land. Such interest transferred to a conveyance must be legal. It is not usually executed by two persons unlike a deed of conveyance. The donee must be a legal person that can sue and be sued. Therefore, any adult of full capacity or a limited liability company can be a donee but a body registered as a business name cannot be appointed as a donee[36]. There is therefore, presumption of due execution in favour of an attorney if the deed is executed in the presence of a notary public, judge or magistrate[37].

6. **Deed of Control:** This is a contract form, a connection for the sale of real property known as installment land contract, land sale contract, land contract, etc. It is a formal agreement that contains a lot of details and seeks to provide for the occurrence or lack of occurrence of events explicitly written. Unlike the open contract which severally depends on improved terms. In such formal contracts, the parties expressly start out terms of which must be addressed to and this is done in the form of a deed which must be signed, sealed and delivered to confirm authenticity. The words that are written in such deed are considered to be binding on the parties involved. As such care must be taken in the drafting of the deed because at the preliminary stage of a contract, a vendor could find himself bound by a much more information. Deed of contract is not a conveyance. It is auxiliary to a conveyance.
7. **Deed of Gift:** In property practice, voluntary transfer or conveyance of any interest in land made gratuitously to a recipient and without any consideration paid by the recipient

[35] Abina v. Farhat (1938) 14 NLR 17
[36] N.B.N V. Koban Brother Nig. Ltd. (1976) 1 FRLR 116
[37] Ayilob V. Akorede (1951) 20 NMLR P.H Section

shall be by deed except it is a customary grant[38] where a gift is made in a formal transmission, the agreement will be reflected in a deed of gifts[39]. There are circumstances where a gift may be revoked. The reason for this may be due to fraud, mistake, misrepresentation, or perhaps total failure of the object of the gift[40]. A deed usually does not have consideration clause because it is a gratuitous grant.

### 3.3 Main Features of Deed of Assignment

A deed of assignment has the following features:

(1) Signed by the parties: It must be signed by the parties because an unsigned deed is inadmissible in evidence against a party who had not signed it[41]. The law requires that a party executing a deed must sign on it[42]. Where a party is illiterate there must be an illiterate jurat[43].

(2) Sealing: It is a red wafer fixed to a deed. The combine effect of problem of judicial authorities and statutes show that sealing is no longer a strict requirement for a valid deed[44].

(3) Delivery: This is an act conveying intention to transfer title and be bound by the transaction. Delivery can be absolute or in escrow[45].

(4) Attestation: This is a third party confirmation of the execution of a deed by parties. It is an act of witnessing an instrument in writing that one or more persons

[38] Kwari v. Rago (2000) FWLR pt.22, p.1129
[39] Dadem Y.Y. Op.cit
[40] Imeh v. Okogbe (1993) R SCNJ, 39 at 1957 – 1958.
[41] Toro Co. Ltd. v. Osuji.
[42] Section 97(1) PCL 1959 (supra).
[43] Section 3 Illiterate Protection Act; Eze Igwe v. A Wudu (200* All FWLR pt 434 p. 1529.
[44] Section 98(1) PCL; Section 127 (Evidence Act 2004); Section 80(1) Registration of Titles Law of Lagos State, 2004. National Securities v. John (supra), Carlon (Nig.) Ltd. V. University of Jos (supra)
[45] Jegede v. Citicon (Nig.) Ltd. (Supra); Awojugbagbe Light Industries v. Chinuke supra.

were present when the deed was executed. There is need for attestation to facilitate the proof of due execution of the deed where it becomes necessary[46].

(5) Durable Paper: These are papers like A4 paper, indenture paper and parchment. This implies that a deed must be in writing on a paper or parchment.

(6) Consent of the Governor: This is where it relates to transfer of interest in land and in urban areas, the deed should be with the consent of the Governor which ought to be endorsed in the deed[47].

A deed has four (4) parts which make a standard deed of assignment. These include introductory part, operative part, miscellaneous part and concluding part.

### 3.3.1 Introductory Part

The introductory part of a deed is divided into four (4) parts, viz: commencement, date, parties and recital.

**Commencement:** This usually commences with the word thus: THIS DEED OF ASSIGNMENT. The use of the words is intended to show the nature of the transaction e.g. assignment, lease, etc.

Date: (Made this …….. day of …….. 20……..). However, a deed takes effect from the date of delivery not the date on it.[48] The date on the deed is however relevant for the payment of stamp duties and registration. A deed must be registered within 60 days of its execution[49]. It

[46] Section 163 Evidence Act op. cit
[47] Savannah Bank (Nig.) Ltd. V. Ajilo (1989) 1 NWLR (pt. 97)30
[48] Awofugbughe Light House Industries v. Chinuke supra.
[49] Item 1 Second Schedule Land Registration Law Cap 85 Laws of Kaduna State, 1991.

must be stamped within 30 days of execution[50]. Under the Registration of Title Law, failure to register a deed within 2 months renders it void[51] even though the period may be extended[52].

Parties: The proper description of the parties is the ASSIGNOR grantor) and ASSIGNEE (grantee). The address of the parties should be provided in the fore of their names. Only parties named and described in the deed can sue[53].

Recitals: These are statements of material facts that constitute the background to the transaction. If these facts are not correctly recited, there will be a problem in understanding the transaction. In **NITEL v. Rockonoh Properties Limited (1995) 2 NWLR pt. 378, 473**, it was held that a recital is a formal part of a deed or writing which explains the reasons for the transaction. The use of the word "WHEREAS" to introduce the recital is archaic; the preferred word is "BACKGROUND." There are these two types of recital, namely narrative (history and background of how the vendor came to own the property) and introductory (explains the reason for the present conveyance in the deed). According to Daddem Y.Y., the use of the words WHEREAS or BACKGROUND are still subject to argument to most scholars. WHEREAS should not be used but BACKGROUND because the latter is modern[54]. In deed instead of using "Background" or "Whereas" or any such words, the better practice is simply put the word "Recital" or This Deed recites as follows" and state out in numerals the items and facts that constitute the recital[55].

Recital is very important in deed because (1) the courts make use of recitals when interpreting deeds in order to clear ambiguity in deed or document. The court does not look at

[50] Section 22 SDA.
[51] Onashile v. Idowu (1961) All NLR 313.
[52] Onashile v. Barclays Bank D.C. (1963) All NLR, P. 31.
[53] Adebayo v. Olowosogo (1988) 2 NSCC 203; Nmbia v. AG. Rivers State (1999) 3 NLWR (pt. 593) 82.
[54] Ihamnobe S.O. op. cit. p. 177.
[55] Dadem Y.Y., op. cit. p. 79.

recital when interpreting a deed except there is need to clear ambiguity[56]. (2) Recital may also create estoppels in respect of statement in a deed[57]. A title document that date back to not less than 20 years raises a presumption of the execution[58]. Recently, the Supreme Court held that whether a sale was under English law or not, as far as the fact is not challenged, it was conclusive proof of the sale that was mentioned[59].

### 3.3.2 Operative Part

The operative part of a deed is divided into four (4) parts.

(a) Testatum (NOW THIS DEED WITNESS AS FOLLOWS...) This part contains the active (controlling) parts of the deed. This is where the right and obligations of the parties are closely set out. It usually commences the operative part. The testatum is divided in to: A consideration clause (IN CONSIDERATION OF THE SUM OF ₦…… PAID BY THE PURCHASER TO THE VENDOR…)

(b) The receipt clause (THE RECEIPT OF WHICH THE VENDOR ACKNOWLEDGES). The consideration clause states the amount the property is being sold or assigned to the purchaser. It is on the disclosed amount that stamp duties would be paid.

(c) Receipt clause: This discloses the fact that the vendor has collected the money for the property. The implications of inserting the receipt clause are: (i) *Prema facia* evidence of payment of the money[60]. (ii) There is no need for further receipt since it is

[56] Inland Revenue Commissioner v. Raphael (1935) A.C. 96 at p. 135; See also ORR V. Mitchell (893) AC 258.
[57] Section 162 Evidence Act 2011; Ngige v. Mgemena (2007) All FWLR (pt. 372) p. 1785-1786.
[58] Onyawale v. Odusanmi (2012) All FWLR (pt. 610) p. 1246
[59] Olukoya v. Ashiru (2006) All FWLR pt. 322, p. 1471 of 1490.
[60] Section 55 of Conveyancing Act 1882, Section 93 PCL.

adequate discharge to the person paying the money (purchaser)[61] and (iii) It is adequate authority for the purchaser to pay money to the solicitor who purchases the deed of conveyance as acting for the vendor[62].

(d) Words of grant: This conveys, transfers or assigns the interest in the property. No special word is strictly needed.

(e) Parcel clause: This describes the property that is the subject of the transaction that is ALL THAT PARCEL OF LAND. It is better to describe it with survey plan before address. (f) Habbendum; This part of a deed describes the estate which the grantee or purchaser takes. It defines the extent of ownership in the things granted to be held and enjoyed by the grantee[63]. The Hebbendum describes the quantum of the estate passed by unexpired residue. Thus, TO HAVE AND TO HOLD THE TERM UNEXPIRED.

**3.3.3 Miscellaneous Part:** This part of a deed contains the (1) Express Covenants of the parties. This is an undertaking by the assignee/grantee to pay the rent and observe the covenants and conditions stated in the lease e.g. Certificate of Occupancy. The covenant serves as scrutiny for reimbursement of the vendor in the event of a breach by the assignee of the conditions in the lease.

(2) Acknowledgement for custody and production of document. The vendor undertakes with the purchaser for the safe custody of the documents listed in the schedule and acknowledges his right to the production of the documents for inspection, citing etc[64].

(3) General Provisions: The covenant to repair covenant to ensure, etc. in certain deeds form part of the miscellaneous part.

[61] Sections 54, C.A. and 92 PCL.
[62] Sections 56 C.A. and 94 PCL.
[63] Stephen Idugboe v. Anenih (2003), FWLR (pt. 149) 1418
[64] Daddem Y.Y. op.cit. p. 83.

(4) Indemnity clause is required in the old Eastern and Northern States of Nigeria.

**3.3.4** **<u>Concluding Part:</u>** This always contains the testimonies, execution and attestation clauses.

(1) The testimonium: "IN WITNESS OF WHEREOF THE PARTIES HAVE SET THEIR RESPECTIVE HANDS AND SEAL THE DAY AND YEAR FIRST WRITTEN ABOVE." This shows that two parties are involved in the execution of the deed. This is one of the differences between a deed of assignment and a power of attorney.

(2) Schedule: These are survey plan, table diagram and the inventory of items that are transferred under the deed. The use of schedules is to avoid distractions to the flow of the sequence of the deed. The deed may provide more than one schedule if the need arises.

(3) Execution: This means signing and the mode of execution of a document determines whether or not it is a deed. The capacity of the parties (individuals, illiterates, blinds, companies attorneys, etc.) is important in the mode of execution. Format for execution of deed:

i) Regular individual: SIGNED, SEALED AND DELIVERED by the within named vendor (in the presence of). Attestation: Name, address, occupation and signature.

ii) For illiterate jurat: SIGNED, SEALED AND DELIVERED by the within named vendor……. The contents of the document having been first read and interpreted to him from …….. to …… by me …… (sworn testator) when he appeared perfectly to understand it before affixing his thumb print thereto.

<u>Before me</u>
Magistrate/Commissioner for Oath.

(4) For companies:

The common seal of …….. Ltd. Was affixed to the deed following a resolution of the company dated the ……. day of …… 20…….

_____ _____

Director Secretary

(5) Attorney Executing a Conveyance:

By the lawful attorney of the within named vendor by virtue of the power of attorney dated the …….. day of ……. 20……. registered as No……. page ……. In volume …… of the Land Registry at ……

In the presence of:

Name…….

Address…….

Occupation……

Signature…….. [65]

It is worthy of mention that franking is a feature of a deed. This is the endorsement of the name and address of the lawyer who prepared the deed. This is in line with Rule 10 of the Rules of Professional Conduct in the legal profession (2007), which provides thus: "*A lawyer acting in his capacity as a legal practitioner ... shall not sign or file a legal document unless there is affixed on any such document a seal and a stamp approved by the Nigerian Bar Association".*

[65] Dadem Y.Y op. cit p. 83-84

# CHAPTER FOUR

# ISSUES AND CHALLENGES IN PROTECTION OF DEED OF ASSIGNMENT

## 4.1 Introduction

The last stage in the process of transfer of interest in land is the completion stage. Under the completion stage, matters to be dealt with include application for Governor's consent[1], payment of stamp duties and registration of the conveyance. Without these, title to land can not be validly passed to the purchaser. Failure to meet up with these requirements have grave consequences.

## 4.2 Application for Governor's Consent

The consent of the Governor is important before the actual alienation or the transfer of any interest in land in Nigeria. Failure to obtain Governor's consent in alienation of land renders the transaction null and void.

(1) Accordingly, the solicitor for the purchaser should ensure that consent is sought 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. Where the property is subject to customary right of occupancy, the consent required is that of the Local Government where the land is located. The Act states that "it shall not be lawful for any Customary Right of Occupancy or any grant thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise… without the approval of Local Government."[2]

[1] Section 22 Land Use Act; Savannah Bank v. Ajilo Supra.
[2] Section 21 Land Use Act op. cit

To prevent a situation where he may later say that he never applies for Governor's consent or authorized his solicitor to do so, the purchaser should ensure that the vendor personally signs the letter applying for consent. The solicitor may write a covering letter forwarding the vendor's letter. Before consent is granted there must be evidence of payment of all outstanding ground rents and other charges on the land. The steps taken to apply for a Governor's consent may vary from State to State.

In the Federal Capital Territory, Abuja, the procedure is as follows:-

1. A written application to the Minister of the Federal Capital Territory seeking for his consent to transfer the named property, stating the consideration for the transaction and the intended assignee.
2. Inspection and valuation of the land is conducted and recommendation made by the relevant departments on whether consent should be granted or not and the conditions for the grant of consent.
3. Payment of the consent fee and other outstanding rents and charges on the property.
4. Evidence of Tax Payment (a Tax Clearance Certificate for three years preceding the year of the transaction).
5. Four copies of the deed of assignment[3].

In Lagos:

1. The application should be made on Land Form 1c obtainable at the Lands Registry and the form should be signed by the purchaser and the vendor.
2. The application for the consent should be submitted with the following:

[3] Dadem Y.Y., op. cit p. 255

i. Covering letter addressed to the Director of the Department of Lands and Housing.

ii. A certified cheque made payable to Lagos State Government for an amount equal to 7½ (seven and a half) to 10 (ten) percent of the consideration passing between the two parties. This is an initial deposit for consent because after the property has been inspected and valued, the actual sum payable will be deemed as consent fee if the deposit does not cover the amount.

iii. Current tax clearance certificate of the two parties. In case of mortgage, only that of the mortgagor is required.

iv. Where one of the parties is a corporate body, must supply the revenue certificate paper for its staff remitted to government and the current tax clearance certificates for the director.

v. In the case of developed property, there shall be a requirement for the building plan.

vi. Six (6) copies of deed of assignment for which consent is sought and it shall include the following clause:

> *"The assignee herein mentioned hereby undertakes to pay all government levies inclusive of land charges that may be imposed from time to time by State Government."*

(i) Evidence of payment of ground rent and legal charges up to date.

(ii) Receipt of payment of Economic Development Levy of the vendor and the purchaser.

(iii) Receipt of payment of charting fees.

(iv) Receipt of endorsement fees.

(v) A certified true copy of the assigned land documents obtainable from Land Registry.

(vi) Approved building plan.

What is the case, the application must be copies of the deed with consent clause endorsed on it. The Governor can also delegate the Commissioner of Lands in the State to grant consent[4]. The Governor can not be compelled to give consent[5].

In Ogun State, the procedure is as follows:

(i) An application form is duly completed.

(ii) Certified copies of the document is attached. The sum of ₦500 is paid per charge per page.

(iii) Government receipt of up-to-date payment of ground rent is attached.

(iv) Government receipt for the payment of current tenement rate if the property is developed.

(v) Three (3) years Current Tax Clearance Certificate of the assignor[6].

(vi) Three (3) years Tax Clearance Certificate of the assignee.

(vii) Ogun State Government development levy receipt for 4 years.

(viii) Six (6) copies of deed of assignment.

(ix) Four (4) passport size photographs.

(x) In case of company which is resident in Ogun State, evidence of remittance of current PAYEE of its staff to the State Government.

[4] UBN v. Ishola (2001) 15 NWLR (pt. 735) 47
[5] Qudus v. Military Governor of Lagos State (1975) CCHCJ.
[6] The information is sourced at http://www.ogunlands.com/ on 29 November, 2014.

(xi) For companies resident in Ogun State, the Tax Clerance Certificate of two (2) Directors which is obtained in Ogun State should be attached[7].

In Kaduna State, the procedure is thus:

(i) The parties to the transaction complete Form 6, which is a document for the transfer of the title, stating among other things the consideration involved, current Tax Clearance Certificate and other conditions for the transfer.

(ii) The form is required to be accompanied by any document evidencing the transaction, for example, the Deed of Assignment, Mortgage, etc.

(iii) Evidence of payment of Tax Clearance Certificate. In addition, other taxes (such as ground rents) must be paid.

(iv) Evidence of payment of processing fee for the transfer which is ₦5,000.

(v) A valuation of the capital value of the property is conducted to assess the registration fee to be charged on the property. The registration fee is 3% of assessed value of the property, which must be paid.

### 4.3 Payment of Stamp Duties

Stamp duties and taxes imposed on certain transaction, for example, alienation of interest in land. However, penalty may be charged where document is outside thirty (30) days[8].

After the Governor grants consent, the solicitor must ensure that the stamp duties charged on the transaction is paid. The Stamp Duties Act permits the use of adhesive stamp, which must however, be cancelled for it to be valid stamping to avoid the use of repeating a stamp already used so that there will not be loss of government revenue.

[7] Ibid.
[8] Section 23(1) & (3) of the Stamp Duties Act.

Procedure at the Stamp Duties Office:

1. The original of the instrument and copies are presented to the Stamp Duties Office for assessment of the duty payable.
2. The solicitor pays the assessed duty either in a designated bank or the accounts department of the State Board of Internal Revenue and presents the evidence of payment to the Stamp Duties Commissioner. But it is paid to the Federal Inland Revenue Service (FIRS) where it is an incorporated body.
3. The instrument is accordingly impressed with the Stamp (usually red ink) as evidence of payment of the duty. Between 2½ and 3% of the value of the property is charged by many states of the federation as stamp duties.

Failure to pay stamp duties makes the instrument:-

1. It will not be accepted for registration[9].
2. Inadmissible in evidence in court.

It is worthy of note that the stamp duties office is at the office of the Board of Internal Revenue of the various states. The Federal Inland Revenue Service is established[10] to control and administer the different taxes of the Federal Government and laws in the schedule to the Act or other laws or taxation and also to account for all taxes collected[11].

More so, the Stamp Duties Act provides that increase of such instrument as are charged with advalorem duty… the instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper advalorem duty before expiration of thirty (30) days after it is first

[9] Section 22 Stamp Duties Act; Ogbahon v. Registered Trustees (2001) FWLR part 80, 1496. A Court may order payment of duties (despite lateness) to make the document admissible.
[10] Federal Inland Revenue Services (establishment) Act No. 13, 2007.
[11] See Section 3 of Federal Inland Revenue Services (establishment) Act supra confers, transfers, limits.

executed or after it has been first received in Nigeria, if it was first executed in any place outside Nigeria[12]. Examples of documents stamped advalorem include Conveyance on Sale, Bills of Exchange, Promissory Note, Agreements, Contract or even instruments such as Letters and Certificate of Admission, instrument of Apprenticeship, Insurance Policy, etc.

### 4.4 Registration of Deed of Assignment

Registration is made in order to avoid fraud and problems arising from the suppression or omission of instruments when title is deduced. Although registration may not totally cure defect in titles but it has the tendency of reducing same.[13] The importance of registering the contract or conveyance which alienates interest in land is that it is a document affecting land which one party confers, transfers, limits changes or extinguished in favour of another party a right or title to or interest in land[14].

The importance of registration of documents that alienate lands are:-

i. It is an indication that the title is incumbered. This is because the presence and evidence of registration will put an intended payer of land (particularly where mortgages and charges have been registered) to be continuous and ensure that the charges has been discharged. This is because registration vests the legal estate on the person who registered it.

ii. Where an instrument is not registered, it cannot be pleaded, it is inadmissible in evidence and the Courts cannot give effect to it. In other words, it cannot be used as a document of title to land[15].

[12] Section 23(3) a Stamp Duties Act.
[13] Folashade v. Duroshola (1961) all NLR 87.
[14] Section 2 Land Instrument Registration Law of Kaduna State.
[15] Akinduro v. Alanya (2007) All FWLR pt. 381 p. 1653; Atule v. Oghonienor (2004) All FWLR, pt. 224 p. 2061.

iii. It gives priority where there are rival instruments that are registered, the first in time will be reckoned with. The doctrine of priorities is expressed in the maxim *"qui pior est temper portior est jure (he who is first has the stronger right)* and it dictates that the first in time takes priority. Date of registration take priority against the date of execution[16]. More so, competing interest rank in their order of creation[17].

The mere fact of registration of a document will not cause any defect in any instrument, or confer upon it any validity which it would otherwise have had[18]. In fact, registration of instruments alone does not validate opinion or fraudulent instrument of titles or a transfer or grant which in law is patently invalid or ineffective[19].

The procedure for registering deeds is broadly the same in all the states, but may depart in little details. The procedure may be summarized thus:-

(i) The original and counterparts of duly executed and stamped deeds are forwarded to the Deeds Registrar for registration.

(ii) The Deeds Registrar collects the deed and registers it in the register of Deeds on a particular volume, on a particular page and giving it a particular number.

(iii) The original deed is given back to the purchaser of the land while the counterpart is kept at the registry.

The current land registration process in Nigeria is not clearly spelt out by land Use Act 1978, that brings about diverse procedural processes being adopted and operated in various states

[16] Olukoya v. Ashiru supra at 1500 & 1503.
[17] See Kachalla v. Banki (2006) All FWLR, pt. 309 p. 1420
[18] Orumwense v. Amu (2008) All FWLR pt. 442 p. 1120 at p. 1141.
[19] Kyari v. Alkali (2001) FWLR, pt. 60 p. 1481 at 1506-1507

in the country which is characterized by ordinary file system, information card system and manual procedure which are prone to insecurity of data stored, susceptible to destruction by termites or fire, very slow and labous, lack of integrity, openness and trust in land administration. About 95% of the 36 states in Nigeria still operate this manual filing system[20]. It is worthy of note that the Federal Capital Territory, administration through Abuja Geographic Information System (AGIS) adopted the Geographic Information System/Land Information System of land titling. This has brought about change in the system of generation of land titling in the Federal Capital Territory, Abuja.

The World Bank has compiled a comprehensive summary of the stages and cost involved in registering property in Nigeria. This is summarily discussed in tabular form below.

| S/N | PROCEDURE | TIME TO COMPLETE | ASSOCIATED COST |
|---|---|---|---|
| 1. | Conduct a property title search at the land registry, the application letter to conduct the search is accompanied by a Sworn Affidavit or declaration of the status of the party and purpose of search.<br>A lawyer is generally engaged to perform the registration of property. Legal fees are charged based on the scale of fees for conveyancing matters | One day | ₦3,750 (search at registry and legal fees as follows:<br>₦7,500–10,000<br>+ 7.5% of values above ₦20,000 if acting for the buyer,<br>15% of values above ₦20,000 if acting for the seller. |

[20] Ukaejiofor, C.A.N., Land Administration and Information Technology: Contemporary Challenges. Technology on Land Administration in Nigeria. Being a paper presented at MCPD Seminar of NIESV, Abuja on November 22, 2009; see also Ukaejiofor, C.A.N.; Land Filing and Registration as Necessary Factors in the National Land Reform Programme. Being a paper presented at NIESV Annual Conference, Akwa 21-26 2007.

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| | (legal documentation and other land matters).<br>This is a sliding scale, and averages out as about 7.5% of the consideration. The fees include all steps required until the new title is registered under the buyer's name. The objective at this stage is to ascertain whether the vendor has a good root of title. In this context, it means the following: that the vendor is the rightful owner of the land. That the land is free from any encumbrance or pending litigation. That the land is not subject of government acquisition. That the land is not subject to any of the overriding interests in land (e.g. short leases, easements, licenses, road or right way).<br>Agency: Land Services Department. | | |
| 2. | Obtain application, Land Form 1C:<br>One can obtain the application from the consent section of Lands Services Department. Form 1c is the application form to request later, the Governor's consent to the transaction required by Nigerian law. The Form 1c must be dated and signed by the parties to the transaction and sown to before a Magistrate or Notary Public.<br>Agency: Land Services Department. | 1 day | No cost |
| 3. | Obtain certified true copy of title document: | 2 days | ₦5,625 |

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|---|---|---|---|
| | The assignor/assignee issues a letter of authority to the Registrar of Titles, authorizing the lawyer to apply for and obtain CTC of title document and required Governor's consent. It takes a minimum of 2 days to obtain certified true copies of title documents as the lawyer should also present an affidavit to that effect.<br>Agency: Land Services Department. | | |
| 4. | Obtain a survey plan:<br>Parties obtain a copy of the survey plan as approved by the Town Planning Authority, which is required for the Governor's consent.<br>Agency: Town Planning Authority. | 1 day | No cost |
| 5. | Execution of Deed of Assignment/Conveyance and Land Form 1C:<br>The assignor and assignee complete and sign land Form 1C and four copies of the Deed of Assignment. | 1 day | No extra cost |
| 6. | Payment of the Charting fee, Administrative fees, Endorsement fee at a designated Bank:<br>A charting fee, an administrative fees and the endorsement fees are paid to the designed Bank. A receipt is issued, together with the paying-in-slip to the designated Bank. A bank draft is made payable to Lagos State Government. | 1 day | Charting fees (₦7,500) + Administrative fee (₦3,000) and Endorse-ment fees (₦1,500), Capital Gain Tax of 2% is also paid but are not included in the |

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| | This procedure is required for Governor's consent.<br>Agency: Bank. | | calculation. |
| 7. | Process Governor's consent to the assignment:<br>By virtue of Land Use Act 1978, all lands in each state belongs to the Governor, who holds same in trust. The Governor's consent must be sought for the legal validity of any transfer or alienation of interest in landed property. In August 2005, the Governor's consent procedure underwent major reform, with the aim that consent should be granted within 30 days following submission of duly completed application. Incomplete applications are not acceptable. New procedure and documentation requirements have been widely published. Obtaining the Governor's consent require the following documentation:-<br>➢ Covering letter with address and telephone numbers.<br>➢ Completed Form 1C.<br>➢ Certified True Copy (CTC) of Title Document of Assignor.<br>➢ Current Tax Clearance Certificate of the Assignor and Assignee.<br>➢ For limited liability companies, the internal revenue certificate or proof | 61 days | No cost |

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| | for its staff and current tax clearance certification for the Directors.<br>➢ Four (4) copies of the Deed of Assignment of which consent is sought should be attached.<br>➢ Copy of the survey plan, as approved by the Town Planning Authority and picture of the building.<br>➢ Evidence of payment for charting fee, endorsement fee, Form 1C (administrative fee), consent fee, stamp duty, Capital Gains Tax and Registration Fee.<br>➢ Evidence of payment of land use charge.<br>➢ Where the property is covered by a state leasehold or certificate of occupancy, evidence of payment of ground rent up to date.<br>Agency: Directorate of Land Services. | | |
| 8. | Obtain notice of Stamp Duties Registration Fees, Consent Fees, Neighbourhood Improvement Charge at the Land Registry:<br>The conveyancer pays the remaining fees at the designated Bank by means of certified cheques. Receipts are provided to the coveyancer, who will make copies of those receipts before submitting to the Land Registry. If land directly allocated to the seller by the government | 7 days | No cost. |

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| | is resold within 10 years of its initial allocation, then a penalty consent fee of 16% of the value is charged (to deter land speculation). | | |
| 9. | Payment of stamp duty, registration fees, consent fees, neighbourhood improvement charge at Commercial Bank:<br>The conveyancer pays the remaining fee at the designated Bank by means of certified cheque; receipts are provided to the conveyancer, who will make copies of these receipts before submitting to the Land Registry. If land directly allocated to the seller by the government is resold within 10 years of its initial allocation, then a penalty consent fee of 16% of the value is charged (to deter land speculation).<br>Agency: Bank | 1 day | 8% consent fee + 3% of property value for the registration fee + 2% of property value for the stamp duty (capital tax of 2% is also paid, but are not included in the calculation). |
| 10. | Submit the receipts of the registration fees, consent fees, neighbourhood, improvement charge, stamp duty:<br>The receipt obtained from the bank are submitted as proof of payment to the Land Registry. These receipts are internally forwarded to the account department for reconciliation. The lawyer retains copies of the report/payment slip for his records. The Land Services Department sends the file | | |

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| | directly to the office of the Honourable Attorney General of the State<br>Agency: Lands Registry. | | |
| 11. | Obtain file from the Land Services Department:<br>The conveyancer will make follow up on the progress of the file. The Honourable Attorney General grants consent on behalf of the Governor by signing on the deed of transfer. The lawyer will then transmit the file to the Stamp Duty Offices for stamping.<br>Agency: Governor's Office. | | |
| 12. | Stamp of the Deed of Assignment:<br>Deeds are presented for stamping of the Stamp Duties, Registry (agency of Inland Revenue Services). Stamping takes place only after registry receives confirmation of receipt of payment. The documentation shall include receipts confirming payment of stamp duty.<br>Agency: Stamp Duty Office. | | |
| 13. | Registration of Deed and Title conferred:<br>The lawyer will then follow up on the deed to be filed to the Lands Registry. The receipt and paying-in-slip evidencing payment are given to the cashier at the Lands Registry with proof of payment, a land officer is assigned to | | |

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|---|---|---|---|
| | enter the Deed into the Registry records.<br>Agency: Land Registry | | |

*Source:* World Bank[21].

### 4.5 The challenges with Deed of Assignment as a means of transfer of real property in Nigeria.

Deed of assignment is the instrument used in the valid transfer of interest in land particularly under the Land Use Act regime[22]. The Land Act has made every customary grant to have the consent of local government[23]. Be that as it may, transfer of interest in land via deed of assignment must be registered. Failure to register a deed of assignment has grave consequences.

It is pertinent to note that one of the major challenges with the deed of assignment as a means of transfer of real property in Nigeria is traceable to the imperfection in the principal enactment such as the Land Use Act 1978. The enactment was made during military regime without a conduct of public hearing and same (Act) has been embodied in the constitution. This led to the subsumption of the flawed and offensive sections. Again, the Act does not cover the entire procedure for land acquisition in Nigeria thereby leaving the Federal Government and the State Government to enact various laws that flaw the system of land acquisition via deed of assignment.

The major challenges associated with the Deed of Assignment as a means of transfer of real property in Nigeria are thus:

1. Too many legislations: It is evident that the process of transfer of real property in Nigeria using deed of assignment is governed by many laws such as the Land Use Act, the Stamp Duty Act, the Capital Gains Tax Act, the Constitution of the Federal Republic of Nigeria,

[21] World Bank, Doing Business, www.doingbusiness/data/explore a countries/Nigeria/ registering property, 2011.
[22] Section 21 and 22 of Land Use Act 1978.
[23] Section 22.

the Property and Conveyancing Law of the old Western States of Nigeria 1959, the Conveyancing Act 1882, Statute of Fraud 1677, Registration of Title Law of Lagos State 2004, Land Instrument Registration Laws of the States, Company and Allied Matters Act 2004, etc. From the foregoing, a transaction for the transfer of interest in land must comply with the relevant laws. Since the process for the transfer of interest in land is by deed, the Land Use Act or a uniform Act should have taken care of the process. A lawyer who practices on property in one state of the federation must undergo a learning process if he moved to practice in another state because of the variation in the process and laws application in the use of deed of assignment as an instrument of transfer of real property.

2. Time Wastages: From the minimum of 90 days that it takes to complete the process of transfer and registration, obtaining Governor's consent takes a disturbing sixty one (61) days,[24] on the average, a whooping 67 days, 8% of the period. So, it becomes almost irrelevant that it takes only about 6 days to register a mortgage in some parts of the country because consent must be obtained for the transaction to be perfected. There is usually delay in obtaining Governor's consent. This is a serious constraint on someone who is desirous of selling or buying a piece of land for industrial, residential or agricultural purpose.[25] This delay makes people not to comply with the relevant laws on the transfer of real property in Nigeria.
3. Excessive Bureaucracy and Corruption: The process and procedures for giving legal backings to land transactions such as leases, assignment and mortgages as substance are cumbersome and excessively bureaucratic[26]. Thirteen stages have been identified in the

[24] Op. cit.
[25] Savannah Bank v. Ajilo (supra)
[26] As shown in the Tale above.

process of trying to register a title to land and one has to walk in and out of at least seven offices not once. To add to these administrative roundabouts, the process is too corrupt that failure to give bribe create worse delays in the process. To get a file from an office, the officer involved may demand for bribe. This continues from one office to the other.

4. Inadequate Manpower: It is glaring that there are few Nigerian lawyers in the field of conveyancing practice. This allows the infiltration of quacks into the system. You find touts hanging around Land Registries offering cheap services for conveyancing.
5. Expensiveness: The cost of transferring property is put at 15-20% of the cost of land. This is considered exorbitant as land registration in some other countries of the world is free. The resultant effect of this is that people tend to buy or sell land without registering same which in turn lead to litigation at the long run.

# CHAPTER FIVE

# SUMMARY AND CONCLUSION

## 5.1 Summary of Findings

The major findings in this research are as follows:-

i. We have been able to establish that there are various means of acquiring real property in Nigeria which include, state grant, gift, inheritance, purchase and allotment of family land. We could examine that of all these means of acquiring land, only gift and assignment (purchase) must be by deed. This lead to the answering of the question - what constitute a valid conveyance?

ii. We have also been able to establish that in conveyancing, particularly as it relates to the transfer of land and landed property interest, it could be effected under native law and custom without the need for a Deed of Assignment. This results in the serious hitches in the desire and ability to guarantee the security of titles to land in Nigeria and the escalating litigations.

iii. The course of this research revealed that the nature of conveyancing practice in Nigeria is bedeviled and clouded with multiplicity of applicable laws such as the Conveyancing Act 1881, Property and Conveyancing Law 1959, Land Use Act 1978, Stamp Duty Act2007, Registration of Titles Law 2004, Land Instrument Registration Law of Kaduna State, Abia State Law of Property, Capital Gains Tax Act, etc. This greatly causes the unnecessary bureaucracy and difficulty in effecting conveyance of interest in land.

iv. That it is unnecessary to obtain Governor's consent for transfer of interest in land. It has become difficult, cumbersome and fund consuming in accordance with the provision of the Land Use Act and other applicable legislations. The process of obtaining Governor's

consent amounts to 68% on the average of the total time it takes to register title in Nigeria.

v. That the cost of registering property in Nigeria is between 15% to 20/% of the cost of land, representing an excessive cost compared to other countries where registration of title is far less expensive or even free.

vi. The Certificate of Occupancy (arising from acquisition of real property) does not confer title and presumes that such a title exists. A careful perusal and deduction from the Lands Use Act does not show any conclusive means of proving one's entitlement to a right of occupancy. That is a grave defect legislatively and otherwise.

vii. Inadequate manpower in the field of conveyancing practice in Nigeria adds to the challenges in the art of covneyancing. It is glaring that few Nigerian lawyers are in the field of conveyancing practice. This allows the influx of quacks into the system, you find touts hanging around Land Registries offering cheap services for conveyancing.

viii. Shortage of awareness of the conveyancing practice amongst the citizenry. Except there exist a problem relating to real property where someone is involved, most Nigerians do not know the legal procedure for acquiring real property especially as it relates to deed of assignment. Most people rely on contract of sale of land agreement as an evidence of acquisition of title or interest in land; not knowing that it is a mere preparatory stage to the real assignment.

## 5.2 Conclusion

This research has attempted an examination of the means of acquiring real property in Nigeria. It has shown that property or interest in land can be acquired through state grant, gift, purchase, inheritance and allotment of family land. But it is evident from the operation of the

Lands Use Act that assignment or alienation of interest in land must have Governor's consent to be valid[1] or that consent of the Local Government Authority in the territorial jurisdiction must be sought and obtained.[2] We humbly submit that in view of the challenges pose by this requirement of Governor's consent, it is practically unjustified and unnecessary.

Some of the provisions of the Land Use Act[3] are a clog in the wheel of development in Nigeria as pertains real property transactions. The ownership of land has been vested in the Governor who holds same in "trust" threatens economic development. People cannot easily carry out a valid sale and assign the interest in the same property within a desired and short time.

From plethora of judicial authorities, customary means of acquiring property and state grant are evidences of ownership of land. The problem created here is that, there are various laws especially the Land Use Act which expressively requires Governor's consent for alienation of land. It is disturbing that holders of statutory rights of occupancy are at the mercy of the Governor since a deed of assignment registered at the Land Registry is superior. Be that as it may, we humbly submit that state grant should rank pari passu with deed of assignment that the same Act would not create obscurity.

The Deed of Assignment spells out the key issues in the transaction between the seller and the buyer so that there would not be any confusion or assumption after the property had been transferred to the new owner. When deed of assignment has been exchanged between parties, there is need for registration. The procedure requires payment of stamp duties, obtaining of Governor's consent and registration. It is this procedure governed by various laws that guarantees a valid assignment.

[1] Section 21 and 22 of Lands Use Act 1978.
[2] Ibid.
[3] Particularly Section 1.

## 5.3 Recommendations

From the findings, we proffer the following recommendations:-

i. In view of the problems associated with the transfer of title under Customary Law, the transfer of interest in land under any means should be synchronized under one system of conveyancing, that is, Deed of Assignment.

ii. In view of the multiplicity and variation of different legislations on conveyancing in Nigeria which makes it different from State to State, should be harmonized and made uniform in all the States of the Federation. This will create certainty as to what may be attained if a citizen from one State wishes to acquire property in another State as guaranteed under Section 42 of the 1999 Constitution of Nigeria (as amended).

iii. Processing time for Governor's consent where it must be sought and obtained should not exceed 15 days and the cost of transferring property should not exceed 5% of property value.

iv. The power to arbitrarily increase fees payable to State should be checked seriously so that the State not unreasonably exploit title holders. For instance, Kaduna State Government increased fees payable to Ministry of Lands, Survey and Country Planning in 2012. In January 2014, the Ministry increased the fees to 100% for registration. Initially it was 2.5% to 5%, though it was reduced to 3%, and if the property is State owned, you pay the same amount you paid for registration and stamping. Also the consent form before January, 2012 was Five thousand Naira (₦5,000). It was increased to Thirty thousand Naira (₦30,000), but it is not less than Ten thousand Naira (₦10,000).

v. In view of the time spent in obtaining Governor's consent, we recommend that once payment is made at the Stamp Duties Office, the conveyancee should go ahead and register the deed having produced evidence of payment of necessary fees.

vi. Shortage of manpower in the field of conveyancing can be reduced by training and retraining of lawyers in the field. Effort should be made in curbing quacks from engaging in the field of conveyancing. If they are allowed, some may even go ahead preparing documents for conveyancing which is against the Legal Practitioner's Act 2007.

vii. It is also recommended that property owners should contact their lawyers that may know and take the best alternative to effecting transaction on their properties.