

Legal Alert ? November 2010 ? **Land Instruments Registration ? Part 2**

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Introduction

In Part One of our Legal Alert, "Land Instruments ? Survey Plan & Survey Law", we emphasised the significance of preparing and registering all Survey Plans to land. In this Part Two of this Legal Alert, we will be examining the origin of land registration with the present applicable legislations on the subject.

Registration of Titles Law

The Registration of Titles Law of Lagos State requires that any first voluntary transfer of any right or interest in land or in any landed property, including all leases or assignments, for a consideration that is in money/cash, or is a combination of money and some other consideration in kind, for a term of forty (40) or more years is void if an application for registration is not submitted within a period of two months from the date of the commencement of the land transfer agreement.

A Grantee of any interest in land, as referred to above, is allowed to apply to a Court of Law for extension of time within which he or she could apply for the registration of his or her interest in land at the Land Registry. Where however such an application for extension of time is not made and granted, the unregistered land instrument will be deemed null and void, of no effect whatsoever.

Equally significant is the requirement that every charge or encumbrance relating to any land must also be registered. Charges against the assets of incorporated companies in Nigeria must equally be registered at the Corporate Affairs Commission in compliance with Section 197 of the Companies & Allied Matters Act. The effect of non-registration is that such a land instrument will be declared null and void against the liquidator and any secured creditor of such a company.

Land Instruments Registration Law

After the first registration of any interest regarding any land, in accordance with the provisions of the Registration of Titles Law, subsequent transfers or registration of interest must be undertaken under the Land Instruments Registration Law.

A land instrument is described by the Land Instruments Registration Law to be a document

affecting any interest in land where one party confers, transfers, limits, charges or extinguishes his or her interest in such a property/land, in favour of another party. Where any of the described event herein occurs, such instrument must be registered otherwise it will be deemed to be null and void, of no effect whatsoever.

A land Instrument can however only be registered if it has attached and accompanying it a Survey Plan of the land duly signed by a licensed Land Surveyor. Also, no Land Instrument requiring Governor's consent under the provisions of the Land Use Act will be accepted for registration unless and until the consent of the Governor of the relevant State is obtained and endorsed on the Land Instrument. Subject to the Registrar of Titles extending the time for making a registration application upon good cause being shown, any Land Instrument that is endorsed by the Governor of a State with his consent but which Instrument is not registered within a period of six months (twelve months in some instances), will be held to be null and void, of no effect whatsoever.

Where one of the parties to a land transaction is an illiterate, such an illiterate must endorse his mark or thumb print on the land instrument in the presence of a Magistrate or a Justice of the peace. Failure to obtain this statutory endorsement on the land instrument invalidates the land instrument.

Miscellaneous

The Registrar of Titles is authorised, upon the making of the proper application and the payment of the relevant fees, to furnish certified true copies of any entry on a registered Land Instrument registered at the Land Registry. Any certified copy of a registered Land Instrument is admissible in evidence in civil proceedings without any further or other proof required in a Court of Law. Also, every judgement of a Court of Law affecting any interest in land, with a certified true copy of the Map or Survey Plan of the land concerned, must be transmitted by the Registrar of the Court that delivered such a judgement to the Registrar for Titles who shall on receipt of these documents register the judgement with the accompanying Survey Plan against the legal title to such land that the judgement affects. This process serves as a further notice of the judgement to members of the public.

Effect of Registration

The registration of a Land Instrument does not however cure it of any defect in the Instrument neither does it confer on the Instrument any validity which the Instrument would not have otherwise had but for its registration. However, any Land Instrument that is registered, without any inherent defect in the Instrument, takes priority over and against other unregistered land instruments affecting the same land, from the date of the first registration of the registered Land Instrument.

A second effect of a registered Land Instrument is that it can be pleaded and tendered in evidence; whereas, an unregistered instrument must not be pleaded or given in evidence except where the relief sought is an equitable one coupled with possession that some consideration was provided for.

Case Law

There are a plethora of decisions of superior Courts of record where substantial justice was sought to be done in the face of the strict legislations regulating the acquisition and transfer of landed property in Nigeria. In *Savannah Bank v. Ajilo* (1989), the Supreme Court considered the revolutionary effect of the provision of the Land Use Act and held that any alienation of any interest in land, in Nigeria, will be null and void except the consent of the Governor is obtained. This provision, the Supreme Court observed, will have a suffocating effect on the commercialisation and growth of the real estate industry in Nigeria.

In another matter, *Akinduro v. Alaya* (2007), the Supreme Court held that an unregistered land instrument must not be pleaded as it is inadmissible. Where it is wrongly pleaded and admitted in evidence, it will be expunged. But in the matter of *Nsiegbe v. Mgbemena* (2007) the Supreme Court held that a purchaser of land or a lessee in active possession of land by virtue of an unregistered land instrument acquires a equitable interest in the land which equitable interest can only be defeated by another purchaser for value without notice of the prior unregistered equity, i.e. equitable interest coupled with active possession. Decisions like this one are however based strictly on the facts presented to the Court. There are therefore more of the exception than the general rule.

Conclusion

The inability of the Nigerian government to heed numerous representations, both judicial and non-judicial, on the necessity to amend or abrogate the Land Use Act continues to inhibit the ability of this vital sector of the Nigerian economic attracting large local and foreign investments. Also, the cumbersome nature and costs of registering Land Instruments in Nigeria discourages registration which exposes the parties to a plethora of protracted court cases that span decades to resolve.

A stimulus package which does not obtain the amendment of the legislations regulating real estate businesses in Nigeria will not be a wholesome package intended to develop the Nigerian economy. Pending the resolution of the legal and structural environment for the real estate market in Nigeria, investors will be better served by exercising caution and undertaking extensive due diligence before they exchange land instruments in return for valuable consideration.

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