

Legal Alert Land Ownership & Land Certificates in Nigeria Probative Value

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Legal News: Lagos State Consumption Tax Law

The Lagos State Government has signed into Law a Consumption Tax Law on goods and services consumed in Hotels, Restaurants and Event Centres. A flat 5% tax will now be charged at all such venues to the exclusion of the already existing VAT tax.

Legal Alert for June 2009 ? Land Ownership & Land Certificates in Nigeria ? Probative Value of? Land has remained an invaluable asset to mankind. The failure to secure the legal title to land by registration or by obtaining the approval/consent of the appropriate government authority usually leads to conflicts and expensive litigation. This Alert is meant to provide you with some information on the recognised methods of establishing title to land in Nigeria, the probative legal value of a certificate or right of occupancy - which is the most common form of land document in Nigeria - and the need to register all titles to land in Nigeria.

Methods of Establishing Land Title in Nigeria

The legal responsibility of establishing ownership to land in Nigeria is placed on the party who alleges that such a piece of property belongs to him or her. Five different methods are recognised for discharging this responsibility and they are:-

- (a) Proof of ownership to land by traditional evidence, i.e., ancestral possession and inheritance.
- (b) Production of land title document that is duly authenticated.
- (c) Numerous positive acts of ownership over a sufficient length of time to warrant the reasonable inference of ownership.
- (d) Acts of long undisturbed possession and enjoyment of land.
- (e) Possession of adjacent land could raise the presumption of ownership of the land in question.

Certificate of Occupancy ? Probative Value

A Certificate of Occupancy is the land title document that is delivered to the owner of a piece of land by the government attesting to the owner's title to the land which ownership is in accordance with the applicable law. Over time, users of land and financial institutions have elevated this type of land document to be conclusive evidence of the ownership of the land described in it, to the

exclusion of any other party claiming title to the same piece of land.

Judicial decisions in Nigeria however indicate that a Certificate of Occupancy is merely a prima facie - first sight - evidence of an owner's title to the exact piece of land that is described in the Certificate of Occupancy. A Certificate of Occupancy is therefore not a conclusive proof of title to land neither does it validate spurious or fraudulent instruments of title to land which are in law fatally invalid.

Governor's Consent & Registration of Title

The Land Use Act extinguished the unlimited rights and interests to land that Nigerians had prior to the enactment of the Land Use Act. In place of the prior unexhausted rights to land, the Land Use Act vested all land in the territory of a state solely on the Governor of the State, who holds all land in that State in trust for the use and common benefit of all Nigerians. The Land Use Act also introduced a rigid regime of controls on the use or otherwise of all land in Nigeria.

One of the key controls introduced by the Land Use Act is the requirement that any transaction or instrument which confers or vests or transfers or limits or charges or extinguishes any interest or right in land on another party must first be approved by the Governor of the State where the land is situated. Where the prior approval or consent of the Governor is not first sought and obtained, such alienation or transfer is deemed in law to be null and void, and of no effect whatsoever. See, *SAVANNAH BANK v. AJILO* (1989) 1 SC (PT. 11) 90 @ 92

The argument that the failure to obtain Governor's consent only makes the transaction inchoate and not void has been rejected by the Supreme Court of Nigeria particularly where the application for Governor's consent was not made before the dispute was submitted for judicial adjudication, and where the application for consent is made and granted, the consent of the Governor must be pleaded and exhibited before final judgment is delivered. See, *CALABAR CO-OP V. EKPO* (2008) 1-2 SC 229 @ 285.

Registration of Land Instruments

The Land Instruments Registration Law of Lagos State requires that any document affecting land in Lagos State, in whatever manner, must be registered at the Lands Registry. Failure to register such a document implies that the document is void. Equally significant is the legal principle that a void document cannot be pleaded or held admissible by a Court of Law. The Registration of Titles Law of Lagos State also compulsorily requires all Instruments relating to land to be registered.

CONCLUSION

The clamour for appropriate amendments and in some instances outright abolition of the existing land legislations in Nigeria, at the federal and state levels, has been heightened in the present financial year. Without the necessary amendments, land transactions in Nigeria will not be

business-friendly for meaningful development to take place.

Pending the time when the expected amendments to our land legislations are made, you will do well to ensure compliance with existing laws regulating ownership and control of land in Nigeria.

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