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A REVIEW OF THE LAGOS STATE PROPERTIES PROTECTION LAW, 2016

Vivian Nwobi

Introduction

The real estate sector in Lagos State is no doubt one of the major sectors of industry which has witnessed unparallel growth over the years. The value of property within the

LEGAL QUOTES

It is the spirit and not the form of law that keeps justice alive

- Earl Warren

No man suffers injustice without learning, vaguely but surely, what justice is

- Isaac Rosenfeld

state is on a continued increase and the sector has a lot more people trying to key into the obvious benefits of owning property in Lagos. However, this growth is plagued by various elements in land transactions which largely increase the risk profile associated with the acquisition of property. It is in response to some of these challenges that the Lagos State Government under the distinguished leadership of the Governor, Mr. Akinwumi Ambode, enacted the Lagos

State Properties Protection Law, 2016 (LSPPL).¹

Ownership of land in Nigeria is governed by the Land Use Act enacted in 1978 which vests title in the Governors of each state to hold same in trust for all Nigeria. It is by virtue of this Act that the Governor is able to allocate land in urban areas to individual resident in the State and to organizations for residential, agriculture, commercial and other purposes. It is also in furtherance of the objectives of the Land Use Act that State Governments are able to pass into law various legislations geared towards the regulation of land acquisition and disposal within their states.²

Any person who has acquired property in Lagos is familiar with the concept of “OmoOnile” which when literally translated means “Sons of the owners”. These omoonile are able to come into the mix in land transactions owing to the fact that prior to the enactment of the Land Use Act 1978, proprietary ownership of land was subject to customary law which vested land in some land owning families or the community. It was therefore the practice for land owning families or traditional leaders to either create a lease on their property whilst maintaining/exercising control over the tenants’ land or alienate same in an outright sale.

Although the LUA altered the traditional land tenure system and transferred title and

trusteeship in the land from the families and the communities to the State Governors, over time purchasers have had to part with some form of payment to the previous land owning families in order to erect structures (of any kind) on the land and/or enjoy peaceful possession of the same. It has unfortunately become an unwritten law for land purchasers to first ‘settle’ these land grabbers before any work can commence on the land.³ The modus operandi of these omooniles’ or land grabbers span from forcefully dispossessing lawful owners of their landed properties to selling a particular parcel of land to several persons.

There is no doubt that the enactment of the LSPPL is a good development to curb the unwholesome activities of land grabbers in the real estate industry. However, to what extent has the law been able to cover the field in protecting unsuspecting purchasers from the negative impact arising from the activities of these sons of the owners.

SALIENT PROVISIONS OF THE LAGOS STATE PROPERTIES PROTECTION LAW, 2016

The objective of the LSPPL is clearly stated as a law to prohibit forceful entry, and illegal occupation of landed properties, fraudulent and violent conducts in relation to landed properties in Lagos State and for connected purposes.

Section 2(1) of the Law criminalizes actions of forceful and unlawful entry or occupation and unlawful entry or occupation of premises in the following terms:

¹ The LSPPL was signed into Law on August 15, 2016

² Lagos State has enacted the following: Lagos State Properties Protection Law; Lagos State Land Registration Law; Stamp Duties Law; Lagos State Acquisition of Lands by Aliens Law; Land Use Charge Law; Administration of Abandoned Property Law, Administration of Estates Law; Determination of Certain Interest in Lands Law; Lagos State Agricultural Land Holdings Authority Law; Mortgage and Property Law, e.t.c

³Taiwo Adeshina, Kingsley Opia-Enwemuche and OdunayoAyorinde “ *Lagos State Properties Protection Law, 2016: An End to Land Grabbers Menace* ”, Available at <http://www.jacksonettiandedu.com/lawfirm/wp-content/uploads/2016/10/LAGOS-STATE-PROPERTIES-PROTECTION-LAW-Law-Review-051016.pdf> accessed on January 18, 2017

As from the commencement of the law, no one shall use force or self-help to take over any landed property or engage in any act inconsistent with the proprietary right of the owner in the State.

In criminalizing the use of force, the Law states that persons who have used force to take over the properties of others and still do so after 3 months from the date of commencement of the law commit an offence which would make such person liable to ten (10) years imprisonment. The law also states that anyone without lawful authority who applies threats or violence to secure entry into any landed property for personal use commits an offence. It goes further to state that regardless of a situation where the entry is lawful, it does not give a right to use threats or violence and anyone who commits the offence shall be liable to 10 (ten) years imprisonment. This effectively criminalizes the erstwhile use of Vigilante group, ethnic, traditional militia in the forceful execution of a court judgment in respect of landed property and/or use of violence by a person without lawful authority for the purpose of securing entry into land.⁴

The law also increases the level of duty of care to be exercised by professionals in handling the acquisition of property as professionals who facilitate contractual agreements in contravention of the Law shall be liable to prosecution and upon conviction reported to the relevant professional body. This duty of care ties up with the provision of the Law that prohibits the sale of property without proper authority. Professionals for both parties to the sale have the onus of ensuring that their clients have authority to alienate the subject matter of acquisition. This is a departure from the previously

existing practice which made it the sole obligation of buyers' solicitor to check veracity of vendors' title and their capacity and authority to sell.

Section 11 is instructive on the interference which land owners are often besieged with by 'omoonile, in the process of construction and development on their acquired property. These 'omoonile' charge developers for every tipper of sand/cement/gravel brought to site; then, at various stages of building, they throw in more obstacles and demand payment of huge sums before they allow developers lay the foundation, deck, roof, erect a perimeter fence, dig a borehole and just about anything! In short, they fleece developers at every stage of construction and beat up their workers or prevent them from working if they are not paid and there was little or nothing one could do to stop them. In addressing this issue, the LSPPL precludes a person, whether for himself or acting as an agent, from demanding for any fee or levy in respect of construction activities on any property, disrupt or obstruct construction works. Consequently, it shall not be business as usual for the 'omoonile' henceforth as any person who contravenes the provision of the section commits an offence and shall on conviction be liable to a fine not exceeding one million naira or two years imprisonment or both.

It is interesting to note that the preclusion from demanding for any fee or levy in respect of construction shall not be interpreted to preclude land owning families under the authorization of the family head to demand for customary fee for possession (in the name of foundation levy) from buyers or ratification fee pursuant to the judgment of a court of competent jurisdiction. This is in itself a contradiction as the Law does not define the parameters surrounding the collection of this foundation levy. Is there a

⁴ See section 2(2), (3) and 3(4) of the LSPPL

fixed percentage for the foundation levy? What is the standard to be used in the computation of this foundation levy? Is this foundation levy a one off payment? To what extent can the payment of this foundation levy be enforced? These unanswered questions mean that the problem which the LSPPL seeks to curb still has a loophole through which it may be exploited to enlarge fees payable to *omooniles* under the guise of foundation levy.

CONCLUSION

The LSPPL is a timely answer to a lot of the problems, which overtime have been associated with land or property acquisition and development in Lagos state, as it seeks to ensure that properties and their owners are adequately protected from adverse parties. Nonetheless it is only with an effective structure for the implementation of its provisions that property owners can truly reap the benefits of the Law.

PERFECTION OF TITLE IN SALE OF LAND: WHAT TO KNOW

Osiri Ndukwe

Introduction

For many, buying a piece of land is all about finding a vendor willing to sell and meeting the price for the property. It is however of paramount importance to take certain steps prior to the purchase of land, during the course of purchase and even after the purchase has been made for the sake of securing ones interest in the said property.

MEANING OF PERFECTION OF TITLE

Perfection of land title simply means registering a title (or interest in a property) with the government. In law, perfection relates to the additional steps required to be taken in relation to securing interest/title to land in order to make it effective against third parties or to retain its effectiveness in the event of default by the grantor of the interest.⁵

WHAT TO KNOW

Many people who are oblivious to legal requirements usually think that after executing deeds of assignment or conveyance as the case may be that they have done all that is required of them and continue to enjoy their newly acquired property. However, there is still a lot more to be done to “perfect” the title to the newly acquired land. These include application for Governor’s consent, payment of stamp duties and registration of conveyance or assignment at the Lands Registry. This is done in order to ensure compliance with relevant statutes and protect the legal validity of the purchaser’s title to the property.

Application for Governor’s Consent:The Land Use Act (LUA)⁶ prohibits alienation of statutory right of occupancy without the consent of the Governor of the State where the land is situated. It makes it mandatory for the holder of a statutory right of occupancy to seek and obtain the consent of the Governor before alienation or sale of interest in land, otherwise the transaction shall be void.

⁵Available online at [https://en.wikipedia.org/wiki/Perfection_\(law\)](https://en.wikipedia.org/wiki/Perfection_(law)), accessed on Tuesday, January 17, 2017

⁶Section 22 of The Land Use Act of 1978

Where the property however is subject to a customary right of occupancy, the consent required is that of the local government where the land is situated.

The purchaser should always endeavour to make sure the vendor signs the application letter for consent, as it is the duty of a holder of the right of occupancy to seek consent of the Governor to alienate.

The following documents are required for processing an application for governor's consent (this is as it applies specifically to lands in Lagos State; other jurisdictions have slight differences, otherwise the procedure is largely similar):

1. Application for consent in prescribed form - Land Form 1C (if the land is in Lagos)
2. 5 copies of the executed deed of Assignment
4. CTC of title documents
5. Tax clearance certificate of both parties (3 years preceding)
6. Evidence of payment of consent fees and other prescribed fees.
7. Receipts of payment of certain outgoings:
 - i. tenement rate (developed)
 - ii. ground rent; stamp duties, etc
 - iii. development levy
8. Attach copy of
 - i. Survey plan
 - ii. Approved building plan (developed property)

If any of the parties is a company, the following additional documents must be attached:

9. CTC of the Certificate of Incorporation
10. CTC of the Memorandum of Association
11. CTC of Form CAC 7 - Particulars of Directors of the company

12. Tax clearance certificate of at least two directors

13. Evidence of PAYEE returns for its staff

14. A Resolution of the company approving the transaction

Stamp duties: The amount to be paid as stamp duty may be a fixed fee or ad valorem charge (i.e. based on the value of the transaction). Stamping of documents which are charged ad valorem is to be stamped within 30 days while others are to be done within 40 days of execution.

Failure to pay stamp duty renders the document unacceptable for registration and inadmissible in evidence in a court of law. Penalty would also apply where relevant documents are stamped outside the stipulated time.

Registration: Registration of Title is done in order to avoid fraud and problems arising from the suppression or omission of instruments when title is deduced, in case of subsequent transactions it would show a registered interest in the said property.

While registration does not cure any defects to title to property, it is important to register such documents as they are documents affecting land in which one party confers, transfers, limits, charges or extinguishes in favour of another party a right or title to or interest in land. Registration gives an indication that a property is encumbered and any subsequent purchaser would be duly informed upon carrying out a search at the registry.

Documents transferring title to land are registrable instruments and failure to so register them would render them inadmissible in court.

CONCLUSION

Many people fall into the mistake of dealing with vendors of properties solely based on trust.

A critical function of government authorities is to ensure proper adherence to the spirit and letters of the law. The essence of the consent provisions of the LUA and various Registration of Titles Laws is to enable the governor to protect the interest of beneficial owners of such lands and other lawful interested persons from unauthorized alienation and other unfavourable dealings.

THE CONCEPT OF DELIVERY IN PROPERTY TRANSACTIONS BY DEED

Kenneth Jim

Introduction

In recent times, it is the norm for parties interested in transferring title to landed property to do so by a deed of assignment. Using a deed is necessary because a valid deed of assignment is sufficient proof of transfer of title to a property to a purchaser of the property. But for a deed to be valid and enforceable, there are three essential requirements - execution by parties, sealing by parties, and delivery of the deed. Execution essentially means signing of the deed by the parties while sealing is done by impressing one's seal to a deed to show assent. The focus of this article however is on the meaning of the concept of delivery as a requirement for the validity of a deed.

THE CONCEPT OF DELIVERY

Proper delivery of a deed from the grantor to the grantee is an essential element of its

effectiveness. In addition, the grantor must perform an act that implies his or her intention to transfer title. It is insufficient for a grantor to have the mere intention to transfer title, in the absence of further conduct that consummates the purpose.⁷

In the case of *Jegade v. Citicon Nigeria Limited*⁸, delivery was defined as an act done to evince an intention by a party to be bound. Although deeds contain commencement date, deeds do not necessarily take effect from the date inserted on it but from the date of delivery.

Delivery is signified by the passing of an interest or title and not necessarily by the parting with physical possession of the deed. This is one of the main differences between a deed of assignment and a contract for sale of land – a contract for sale of land is not binding on the parties until they have exchanged the counterparts. A deed however is binding on a party even though the counterparts have not been exchanged, as long as it has been delivered.⁹ Mere physical delivery of a deed without an intention to transfer interest does not constitute delivery. In *Awojugbagbe Light Industries v. Chinuke*¹⁰, the Supreme Court held that in order to be effective, a deed must be delivered as the act and deed of the party expressed to be bound by it, as well as sealed but that no special form or observance is necessary for the delivery of a deed and it may be made by word or by conduct. That it is not necessary that the deed should actually be delivered over in possession or custody either of the person intended to take benefit of the deed, though if the party to be bound

⁷ Available online at <http://law.jrank.org/pages/6016/Deed-Delivery.html> accessed on January 11, 2016

⁸ (2001) 4 NWLR (Pt. 702), P. 122 at 139

⁹ Y.Y.D. Dadem: *Property Law Practice in Nigeria* published by Jos University Press (2009), Page 59

¹⁰ (1995) NWLR (Pt. 390) P. 379

so hands over the deed that is sufficient delivery without words. The Court went further to state that what is essential to delivery of a document as a deed is that the party whose deed the document is expressed to be (having first sealed it), shall by words or conduct expressly or impliedly acknowledge his intention to be immediately and unconditionally bound by the provisions contained therein.

Delivery can be absolute or conditional. It is absolute when delivery is complete upon the actual transfer of the instrument from the possession of the grantor. The pre-requisite intention that the document takes legal effect as a deed has been concluded. A conditionally deliver (delivery in escrow) is one which pass the res (subject of the delivery), from the possession of the grantor, but it is not complete until the fulfillment of condition or the happening of an event.¹¹ Until the specified time has arrived or the condition has been met, the instrument is not a deed. It is a mere “escrow”¹². Examples of delivery in escrow include:

- a. Delivery pending the receipt of Governor’s consent for a transaction;
- b. Delivery pending the payment of the balance of purchase price.¹³

The fact that an instrument (deed) is in escrow does not mean that the party executing can discontinue from the deed in the period between execution and the date of performance of the condition. Once a deed has been executed, even in escrow, it is too late for the executing party to avoid its full effect – provided the other party fulfils the condition within the time prescribed for

¹¹Jegede v. Citicon Nigeria Ltd. (2001) 4 NWLR (Pt. 702) P. 112 at 139

¹² An escrow is an instrument delivered to take effect only on the happening of a specified event or a condition has been fulfilled.

¹³ Y.Y.D. Dadem (Supra)

completion. Where a deed is executed in escrow, the party executing cannot withdraw from the deed unless the other party fails to fulfill the condition within the prescribed time.¹⁴

CONCLUSION

In doing property transactions involving deeds, parties must ensure that they take cognizance of the principles guiding delivery of a deed in order to avoid executing an invalid deed.

JOKES



NEWS UPDATE

IMF reduces Nigeria’s growth to 0.8%, surging \$27b reserves support forecast

Few days after the World Bank Group said the country would grow by one per cent in 2017, the International Monetary Fund (IMF) has reduced the growth rate to 0.8 per cent. The differing numbers show the continuous changes in economic activities, which are used in measuring growth, as well as an affirmation that each forecast is not the end.

Nigeria’s growth rebound would be better than that of South Africa, projected at 0.8 per

¹⁴ Ibid

cent in 2017 and 1.6 per cent in 2018, while the sub-Saharan African economy, led by Nigeria, would record 2.8 per cent and 3.7 per cent for 2017 and 2018 respectively.

The gradual gains in the foreign exchange reserves may have improved Nigeria's outlook, as the steady price of crude oil add up the number to \$26.96 billion. The new record represents eight-month record high, as it added no less than \$600 million in the last seven trading days. In the last three months, the nation's foreign exchange reserves have been on the ascendancy, raising the hopes for calm forex market activities in 2017, and currently influencing growth projections.

Read more at: <http://guardian.ng/news/imf-reduces-nigerias-growth-to-0-8-surging-27b-reserves-support-forecast/>

FG gets leave to amend processes in \$245 million suit against Total

A Federal High Court sitting in Lagos, on January 16, 2017, granted an application by the Federal Government, to amend processes in its suit against Total Exploration & Production Nigeria Plc, over alleged under-declaration of crude oil exports to the tune of \$245 million.

Alleging that Total under-declared the volume of crude oil it shipped out of the country between January 2011 and December 2014, the plaintiff (FG) filed the action.

The Federal Government had sued the oil company for short-changing it to the tune of \$245 million, by allegedly shipping several barrels of crude oil out of Nigeria, without making due remittances to it.

At the resumed hearing of the case on Monday, January 16, 2017, Mr. Charles Nwabulu announced appearance for the Plaintiff, while Mr. H. Abudukareem appeared for the Defendant. Nwabulu then informed the court of a motion seeking leave to amend its pleadings. Mr. Charles said the plaintiff had written to the Court on December 9, 2016, and had filed an affidavit of urgency to enable it apply for hearing of its motion to amend its processes.

Moving in terms of his motion paper, Mr. Nwabulu said that his application was premised on the provisions of Order 17 rules 1, 2, and 3 as well as sections 36 of the 1999 constitution. He urged the court to grant plaintiff's application and allow an amendment.

In response, Defendant Counsel, Abdulkareem, said he was not opposed to the prayer for amendment, but urged that the court put it on record that the Plaintiff had made several amendments in the suit. He noted that the amendments of Plaintiff's Processes had foisted it on the Defendant to make a consequential amendment on its Statement of Defence, adding that same should be put on record. The Defendant Counsel also prayed that upon a grant of amendment of the Plaintiff's Processes, a time frame should be afforded the Defendant to regularize its Statement of Defence.

In a short ruling, the trial judge, Justice Mojisola Olatoregun granted the Plaintiff's motion and adjourned the case to March 23.

Read more at: <http://guardian.ng/news/fg-gets-leave-to-amend-processes-in-245-million-suit-against-total/>

Bribery charge: FG tenders evidence against Justice Ademola, SAN

ABUJA – The Federal Government (FG), Monday, adduced evidence to prove its allegation that Justice Adeniyi Ademola of the Federal High Court, Abuja received gratification from a Senior Advocate of Nigeria (SAN), Mr. Joe Agi, in the discharge of his judicial functions. Among exhibits the FG tendered before an Abuja High Court at Maitama, included invoice and receipt of a BMW Saloon 320i valued at N8.5 Million, which Agi, SAN, purchased from Coscharis Motors Limited on January 5, 2015 and handed over to the judge through his son, Ademide.

Trial Justice Jude Okeke admitted the documents into evidence and marked them as Exhibit A. Justice Ademola who is a grandson to a former Chief Justice of Nigeria, is answering to a 16-count corruption charge alongside his wife, Olabowale and Agi, SAN.

Read more at:
<http://www.vanguardngr.com/2017/01/bribery-charge-fg-tenders-evidence-justice-ademola-san/>

LASSA FEVER: NCDC confirms 9 deaths, 20 cases in 7 states

The Nigeria Centre for Disease Control (NCDC), has confirmed nine deaths and 20 cases of Lassa Fever in seven states since the beginning of the dry season in December 2016; even as it commences implementation of its plan to strengthen nationwide response

capacity to anticipated Lassa Fever cases. However, in an interview with Vanguard, the Nasarawa State Commissioner for Health, Dr. Daniel Iya, confirmed four deaths and 16 cases in the state, while 38 people are now under surveillance.

In a statement made available to Vanguard, the Technical Assistant, Communication, of the NCDC, Dr. Lawal Bakare, alerted Nigerians on the increasing cases of Lassa Fever and the need for increased focus on prevention and preparedness. Bakare noted that Plateau State recorded three deaths out of six confirmed cases, while Ogun State recorded two deaths and two confirmed cases. He added: "In Taraba State, there was one death out of the six confirmed cases, while Nasarawa recorded three deaths. Other states that have recorded one case each, without confirmed deaths include Edo, Ondo and Rivers." Meanwhile, NCDC in the last quarter of 2016 commenced implementation of its Lassa fever plan ahead of the current dry season with a view to strengthening nationwide capacity to prevent, detect and respond to the anticipated cases

Read more at:
<http://www.vanguardngr.com/2017/01/lassa-fever-ncdc-confirms-9-deaths-20-cases-in-7-states/>

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11C, Ayinde Akinmade Street
Off Admiralty Way, Lekki Phase 1
P.O. Box 75889, Victoria Island, Lagos
Tel: +234 1 4547857

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