

PERFECTION OF LAND TRANSACTIONS AND TITLES IN NIGERIA POST-COVID 19: PROSPECTS AND CHALLENGES

Written by *Ibrahim Mohammed*,* *Abigail Benjamin Kahuwai*** & *Chigozie Umenzekwe****

* *Deputy Director Academics, Nigerian Law School, LLB, LL.M*

** *Senior Lecturer, Nigerian Law School, LLB, LL.M*

*** *Lecturer, Nnamdi Azikiwe University, Awka., LLB, LL.M*

ABSTRACT

This paper examines land transactions and the prospects of electronic perfection of title to land in Nigeria in Post-COVID-19 pandemic. To achieve the purpose of the study, the paper reviewed the current system of land administration in Nigeria and the efforts that are being made at reforming the system to accommodate electronic transactions prior to the emergence of COVID-19 pandemic. While the system of electronic perfection of title to land is achievable, the findings identified some challenges that may adversely affect the system and proffer some recommendations accordingly.

Keywords: Post-Covid-19, E-perfection, land transactions, land titles, land administration in Nigeria.

1.0 INTRODUCTION

The SARS-CoV 2, commonly known as coronavirus or COVID 19, belongs to the category of viruses that may cause illness and are easily transmitted between humans as well as between humans and animals. The viruses cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-CoV) and Severe Acute Respiratory Syndrome (SARS-CoV). Covid-19 is a new strain that has not been previously identified in humans until its breakout in China in December, 2019. The common symptoms of the virus include shortness of breath and breathing difficulties, fever, dry cough and tiredness, nasal congestion, sore throat, diarrhoea, headache, loss of taste or smell, a rash

on skin or discoloration of fingers or toes. In severe cases, the virus can cause pneumonia, severe acute respiratory syndrome, kidney failure and even death.ⁱ The symptoms may take up to fourteen days, after exposure, to manifest. Preventive measures include respiratory hygiene like covering the mouth and nose with flexed elbow or tissue when coughing or sneezing, washing of the hands using soap and water or an alcohol-based sanitizer, social distancing and avoiding close contact with anyone with cold or flu-like symptoms.ⁱⁱ Although infected persons are given medications, it is mostly to boost their immune system as there is presently no specific treatment or cure for the disease. There are however, ongoing clinical trials on medications that would, hopefully be effective for the treatment or management of the disease.ⁱⁱⁱ

The coronavirus pandemic (COVID-19) is said to be the worst global health crisis since the Second World War^{iv} and its impact transcends human health as it has also affected socio-economic development globally. In view of the alarming rate of person-to-person transmission of the deadly virus and number of deaths, countries all over the world were compelled to take unprecedented number of both proactive and reactive strategies to mitigate the risk and combat the unique challenges posed by the virus. Some of the measures adopted by countries include total and partial lockdowns, social distancing, mandatory use of facemasks and hand sanitizers, testing and isolation as well as halting non-essential services. These containment measures devastatingly affected economic activities resulting in drastic fall in government revenue, stagnation of commercial activities, loss of jobs in countries including Nigeria. Even before the outbreak, countries around the world, especially developing countries like Nigeria, were grappling with weak economic situations hence the pandemic had therefore aggravated the economic predicament.^v Social distancing, as one of the measures of containing the spread of the virus in Nigeria, affected many government businesses and transactions. Many government offices including land registries were closed down and this made physical or manual perfection of land titles almost impossible during the period.

This paper examines the prospects and challenges of electronic perfection of title documents in land transactions in Nigeria as alternative to the common physical system that require an interface between the parties and government officials.

2.0 LEGAL FRAMEWORK FOR LAND ADMINISTRATION IN NIGERIA

Land administration is the process or system of managing land as natural resources for sustainable use and development.^{vi} It is basically the process of determining, titling, recording of deeds and registration of titles and providing information about ownership, value and use of land. Land administration helps in providing security of tenure and enables the government to effectively regulate dealings in land, land taxes and environmental protection for sustainable development.^{vii} Thus, land administration determines land titling, ownership of land and how the ownership can be secured or protected, uses of land and how revenue can be generated from the uses and how the environment can be protected. It also assists the government to initiate land reform, improve urban planning and infrastructure.

There are various laws that regulate land administration in Nigeria. Some of these laws are:

i. Constitution of the Federal Republic of Nigeria 1999 (as amended)

The constitution guarantees the right for every citizens of Nigeria to own land and other immovable properties anywhere in Nigeria. A Nigerian has can own immovable property in any part of the country. Specifically, the constitution provides that:

Subject to the provisions of this Constitution, every citizen has the right to acquire and own immovable property anywhere in Nigeria.^{viii}

Furthermore, a property including immovable property or any right or interest in such property legally owned by a citizen of Nigeria in any part of the country cannot be compulsorily acquired by the government except in the manner prescribed law and reasonable compensation which may be determined by a court of law or tribunal in Nigeria, is promptly paid to owner.^{ix}

ii. Land Use Act^x

This legislation vests all lands in each state in Nigeria to the Governor of the state who holds the lands in trust for the benefit of the citizens of Nigeria the state.^{xi} The Governor of each State is empowered to grant right of occupancy and incidental interest(s) therein to the citizens over lands comprised in the State.^{xii} The right of occupancy is the ultimate interest a citizen can hold in respect of a land in Nigeria, and it is granted for term of years which should not exceed 99 years.^{xiii} The legislation prohibits alienation of a right of occupancy or any part of it by way of assignment, mortgage, transfer of possession, sublease or otherwise howsoever, without first applying for and obtaining the consent of the Governor .^{xiv}

In addition, the legislation prohibits granting of a right of occupancy or the consent to assign or sublet a right of occupancy to person under the age of 21 years.^{xv} The Governor of a state cannot grant a right of occupancy to a person who is not a citizen of Nigeria without the approval of the National Council of States.^{xvi}

iii. *Property and Conveyancing law 1959*^{xvii}

This is the law that regulates property transactions in almost all the states in the former Western Region of Nigeria. The legislation voids all conveyances of land or interests in land that are not made by deed.^{xviii} Furthermore, the legislation upholds the principle of unenforceability of sale of land that is not made in writing.^{xix}

iv. *Conveyancing Act 1881 and 1882*

These legislations are some of the colonial legacies and they are statutes of general application in Nigeria. The legislations only regulate land transactions in states that do not have comparable local legislation.^{xx} Consequently, it is applicable in some states that form the former Northern and Eastern Regions of Nigeria.^{xxi}

v. *Land Instruments Registration Laws of States*

Different states in Nigeria have enacted Land Instruments Registration Law to regulate the registration of instruments used in land transactions. The legislation determines what constitutes a registrable instrument. For example, section 3 of Land Registration of Kaduna state^{xxii} defines instrument to mean:

A document affecting land whereby one party (hereinafter called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the guarantee), any right or title to, or interest in land, and includes a certificate of purchase and a power of attorney under which any instrument may be executed, but does not include a Will.

The legislation goes further to provide for the effects or consequences of non-compliance with the law in respect of registration of a registrable land instrument. An unregistered registrable instrument cannot be pleaded in court of law, it is inadmissible in evidence as proof of title, and the court cannot give effect to it to transfer interest in Land.^{xxiii} However, in the case of Benjamin v Kallio^{xxiv}, the Supreme Court of Nigeria held that admissibility of any document

in evidence is not determined by a law of a State but by the principle of admissibility of documents under the Evidence Act, 2011.

vi. Land Instrument Preparation law of States

Many states in Nigeria have laws on preparation of instruments in land transactions. These laws stipulate that preparation of instruments and documents on sale or transfer of land can only be done by a Legal Practitioner. Section 2 of Cross-Rivers State Land Instruments Preparation Law, 2017 states that:

No person other than a legal practitioner shall either directly or indirectly, for in expectation of any fee, gain or reward, draw or prepare any instrument and any person contravening the provisions of the section shall be liable to a fine one hundred naira.^{xxv}

The legislation defines instrument as any document conferring, transferring, limiting, charging or extinguishing, or purporting to confer, transfer, limit, charge or extinguish any right, title or interest in land but does not include a Will.^{xxvi} Any such agreement or instrument drawn by an unqualified person is void and any fee or reward paid under the agreement can be recovered.^{xxvii} The Legal Practitioners Act, 2004 also prohibits drawing of instruments relating to land by unqualified persons. In this regard, the Act provides that if any person other than a legal practitioner prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, such person shall be guilty of an offence and liable to a fine of an amount not exceeding N200 or imprisonment for a term not exceeding 2 years or both.^{xxviii}

vii. Stamp Duties Act^{xxix}

This legislation regulates taxes payable to Federal or state governments in respect of documents such as conveyances on sale, contracts, Bills of exchange, promissory notes, etc. Where the parties to an instrument consist of an individual and a duly registered company, the stamp duty will be paid to the Federal Government. However, where a company is not a party to the instrument, the stamp duty is paid to State Board of Internal Revenue.^{xxx}

3.0 TRANSACTIONS RELATING TO LAND IN NIGERIA

There are various types of land transactions in Nigeria. The major or most common transactions include:

- Sale of land
- Leases/sub-leases
- Tenancy
- Gift of land
- Power of Attorney^{xxx}

4.0 PERFECTION OF TITLE TO LAND AND E-SERVICES

Perfection of title is the completion of the acquisition of interest, transfer of title and ownership vested in a land.^{xxxii} It is usually the last activity in the process of consummating land transactions. Perfection, as the word implies, is the concluding part of an alienation of land transaction. It entails obtaining the necessary consent to alienated the title from the Governor of the state concerned, stamping of the relevant title documents (deeds) and registering the stamped documents at the land registry of the State as required by Land Registration Laws of the State concerned.

The process of perfection, that is governor's consent, stamping and registration will be briefly discussed here.

- 1 **Governor's Consent:** The Land Use Act^{xxxiii} provides that parties wanting to alienate their property must first seek and obtain the consent of either the governor or the local government chairman depending on whether the property is classified as urban or rural.^{xxxiv} This consent is expected to be obtained by the title holder (Assignor) although in practice, it is usually done by the Assignee or their solicitor. The mode of applying for the consent depends on the jurisdiction. Some States have prescribed forms which the applicant can fill in their details, some require that a formal letter seeking consent be made while some require that applicant, apart from filling the requisite form, must write a formal application for the Governor's consent. It is instructive to note that the Supreme Court had, in *Savannah Bank v. Ajilo*^{xxxv} declared void any alienation concluded without the Governor's consent.

This position was however slightly modified when it held in *Awojugbagbe Light Industries Nig Ltd v Chinukwe and Ors*^{xxxvi} that such transactions are inchoate.

- 2 **Stamping:** The second stage of the perfection process is stamping of the deeds prepared and executed by the parties. The alienation instruments are taken to the Stamp Duties Office where they are embossed with the requisite stamp after the payment of the *ad valorem* stamp duty. An unstamped document can neither be accepted for registration nor admissible in court to prove that alienation had been effected.^{xxxvii} The court may however make an order for the payment of the requisite stamp duty in order to make it admissible.^{xxxviii}
- 3 **Registration:** This is the third and final stage in the perfection of land alienation. It is basically the reflection of the transaction in the relevant register of the Land registry of the State or local government where the land is situated. The stamped documents are taken to the Deeds/Title Registrar who then imputes the particulars of the transaction, that is, the names of the parties, particulars of the property or title involved and consideration into the Deeds Register. The particulars of the registration are stated on the instrument as well. Registration is important because it serves as a Notice to the whole world of such transaction and also gives priority to the person to whom it is alienated should there be other unregistered similar transactions and documents.

5.0 E-PERFECTION OF LAND DOCUMENTS

Electronic perfection (e-perfection), of land transaction is basically conducting the final stage of conveyancing or alienation of land title via electronic medium. In e-perfection, information are supplied via electronic medium and saved in the central data base and this makes it easy to access and even update records. We had earlier explained that some States have made efforts to discard or move away from the manual system by implementing land administration reforms focussing on land titling and registration. These reforms relate to introducing digital process of land registration. The Federal Government through the Federal Ministry of Works and Housing has, in the effort of digitalising land registration process, established the Federal Lands Information System (FELIS) to handle registration of lands under the control of the Federal Government across the states of the Federation.^{xxxix} Some States like Lagos, Federal Capital

Territory, Kaduna, Enugu, Anambra, and Kano^{xl} have also introduced E-Perfection of their land transaction.

The introduction of e-services in the area of land administration is not only crucial and desirable but necessary in order to overcome some of the highlighted disadvantages of manual process of land registration and administration highlighted above.

Some of the advantages of E-perfection of transaction include:

- Improves security of data and tenure;
- Searches for records can be carried out online from any location where there is network coverage.^{xli}
- Improves the accuracy of the data thus ensuring and maintaining public confidence in land transactions;
- Provides a strong base for timely information retrieval, which will in turn aid any future land transactions;
- Eases tracing and auditing series of transaction;
- Convenient for keeping with the social distancing rule on fight against COVID-19
- Support the federal government policy on digital economy
- Application of new technologies is making record keeping activities faster, easier, cheaper, space efficient, less redundant and less in terms of damage or loss of documents;

Despite the foregoing advantages and the introduction of electronic system in land administration and management by some states, there is more to be done as the system still left much to be desired. For example, it is reported that although just about 20% of states in the country have introduced ICT in their land administration system, the accomplishment or content and compatibility of the electronic system in those states 'are not easily ascertained because there is little or no central coordination and monitoring.'^{xliii} Further to this the National Geospatial Data Infrastructure (NGDI) policy document which would have facilitated national network coverage in achieving smooth integration and data exchange among the states is still at the implementation state^{xliiii} thereby affecting the ambition of e-perfection of land transaction documents.

The Lagos electronic transactions under the Lagos State Lands Registration Law (LSLRL), 2015 appear to be limited to investigation of title^{xliv} and obtaining certified true copies (CTC) of registered land documents.^{xlv} This means that registration of title to land and

any registrable document are actually concluded manually still using human interface.^{xlvi} There is therefore the need for total or complete digitalisation of land administration to accommodate electronic land titling and E-perfection titles to include application, stamping and registration. It is pertinent to state here that while it is desirable and advisable for all states in Nigeria to introduce digital system and render electronic services in land administration, there is need to address the challenges that are likely to adversely affect the smooth operation and delivery of the system. These include:

- **Legal Framework:** The introduction of a digital Land Information Management in the entire country cannot be successful without the necessary legal framework. There is therefore the need to update or review the various national and states laws relating to land administration to accommodate provisions permitting electronic means of perfecting land transactions.
- **Cyber Security:** Cybercrimes such as hacking or data theft or unlawful manipulation is capable of compromising the system and may lead to loss of public confidence in the system. Thus, there will be need to strengthen the Anti-Cybercrimes laws and improve enforcement of the laws.
- **Technological Infrastructure:** There is need to have necessary standard infrastructure for effective digitalisation as it will enhance speed and accuracy in service delivery and also ensure or entrench seamless integration and data sharing between States in Nigeria. Achieving this will require provision of standard Geospatial Data Infrastructure policy for effective and full implementation.
- **Training and Capacity Building:** It is important to train the staff of the lands department on ICT so as to make them efficient in performing their functions.
- **Civic Education:** There is need to educate people at all levels on the importance of technology and the guidelines on the electronic services such as land titling, stamping, registration and any other transaction as may be necessary.

6.0 CHALLENGES AND PROSPECTS OF E-PERFECTION OF TITLE

In many states in Nigeria, the perfection of title document is majorly made manually requiring direct human interface. The manual system was created in a bid to minimise difficulties usually faced by parties in the quest to ensure the genuineness of their transaction and documents and registering their interest with the government. The manual system is however bedevilled with

challenges and obstacles that have greatly affected the effective realisation of the purposes for which they were set up. Some of the issues bedevilling the manual system are:

1. The possibility of human errors in correctly recording transactions.
2. Unnecessary delay in concluding land transactions as access to records requires physical retrieval and reproduction.
3. The cumbersome process encourages corruption because some people may require the intervention of the staff to speed up the process.
4. Increase in storage space and management costs because of the volumes of paper involved in the perfection procedure.
5. Multiple entries and storage of information in different registers makes the work strenuous and monotonous.
6. Linkage of data using common attribute data is not easily done and there is no room for flexibility because the data are in analogue (paper) format
7. Wear, tear and possible loss of data when information, in data form are transported from one location to another in response to demands from rights holder. This may call to question the accuracy of the document contained in the registers.^{xlvii}

All of the above and especially the realisation that the manual system is no longer tenable or advisable seeing how the lockdown stopped people from perfecting their transaction, it is advisable that E-Perfection be explored. This more so seeing the effect the lockdown, occasioned by the COVID pandemic brought on the socio-economic welfare of the populace.

7.0 CONCLUSION

Preventive measure introduced by governments in a bid to fight the spread of COVID 19 virus affected the perfection of land transactions because people could not physically go to land registries and other government agencies, as may be required, to perfect their transaction. This, apart from delaying the enjoyment of title by a purchaser, may also make them incur penal sanction especially where perfection is expected to be done within a certain period. Electronic perfection would, apart from enabling parties conclude their transaction timeously, may even reduce the cost of the entire transaction as the conveyancers will not need to go physically to the land registry and other relevant offices to register their interest. It is therefore advisable that

government agencies move in line with the times by installing the necessary facilities to make this happen and also train the staff to help make it seamless.

ENDNOTES

- ⁱ About Covid-9 <http://www.emro.who.int/health-topics/corona-virus/about-covid-19.html> accessed on 7-11-2022
- ⁱⁱ Covid-19 Nigeria <https://covid19.ncdc.gov.ng/> accessed on 8-11-2022
- ⁱⁱⁱ *Ibid*
- ^{iv} About Covid-19 <http://www.emro.who.int/health-topics/corona-virus/about-covid-19.html> . accessed on 8-11-2022
- ^v Chukwuka Onyekwena and Mma Amara Ekeruche ‘Understanding the impact of the COVID-19 outbreak on the Nigerian economy’ <https://www.brookings.edu/blog/africa-in-focus/2020/04/08/understanding-the-impact-of-the-covid-19-outbreak-on-the-nigerian-economy/> accessed on 11-11-2022
- ^{vi} FAO, ‘Land Resources Planning for Sustainable Land Management’, <https://www.fao.org/3/i5937e/i5937e.pdf>, page 1, accessed 15-11-2022
- ^{vii} Surv. Taiwo Samuel Adeniran ‘Land Administration: A Catalyst to Economic Development’ <https://www.geospatialworld.net/article/land-administration-a-catalyst-to-economic-development/#:~:text=Land%20administration%20is%20the%20process,implementing%20a%20land%20management%20policy.&text=Nigeria%20became%20independent%20on%201st.of%20national%20issues%20includin%20land>. Accessed 18-11-2022
- ^{viii} See section 43 of the Constitution of the Federal Republic of Nigeria 1999
- ^{ix} *Ibid* section 44
- ^x Cap L5 Laws of Federal Republic of Nigeria 2004
- ^{xi} Section 1 Land Use Act, 1978
- ^{xii} *Ibid* section 5
- ^{xiii} See *Abiyoye v Yakubu* (1991) 5 NWLR (part 190) p. 130
- ^{xiv} *Ibid* sections 22 and 26
- ^{xv} *Ibid* section 7
- ^{xvi} *Ibid* section 46(1). See also *Heubner v A.I.E and P.M. Co. Ltd* (2017) AFWLR (Part 903) p. 1000
- ^{xvii} Cap 100 Laws of Western Region of Nigeria
- ^{xviii} See sections 77 and 78 Property and Conveyancing Law 1959
- ^{xix} *Ibid* section 67(1)
- ^{xx} *Dadem Y.Y. Property Law Practice in Nigeria*, (4thed) Jos University Press, 2018, p.15
- ^{xxi} *Ibid*
- ^{xxii} Cap 81, Laws of Kaduna sState, 1991
- ^{xxiii} See section 37, River State Land Instrument (Preparation and Registration) Law, Cap 74, 1999. See also *Akinduro v Aaya* (2017) All FWLR at page 1563.
- ^{xxiv} (2018) All FWLR, part 920 at page 1
- ^{xxv} See also Section 5 and 6 of the Land Instrument Preparation Law, Cap. 84, Laws of Kaduna State, 1991 which contains similar provisions.
- ^{xxvi} See section 6, Cross-River State Land Instruments Preparation Law, 2017
- ^{xxvii} *Ibid* section 3(1) (2)
- ^{xxviii} See Section 22 (1) (d) of the Legal Practitioners Act, 2004
- ^{xxix} Cap S 8 Laws of Federal Republic of Nigeria 2010
- ^{xxx} See section sections 4 and 22, Stamp Duty Act, 2010
- ^{xxxi} Although power of attorney is basically regarded as an instrument of delegation or a means by which a right or interest in land can be conveyed or transferred, it appears that there is a shift from this traditional or basic function of a power attorney. In *Ibrahim v Obaje* (2018) All FWLR (Part 937) p. 1682, the Supreme Court of Nigeria answered the question on whether a power of attorney transfer in land to a Donee of the power in the affirmative. The court held, amongst other things, that in exceptional situations as such that arose in the case, a power of attorney can transfer interest in land to a Donee.S
- ^{xxxii} Tekedia, Stanley Alieke ‘Perfection of Title in Land Tansactin in Nigeria’, 7- 1-2022, <https://www.tekedia.com/perfection-of-title-in-land-transactions-in-nigeria/>, accessed 15-11-2022

xxxiii CAP L5 LFN 2004

xxxiv S 22 and 26 LUA, CAP L5 LFN, 2004.

xxxv (1989) 1NWLR part 97, 305

xxxvi 1995 4 SCNJ 162

xxxvii S, 22 SDA Cap S8 LFN, 2004

xxxviii *Ogbahon v Registered Trustees CCG (2001) FWLR part 80, p. 1496*

xxxix Nwuba, C. C., & Nuhu, S. R. (2018). Challenges to Land Registration in Kaduna State, Nigeria. *Journal of African Real Estate Research*, 1(1): pp.141-172. DOI: 10.15641/jarer.v1i1.566 www.journals.uct.ac.za/index.php/JARER/index accessed on 22/11/2022

^{xl} Lagos State Lands Registration Law, Edo State Lands Administration and Geographic Information Service Law, 2018, Kaduna Land Use Regulations, 2017, Kaduna Geographic Information Service Law, 2015

^{xli} *Ibid.* See also AWOLAJA Adekunle' Gbenga 'Land Registration in Nigeria: Issues And Challenges' <http://m.covenantuniversity.edu.ng/content/download/33937/233886/file/LAND+REGISTRATION+IN+NIGERIA.pdf> accessed on 23/11/2022

^{xlii} Andrus Nnaemeka Ukaejiofo 'Land information system: Embracing new economic model' <https://www.geospatialworld.net/article/land-information-system-embracing-new-economic-model/> accessed on 23-11-2022

^{xliii} *Ibid.*

^{xliv} Section 22 (3) of LSLRL permits online conduct of search or investigation of title. The applicant shall pay the necessary fees before accessing the LIMS by Credit Card, or any form of electronic payment or such other means as may be prescribed by the Registrar. Section 22(5) states that upon concluding the search, the applicant shall obtain an official report of the search, as is contained in form 4 in Schedule I to this Law.

^{xlv} Under Section 23(1) LSLRL any person who intends to obtain a certified true copy (CTC) of any document in the Land Information Management System (LIMS) shall apply to the Registrar by completing the prescribed form contained in Form 5 in Schedule 1 to this Law. And the documents that may be accessed for downloading on application shall be in electronic form, capable of being registered in law, and shall have the time and date it takes effect indicated on it. See Section 23(2)(a-c)

^{xlvi} Section 26(1) LSLRL makes it mandatory for any holder in possession of any registrable document to register it within sixty (60) days after obtaining the Governor's consent where applicable. The forms for registration of titled land and land covered by deeds/certificates of occupancy are contained in Forms 1 and 2 in Schedule 1 to this Law.

^{xlvii} Dr. Didigwu, Augustus U. S. and Mr. Osarenkhoe, Automated Land Registration in Edo State, Nigeria *Alexander British Journal of Environmental Sciences* Vol.3, No.5, pp.1-9, December 2015 www.eajournals.org accessed on 22/11/2022