

THE STATUS OF CERTIFICATE OF OCCUPANCY UNDER THE LAND REGISTRATION LAW 2015 OF LAGOS STATE: A WAKE-UP CALL ON OTHER STATES IN NIGERIA*

Abstract:

The Land Use Act 1978 has made right of occupancy granted or deemed granted by the state the highest interest one can enjoy over land and has also given the state governors the power to issue certificate of occupancy in recognition of such right of occupancy. Unlike the other states in Nigeria, the newly enacted Lagos State Land Registration Law 2015 has expressly incorporated certificate of occupancy within the definition of document capable of being registered. The aim of the study was to examine the provisions of the Lagos State Land Registration Law 2015 as it relates to certificate of occupancy. The objectives of the work were to expose the lapses in the Land Instruments Registration Laws of the other states of Nigeria relating to certificate of occupancy and to harp on the need to upgrade these laws in line with that of Lagos State in this regard. This work used doctrinal method of legal research by which facts were gathered from legislations and case laws as well as law textbooks. It was found that the Lagos State Land Registration Law 2015 defined registrable document to include certificate of occupancy unlike the applicable laws in other states of Nigeria. The study also found that unlike the other states of Nigeria, the effect of registration of instrument or documents is that registration will operate as evidence of the holding of the land. Consequently, this research work recommended that other states of Nigeria should upgrade their Land Instruments Registration Laws in line with that of Lagos State to provide expressly that certificate of occupancy is a registrable instrument and that registration will have the effect of operating as evidence of the holding of the land it relates to.

Keywords: Certificate of Occupancy, Document of Interest or Title to Land, Registrable Instrument, Land

1. Introduction:

Under the Land Use Act the highest interest one hold in land is right of occupancy, whether statutory or customary, as all land in a state have been vested in the governor of the state.¹ The Governor is empowered to grant certificate of Occupancy to anyone entitled in recognition of such right of occupancy.² The Land Registration Act No. 36 of 1924 which is the prototype legislation regulating the registration of instruments in Nigeria from which the states in Nigeria have re-enacted their respective land instruments registration laws (but now with the exception of Lagos State) does not expressly include certificate of occupancy within its definition of registrable instrument.³ This has led to some controversies whether a certificate of occupancy qualifies as a registrable instrument, not being an instrument of grant of interest in land *per se*. This controversy has ceased to be relevant in Lagos State with the coming into force of the Lagos State Land Registration Law 2015 which, while replacing the word ‘instrument’ with ‘document’, defines document as including certificate of occupancy and thereby making certificate of occupancy a registrable document in Lagos State. The lack of express provision on certificate of occupancy under the Land Instruments Registration Laws of the other states in Nigeria with the exception of Lagos State has created stagnancy in the development of the law regulating registration of land instruments or documents and has also made it out of tune with the Land Use Act. What are the provisions of the Lagos State Land Registration Law 2015 dealing with certificate of occupancy? In what ways have these provisions dealt with the status of certificate of occupancy? What are the lapses in the Land Instruments Registration Laws of other states as it concerns certificate of occupancy? What recommendations can be made towards addressing the lapses?

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¹Land use Act Cap L5 Laws of the Federation of Nigeria 2015, section 1, 5, 6, 34 and 36

² Ibid section 9

³ See Land Registration Act Cap 515 Laws of the Federation of Nigeria 2004, section 2. See also the corresponding provision in the Land Instruments Registration Laws of the states.

The aim of this study is to critically examine the provisions of the Lagos State Land Registration Law 2015 as it relates to certificate of occupancy. The objectives of this work are to examine the provisions of the Lagos State Land Registration Laws dealing with certificate of occupancy and to assess how those provisions have dealt with the status of a certificate of occupancy as a registrable document. This work will also highlight the lapses in the Land Instruments Registration Laws of other states as they relate to certificate of occupancy and make recommendations on how to address the lapses. The work is restricted to the provisions dealing with certificate of occupancy under the Lagos State Registration Law 2015 in comparison with the counterpart provisions in applicable laws in other states in the light of the provisions of the Land Use Act relating to certificate of occupancy. This study is of immense significance because it will portray the areas where the laws of the other states of Nigeria relating to registration of land instruments are lagging behind in relation to the Land Use Act.

2. Conceptual Clarification

It is important for a proper understanding of this study to state the meaning of the terms instrument, document, and certificate of occupancy.

Instrument

Section 2 of the Land Registration Act 1924 defines instrument as follows:

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

This definition was re-enacted in the Land Instruments Registration Laws of the states in the defunct Eastern and Northern Regions of Nigeria⁴ as well as the repealed Lagos State Land Instruments Registration Law.⁵ However, for the laws applicable in the states in the defunct Western and Mid-Western Regions of Nigeria, the definition was extended to include *an estate contract and a deed of appointment or discharge of trustees containing expressly or impliedly a vesting declaration and affecting land.*⁶

Document

The word 'instrument' no longer appears in the Lagos State Land Registration Law 2015 which it has replaced with 'document'. Section 1 of the Lagos State Land Registration Law 2015 defines 'document' as including 'any deed, judgment, decree, order, other document in writing requiring or capable of registration under the Law and includes a certificate of occupancy.'

Certificate of Occupancy

Section 7 of the Land Use Act provides as follows:

It shall be lawful for the Governor

- (a) when granting a statutory right of occupancy to any persons; or
- (b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or
- (c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.

⁴ See Land Instrument Registration Law cap 72 Laws of Eastern Nigeria 1963, section 2 (now re-enacted into the Land Instrument Registration Laws of all the states created from the defunct Eastern Region of Nigeria); Land Registration Law Cap 58 Laws of Northern Nigeria 1963, section 2 (now re-enacted into the Land Instrument Registration Law of all the states created from the defunct Northern Region of Nigeria including the Abuja Federal Capital Territory)

⁵ See Land Instrument Registration Law Cap L58 Laws of Lagos State 2003, now repealed by the Land Registration Law of Lagos State 2015

⁶ See Land Instrument Registration Law Cap 56 Laws of Western Nigeria 1959, section 2 (now re-enacted into the Land Instrument Registration Laws of all the states created from the defunct Western and Mid Western Regions of Nigeria)

As can be seen, a certificate of occupancy *per se* is not in itself an instrument or document of grant of interest in land but merely a document issued as evidence of such interest known as right of occupancy under the Land Use Act.

3. The Status of Certificate of Occupancy under the Land Registration Act 1924 and the Laws of Other States Re-Enacting it

As has been noted earlier, the rest of the other states in Nigeria with the exception of Lagos State still operate under the old platform of Land Registration Act 1924 which they have re-enacted. The definition of instrument under the Land Registration Act 1924 does not include certificate of occupancy. Considering the fact that under the Land Use Act 1978 (which is the principal and supreme legislation on land in Nigeria) right of occupancy is the highest interest one can hold over land and that certificate of occupancy can be issued in recognition of such right, it is anomalous that the land instruments laws of the states do not recognize certificate of occupancy as a registrable instrument or even make any reference to it. Smith remarked as follows:

There may be the need to harmonise the laws relating to registration with the Land Use Act. For example, definition of registrable instrument under the Land Instrument Registration Law does not include a Certificate of Occupancy issued pursuant to the Act. Not only is a Certificate of Occupancy incapable of transferring an interest in land, it cannot confer deemed title or interest in land.⁷

This is a very apt observation since a certificate of occupancy does not confer, transfer, limit, charge or extinguish in favour of any person any right, title or interest in land. However, Umezulike expressed a different view and submitted that the certificate of occupancy comes within the definition of an instrument which confers or transfers an interest in land. To buttress his position, Umezulike stated as follows:

The basic questions which we may immediately ask are:

- i. who is the owner of land in Nigeria?
- ii. what is the paramount interest existing on land in Nigeria?
- iii. who grants such interest?
- iv. and by what recognized document does he confer such interest upon grant?

In answer to the above questions we may once more point out that the state governor is the repository of the ownership of land in the state, the highest interest which any other person can hold in Nigeria being a right of occupancy which is granted, of course, by the states to any person. In fulfillment of this state policy, the state has also introduced a certificate of occupancy to confer the right of occupancy on those granted by the state. The state recognizes no other superior or complimentary document for that purpose. It is submitted that to this extent, the certificate of occupancy comes within the definition of an instrument which confers or transfers an interest in lands.⁸

The above view of Umezulike flows from the nationalization theory under the Land Use Act, of which he is a major proponent, to the effect that the Land Use Act has nationalized all lands in Nigeria by vesting ownership in the State Governor, leaving the citizens with a mere interest in land known as a right of occupancy.⁹ However, it is submitted that the view that the certificate of occupancy falls within the definition of instrument is manifestly unsustainable in view of the clear provisions under regarding the definition of instrument. That certificate of occupancy is not an instrument of grant is also portrayed in Section 9 of the Land Use Act which defines it as a certificate issued as evidence of right of occupancy. This presupposes that before a certificate of occupancy can be issued there must be in existence a prior document or other acts or transaction by virtue of which title or interest in land has

⁷I.O Smith, SAN, *Practical Approach to Law of Real Property in Nigeria* [Revised Edition, Lagos: ECOWATCH PUBLICATIONS (NIGERIA) LIMITED 2013] 463-464

⁸ I.O. Umezulike, *ABC of Contemporary Land Law in Nigeria* (Revised and Enlarged Edition, Enugu: Snaap Press Nigeria Ltd 2013)113-114

⁹ Ibid PP57 – 64; see also *Nkwocha v Governor of Anambra State* (1984) 6 S.C. 326; *Savannah Bank Ltd v Ajilo* (1989) 1 NWLR (Pt 97) 305

been conferred or granted. Secondly, the Land Use Act does not operate to abrogate the Land Instruments Registration Laws but rather preserves same subject to modifications.¹⁰

The courts on their own part have been consistent in holding that a certificate of occupancy is a merely a prima facie evidence of title which can be rebuttable and invalidated upon the production of a better evidence of title.¹¹ This unassailable position of the court is firmly hinged on the underlying provisions of section 9 of the Land Use Act which presupposes the existence of other documents or incidence of title upon which a certificate of occupancy is issued. Once such documents or incidents are found faulty or wanting then the certificate of occupancy that is issued on such basis should be invalidated.

4. The Status of Certificate of Occupancy under the Lagos State Land Registration Law 2015¹²

The Lagos State Land Registration Law 2015 replaced the word ‘instrument’ under the old enactment¹³ with the word ‘document’. Section 1 of the 2015 Law defines document as including ‘any deed, judgment, decree, order, or other document in writing requiring or capable of registration under the law and includes a *certificate of occupancy*.’ Section 2 provides that ‘every document of interest or title to land in Lagos State shall be registered in accordance with the provisions of this law’. Section 26 (1) further provides:

Any holder in possession of any registrable document shall 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/*certificate of occupancy* are contained in Forms 1 and 2 in Schedule 1 to this law

From the foregoing, it is indisputable that a certificate of occupancy is a registrable document in Lagos State because the Land Registration Law of 2015 has made it so. Therefore any argument on whether a certificate of occupancy is registrable is now completely eliminated in Lagos State. On the effect of registration in Lagos State, section 27 (1) Land Registration Law 2015 provides that ‘registration is evidence of holding of that land parcel together with all the rights, privileges and appurtenances, except rights to mineral resources and mineral oil on the land.’ As concerns certificate of occupancy, it is submitted that this provision is completely in tandem with section 9 of the Land Use Act by which a certificate of occupancy operates merely as evidence of right of occupancy. This provision also presupposes that in Lagos State, before a certificate of occupancy will be registered, the registration officer must be satisfied that the applicant is actually the holder of the land in question or other evidence of land holding. The registration officer will therefore be acting within the law when he demands from the applicant evidence of the holding of the land whether in the form of valid documents of title or grant of the land in question. It is however submitted that the fact of registration of the certificate of occupancy in Lagos State will still not confer indefeasible title on the applicant as the presentation of a better evidence of title by a challenger in court will still invalidate any certificate of occupancy.

This very important provision on the effect of registration of instrument or document is lacking in the applicable laws in the other states of Nigeria which rather provide for the effect of registration from a negative perspective. For instance, on the effect of the registration, the Land Instruments Registration Law of Anambra State provides that ‘registration shall not cure any defect in any instrument or, subject to the provisions of this law, confer upon it any effect or validity which it would not otherwise have had.’¹⁴ There are similar provisions in the Land Instruments Registration Laws of the other states still under the platform of the 1924 Act. This is a far-cry from what is required as this has not shown any

¹⁰ See Land Use Act Cap LS Laws of the Federation of Nigeria 2010, section 48

¹¹ See *Elayo v Varegh & Ors* (2019) LPELR – 47134 (CA); *Ilona v Idakwo* (2003) LPELR – 1496 (SC); *Madu v Madu* (2006) 2 – 3 S.C. (Pt. 11) 109, (2006) LPELR – 1806 (SC); *Otukpu v John* (2012) LPELR – 25053 (SC); *Adole v Gwar* (2008) LPELR – 189 (SC); *Mohamond J. Labads v Lagos Metal Industrial (Nig) Ltd* (1973) NSCC 1 @ 6; *Omiyale v Macaulay* (2009) LPELR – 2640 (SC) (2009) 7 NWLR (PT 1141) 597; *Orianzi v A.G. Rivers State* (2017) LPELR – 41737 (SC)

¹² Land Registration Law No 1 Laws of Lagos State of Nigeria 2015

¹³ See the repealed Land Instruments Registration Law Lagos State 2003

¹⁴ Land Instruments (Preparation and Registration) Cap 75 Laws of Anambra State 1991, section 24.

clear and actual legal effect of the document that has been registered in relation to the land as is now the case in Lagos State.

The step taken by the Lagos State in the enacting the Land Registration Law in 2015 is a very welcome one which has brought their land registration practice up to date with the provisions of the Land Use Act regarding certificate of occupancy. Regardless of the legal effect of certificate of occupancy, it has to be noted that it is a document issued in recognition or as evidence of right of occupancy which in effect is the highest right or interest one can hold over land under the Land Use Act. It is therefore an anomaly that such a document is not expressly stated to be a registrable instrument or document and indeed does not qualify as a registrable instrument under the extant land registration laws in force in the other states of Nigeria. It is noteworthy that in practice, in other states of Nigeria notably Anambra State, a certificate of occupancy is registered like any other land instrument. This is borne out of the need to have official documentations of all land documents inclusive of certificate of occupancy rather than the dictates of the law. Registration also accrues revenue to the state government. There is therefore the need to bring the law up to date with this reality and practice as has been done in Lagos State.

5. Conclusion and Recommendations

This study discussed the definition of instrument under the Land Registration Act No 36 of 1924 which has been re-enacted in the states in Nigeria and noted the slight difference in the definition of instruments in the states in the defunct Western and Mid-Western Region of Nigeria. This study also noted that Lagos State, by the enactment of the Land Registration Law 2015 departed completely from the old platform of the principal legislation on land instrument in Nigeria. Also discussed is the definition of document under the new Lagos State Land Instrument Law 2015 which replaced the word 'instrument' with the word 'document' while defining the latter as including certificate of occupancy. This paper also discussed the meaning of certificate of occupancy under the Land Use Act which was related to the definition of instrument under the Land Instruments Registration Laws of the other states under the 1924 Act. Furthermore, the status of certificate of occupancy under the new Land Registration Laws of Lagos State and the other states of Nigeria was also discussed.

The study found that Lagos State Land Registration Law 2015 has replaced the word 'instrument' with the word 'document' in defining registrable documents which it has defined to include certificate of occupancy, thereby eliminating any controversy whether a certificate of occupancy is a registrable document or not in Lagos State. It was also discovered that a certificate of occupancy in Lagos State when registered has the effect of operating as evidence of the holding of the land it relates to together with all the rights, privileges and appurtenances thereto. It was further revealed that the Land Instrument Registration Laws of the other states had a major lapse in not including certificate of occupancy as a registrable instrument even though in practice certification of occupancy is registered, thereby creating a gap between the law and practical reality.

It is thus recommended that the other states of Nigeria should follow the trend in Lagos State by amending their Land Instruments Registration Laws to specifically define registrable instruments or documents to include certificate of occupancy. This will have the effect of bringing up the law to be in tune with practical reality as well as the Land Use Act. While amending, it is also recommended that it should be specifically stipulated that registration of instruments or documents affecting land should be evidence of the holding of such land.