

PROPERTY RIGHT AND ADVERSE POSSESSION OF REGISTERED LAND IN LAGOS STATE: RESTITUTION AS A PANACEA*

Abstract

The doctrine of adverse possession reinforces the statutes of limitation that merely terminate the owner's right to access judicial remedy in recovering possession of land and provides that the adverse possessor actually gains legal title, displacing the registered land owner. The major challenges of the concept of adverse possession of registered land which have sparked global reform of the doctrine remain its ability to defeat the concept of property right, its inability to be reconciled with the concept of indefeasibility of title hampering economic development. The Lagos State Land Registration Law 2015 ('LRL') nevertheless allows for the override of registered title to land by adverse possession. The article adopted doctrinal methodology to analyse the provisions of the Law on adverse possession vis-à-vis the concept of property right and land registration and found that registered land owners are not adequately protected. The work therefore recommended the application of the established principle of restitution founded on unjust enrichment as the best method to adequately protect the interest of registered land owners in Lagos State.

Keywords: Adverse Possession, Land Registration, Security of Title, Reform, Unjust Enrichment and Restitution Standards

1. Introduction

The doctrine of adverse possession is recognized in most jurisdictions and applies to unregistered and registered land depending on the jurisdiction. The doctrine enables the transfer of legal title to property upon the fulfillment of certain conditions, which include that the property should have been occupied without the owner's consent for a period of limitation prescribed by the statutes. The doctrine however poses lots of challenges and therefore has its relevance on registration system variously questioned and tagged as being antithetical to land registration system as it conflicts with the concept of indefeasibility of title that is a fundamental feature of the land registration system, violates constitutional right to property, reinforces lack of established property rights thereby hampering economic progress which may be manifested through a lack of title, unclear title, or a lack of recording, but is generally exhibited through insecure title for landowners. The increasing pressure¹ to reform the law on adverse possession of registered land due to its unfairness and challenges led to the introduction of the Land Registration Act 2002 ('LRA')² in United Kingdom, which limited the scope of the doctrine of adverse possession for registered land in England and Wales. Also, certain states in the United States of America have recently attempted to make the adverse possession rule fairer by introducing reforms to the doctrine which impose a good faith requirement on the adverse possessor³, while some other jurisdictions like Hong Kong have adopted inconsistency use test. Surprisingly, despite the wave of reform of the doctrine of adverse possession particularly on registered land across the globe, the LRL legalized adverse possession thereby making it possible for an adverse possession to override registered title in Lagos State. By the provision of the law, all the adverse possessor need do is to advertise or give notice of the holding as may be required by the Registrar of Titles, and thereafter apply to the court for an order directing him to be registered as the holder of such land.⁴ The principle of the above provision which practically defeats the whole essence of land registration which came into being at a time when there is wave of global reforms of the doctrine of adverse possession due to the inherent problems associated with the application of the doctrine especially to registered land, especially its conflict with constitutionally guaranteed property right and capability of defeating the concept of indefeasibility of title which is a significant feature of land registration.⁵

The thrust of the research is basically the analysis of inadequacies in the adverse possession provisions of LRL 2015 regarding registered land and to formulate a reform that will give better protection to the registered land owners while preserving the operation of adverse possession in Lagos State. The work advances some of the

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¹ Following the years of the litigation process and the highly-publicised decision in *JA Pye (Oxford) v Graham* [2003] 1 AC 419.

² The repealed and replaced previous legislation governing land registration, in particular the Land Registration Act 1925, which governed an earlier, though similar, system which came into force in 13 October 2003.

³ For example, Oregon introduced a mandatory good faith requirement in 1989 while New York introduced a more limited good faith requirement in 2008.

⁴ Section 112.

⁵ See generally, I.O., Smith, *The Relevance of Adverse possession under the Lands Registration Law of Lagos State, 2015, Essays on the Lagos State Lands Registration Law 2015* (Department of private and property Law, University of Lagos, 2016)

criticisms leveled against adverse possession of registered land and concludes that the present regime in Lagos State is unsatisfactory and unjust to registered land owners being in conflict with the concept of property right as constitutionally guaranteed and because it is antithetical to registration by creating insecurity of registered title to land. The work calls for restrictive judicial interpretation of the adverse possession provisions of the LRL by applying restitution principles founded upon unjust enrichment as the best way of protecting the interest of registered land owners in Lagos State.

2. Property Right

One of the complex and difficult sets of issues that any society has to resolve is the definition, allocation, and protection of property rights.⁶ Property rights however define the theoretical and legal ownership of resources and how they can be used. These resources can be both tangible and intangible and can be owned by individuals, businesses, and governments. Property rights in economics, for instance, form the basis for all market exchange, and the allocation of property rights in a society affects the efficiency of resource use.⁷ The right to possession is a direct right, inalienable, antecedent to all law, and instituted for the general good. This theory is one application of the approach that all activity of the human race is the planned product of divine wisdom or of some unavoidable and immutable nature of things.⁸ Private property rights are one of the pillars of capitalist economies, as well as many legal systems, and moral philosophies. Within a private property rights regime, individuals need the ability to exclude others from the uses and benefits of their property. Property rights give the owner or right holder the ability to do with the property what they choose.⁹ Property rights theory is an exploration of how providing stakeholders with ownership of any factors of production or goods, not just land, will increase the efficiency of an economy as the gains from providing the rights exceed the costs.¹⁰ A well-enforced property rights provide incentives for individuals to participate in economic activities, such as investment, innovation and trade, which lead to a more efficient market.¹¹

The framers of the Constitution and other laws understood clearly that private property is the foundation not only of prosperity but of freedom itself. Thus, through the common law, state law, and the Constitution, they protected property rights — the rights of people to acquire, use, and dispose of property freely.¹² The Constitution does not only guarantee and safeguard the right to acquisition of property but also prohibits the compulsory acquisition of private property without compensation hence owners today can get compensation when the title is actually taken. The right to property is universally recognised by international instruments and national laws. Article 17 (1) Universal Declaration of Human Rights provides: ‘Everyone has the right to own property alone as well as in association with others’, while sub Article (2) provides that ‘No one shall be arbitrarily deprived of his property’. Also, African Charter on Human and Peoples' Rights contain provisions guaranteeing right to ownership of property and non-deprivation of ownership of same by providing in its Article 14 that: ‘The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. ‘The Constitution posits that the right of individuals to own and dispose of private property was a natural right of the individual. John Locke, for example, in his Two Treatises of Government argued that private property rights existed before the state and independently of laws prescribed by the state.¹³ Property rights were natural rights of individuals and thus governed by principles of natural justice, governmental interference or re-organization of these rights was not permissible without the consent of the individual.¹⁴ Such natural rights were vigorously defended by political philosophers and indeed formed the basis of revolutionary arguments.

In Nigeria like many other countries, individuals generally exercise private property rights or the rights of private persons to accumulate, hold, delegate, rent or sell their property. The Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right of every Nigerian to own and acquire real estate in any part of the country. Section 43 of the Constitution provides that ‘subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria’. Section 44 of the

⁶ A. Alchian, Some Economics of Property Rights [1965] (30) (4) *Rubbettino Editore*, 816-1829.

⁷ W. Kenton ‘Property Rights’ [2020] Investopedia <https://www.investopedia.com/terms/p/property_rights.asp> accessed 02 February 2022.

⁸ Ibid.

⁹ Ibid.

¹⁰ H. Demsetz, Toward a Theory of Property Rights [1967] (57)(2) *The American Economic Review: Papers and Proceedings of the Seventy-ninth Annual Meeting of the American Economic Association*, 347-359.

¹¹ See D. Acemoglu and S. Johnson and J. Robinson, ‘Institutions as a Fundamental Cause of Long-run Growth and Philippe Aghion and Steven Durlauf (ed.), *Handbook of Economic Growth* (UK, Elsevier, 2005)

¹² R. Pilon, *Property Rights and the Constitution* (Cato Handbook for Policymakers, 8th Edition, 2017)

¹³ M. Crawford, *Property: Mainstream and Critical Positions* (University of Toronto Press 1978)

¹⁴ See J. Tully, *A Discourse on Property: John Locke and Adversaries* (Cambridge University Press, 1980)

Constitution also further enacted the Common law principle that cautions against taking away proprietary vested rights without specific legal authority and also makes provision for compensation. The right to property having been constitutionally guaranteed cannot be taken away by the doctrine of adverse possession or by other means as that will run foul of the provision of the Constitution and hence null and void to the extent of its inconsistency with the Constitution.¹⁵

3. Adverse Possession

Adverse possession makes it possible for the trespasser to extinguish the interest of the real owner of a land if the trespasser possesses the land continuously over period of time specified by Limitation Law. The rule of adverse possession is merely a corollary to the general concept of the statute of limitations. Statutes of limitations are laws that limit the amount of time that a party has to bring a claim. It is settled law that, once the limitation period has run its course, both the owner's right to sue and his title are extinguished by operation of law. The common legal justification was that under the limitation law, just like a cause of action in contract or tort had to be used within a time limit, so did an action to recover land. Actions that are brought after their periods of limitations have run must be dismissed by the court, no matter how meritorious their claims may be.¹⁶ The doctrine of adverse possession works in a similar manner. Each jurisdiction decides how long a property owner has, after a wrongful possessor enters his or her property, to bring an action to evict the wrongful possessor.¹⁷ While adverse possession alone does not result in a transfer of legal title, adverse possession gives a person a vested property right in the area possessed. It operates negatively, to prevent the owner from suing the squatter and extinguishes the title.¹⁸ Several scholars however have criticised the usefulness of the application of doctrine of adverse possession to registered land arguing that the doctrine has outgrown its usefulness.

Mani opined that:¹⁹

The Law of adverse possession, which ousts the owner on the basis of in action within limitation, is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of true owner. The law ought not to be benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law.

On his part, Sprankling²⁰ stated that:

This image of adverse possession, however, is more mirage than reality. The doctrine is instead dominated by a prodevelopment nineteenth century ideology that encourages and legitimates economic exploitation and thus environmental degradation of wild lands. This 'development model' is fundamentally antagonistic to the twentieth century concern for preservation.

'Adverse possession means a hostile possession which is expressly or impliedly in denial of title of the true owner'²¹. 'Adverse possession allows for a 'wrongful' possessor of land to have their interests ripen into a title'²². It is on the bases problems associated with adverse possession which sees the law as seeking to punish a non-diligent title holders for failure to assert their rights within the limitation period, by denying their claim, but the same law on the converse side rewarding wrong doers and trespassers by confirmation of the title by adverse possession upon fulfillment of the stipulated condition²³, that sparked up the wave of reform of the doctrine especially in its application to registered land which many view as being problematic as it practically defeats the whole essence of registered title and calling for outright abolition of the doctrine.

4. Adverse Possession under the Lagos State Land Registration Law

The biggest problem with the adverse possession doctrine is that it can produce results that people perceive as completely unfair. The results of taking away property from owners of record who have, in the eyes of lay observers who have never heard of adverse possession, done nothing wrong, encourages those observers to react

¹⁵ See section 1(3) CFRN 1999 as amended.

¹⁶ Acquisition by Adverse Possession. (2021) <<https://lawshelf.com/coursewarecontentview/acquisition-by-adverse-possession/>> accessed 07 February 2022.

¹⁷ Ibid.

¹⁸ See <<https://www.justia.com/real-estate/home-ownership/owning-a-home/adverse-possession/>> accessed 07 February 2022.

¹⁹ P. Mani, Adverse Possession: A Critique [2006] *Uttarakhand Judicial & Legal Review*, 43-51.

²⁰ J. Sprankling, An Environmental Critique of Adverse [1994] (79) *Cornell Law Review*, 816-884.

²¹ *Annasaheb v B.B.Patil AIR 1995 SC 895*.

²² T. Merrill and H. Smith, Property: Principles and Policies (Foundation Press, Faculty Book, 1984) <<https://scholarship.law.columbia.edu/books/278>> accessed 07 February 2022.

²³ See Mani, *ibid* note 20.

negatively to the law and to their neighbors who are the adverse possessors.²⁴ Adverse possession of registered land not only violates the right of innocent people by the law, but also rewards guilty people. The researcher is of the view that the unfairness of this rule to the registered land owner in its operation in Lagos State can be dealt with by the application of unjust enrichment and restitution principle. Smith²⁵ stated that there is lack of adequate procedural protection in the form of advance notification to the registered owner of an imminent loss of title, as opposed to the case under the LRA applicable to England and Wales.²⁶ This would have served as a warning to the registered owner who is expected to take appropriate legal steps to evict the squatter accordingly. The fact that the court is expected to pronounce on the fact of adverse possession under the LRL²⁷ after hearing both parties is of no moment, since the court's inquiry is as to the validity of the claim in adverse possession and not affording the registered owner the opportunity of reversing the illegally acquired status of the adverse possessor by initiating legal proceedings. The position under the LRL is not that protective of the existing registered proprietor or actual owner. Apart from isolating the existing registered proprietor and denying him or her of an early response to the claim of the squatter, section 112 (2) of the LRL is vague,²⁸ by merely requiring the adverse possessor to give notice as may be required by the Registrar and apply to court without more. As opined by Smith the essence of the registration under the LRL basically lies in the State guarantee of title so that the register stands as a mirror of title in all cases. The certificate of registered land is a prima facie evidence of matters contained in it²⁹ and, the register, evidence of notice to the whole world of the existence of the registered holder. The limitation law therefore is the antithesis of the principle of indefeasibility of title which underlines the LRL, and should not apply to registered land.³⁰

The provision of adverse possession under the LRL practically defeats the whole essence of registered title. Registration is a notice to the whole world, including the adverse possessor who it is incumbent on before dealing with the land to inspect the registrar. Registration ought to be conclusive ownership and ought not to be defeated by any form of adverse claim, but as it is, the doctrine of adverse possession under the LRL makes nonsense of registration if the registered title holder cannot be given assurance of the security of his title after registration. The best approach is for restrictive judicial interpretation of the adverse possession provisions of the LRL by the application of restitution principles which will be the best way of protecting the interest of registered land owners in Lagos State.

5. The Principle of Restitution Founded Upon Unjust Enrichment as a Panacea to Protection of Registered Title Owners against Adverse Possession in Lagos State

The principle that no one shall be unjustly enriched at the expense of another³¹ has been invoked to rationalise the right to restitution in a number of cases which fall outside the provinces of contract and tort. The law of restitution means the return of property to the owner or person entitled to possession. If one person has been unjustifiably received either property or money from another, he has an obligation to restore it to the rightful owner in order that he should not be unjustly enriched, or retain an unjustified advantage'.³² The central idea is the conjunction of unjust enrichment on the one side and loss or grievance on the other hand and liability in restitution depends in part on the wrongful acquisition of gain and in part on the harm or loss wrongfully imposed³³. The concept of unjust enrichment appears in Roman law and early French and German law.³⁴ It generally applies when one party receives a benefit to the other party's detriment in violation of the principles of justice, equity, and good conscience.³⁵ It is a principle that can be applied when legal rules produce results in particular cases that appear unfair.³⁶ This use of unjust enrichment could be particularly important in evaluating the doctrine of adverse

²⁴ See Landowner Fights Squatter's Rights to Vacant Lot, All Things Considered (NPR radio broadcast, Dec. 10, 2007)

²⁵ I.O. Smith, 'The Relevance of Adverse possession under the Lands Registration Law of Lagos State, 2015', and Imran Smith and Nwudego Chinwuba (eds), *Essays on the Lagos State Lands Registration Law 2015* (Department of private and property Law, University of Lagos, 2016)

²⁶ See Schedule 6 paragraph 2(1) thereto.

²⁷ No. 8 of 2015, section 112(2).

²⁸ See Smith *ibid* note 26 at 10.

²⁹ Section 35(5).

³⁰ Smith *ibid* note 29.

³¹ Digest, 12.6.14: *Nam hoc natura aequum est neminem cum alterius detrimento fieri locupletioem* (For this is by nature fair that nobody should be enriched by another's loss).

³² See the definition as offered by a *Dictionary of Law* (7 ed.) Jonathan Law and Elizabeth A. Martin, (Oxford University Press, 2014)

³³ See C. Saiman, 'The Reemergence of Restitution: Theory and Practice in the Restatement (Third) of Restitution' [2006] Villanova University Charles Widger School of Law: Working Paper Series, 1-52.

³⁴ *Ibid*.

³⁵ R. Paternoster and R. Brame and R. Bachman and L. Sherman, Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault [1997] (31) (163) *Law & Society Review*, 169-204.

³⁶ *Ibid* at 171.

possession because the reasons for it are, for the most part, anachronistic, elevating the importance of fairness if unjust enrichment is viewed as 'a principle of individualized, fact-specific decision-making, capable of overriding otherwise applicable rules.'³⁷ The broad proposition of seeing unjust enrichment 'as a more general authorization for courts to depart from legal rules when the rules produce unjust results – an authorization that would cut across the substantive fields of private law,' was articulated by Sherwin in connection with the field of restitution.³⁸ She noted that the notion of preventing unjust enrichment is 'useful as an outlet for common sentiments of comparative justice.' This analysis is particularly applicable to the doctrine of adverse possession; however, individualized decisions can be problematic because of the possibility that the rule will disappear under ad hoc decision making.³⁹ Having the rules of adverse possession bounded by an unjust enrichment standard would eliminate the perception of unfairness that adverse possession decisions have engendered in observers. This use of the unjust enrichment principle would be in keeping with its interpretation as a vehicle for 'covering conduct that was morally wrong although sanctioned by law.'⁴⁰ In addition to the problem of subsuming the legal doctrine of adverse possession by an equitable application of unjust enrichment, the more important problem is the issue of vagueness, but that is inevitably problematic in making judgments about fairness.⁴¹

Although the unjust enrichment principle often operates positively, in the sense that the claimant must establish that the defendant has been unjustly enriched before restitution is available, sometimes the principle may operate negatively. This is because restitutionary relief may be awarded to prevent the defendant from becoming unjustly enriched. Even though the unjust enrichment principle has been clearly recognised at the highest level, the place of that principle within the law of obligations and the function of the principle still require careful justification. A number of commentators have suggested that restitutionary liability should be based on some other theoretical foundation, including proprietary theory, no unifying principle of unjust enrichment, and unconscientious retention.⁴²

Restitution and property share a substantially similar aim: the maintenance of an existing allocation of resources. The absence of a general restitutionary remedy prompted the courts of equity in the nineteenth century to develop the law of property in order to provide relief where an asset which should have gone to the plaintiff came into the hands of the defendant. Equity recognised the asset as belonging to the plaintiff and enforced this equity against a defendant who was not a bona fide purchaser for value without notice.⁴³ The trust provided an ideal mechanism for recovery with its division of legal and equitable ownership. The concept of equitable ownership provided a basis for relief in cases elsewhere seen as third party enrichment. The result was that restitutionary relief was analogised with property law and acquired proprietary characteristics.⁴⁴

The advantages of proprietary restitutionary claims include, first, that they may lie against an innocent recipient of the property, even where no personal claim, whether in tort, unjust enrichment, or equity, would lie against him;⁴⁵ secondly, if the recipient of the property is insolvent, the true owner may, subject to statutory requirements in certain cases,⁴⁶ claim specific property⁴⁷ in priority to the claims of general creditors; thirdly, if the true owner traces his property into investments bearing interest, he will be entitled to claim the interest in addition. Further, it is possible for a personal restitutionary remedy to be obtained by reliance on the vindication of the claimant's property rights. This has the advantage that the claimant can obtain the restitution of value from an indirect recipient of the property, regardless of the fact that the recipient has not retained the property or its substitute. The justification for the award of restitutionary remedies to vindicate the claimant's property rights stems from the fundamental principle of English law that property rights are of such importance that they are deserving of particular protection.⁴⁸ But, despite this, it might be thought that it does not matter whether the restitutionary claim

³⁷ E. Sherwin, *Restitution and Equity: An Analysis of the Principle of Unjust Enrichment* [2001] (79) *Cornell Law Faculty Publications*, 2083-2113.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ See J. McConvil and M. Bagaric, *The Yoking Of Unconscionability And Unjust Enrichment In Australia* [2002] (13)(7) *Deakin Law Review*, 225-251.

⁴² V. Graham, *The Principles of the Law of Restitution* (Oxford University Press, 2015)

⁴³ H. Smith, *The Principle of Unjust Enrichment in English and German Law* [1997] (9)(1) *Otago Law Review*, 157-171.

⁴⁴ See S. Fennell, *Misdirected Funds: Problems of Uncertainty and Inconsistency* [1994] (57)(1) *The Modern Law Review*, 38-57; P. Key, *Bona Fide Purchase in the Law of Restitution*, [1994] *LMCLQ*, 421-448.

⁴⁵ *Sinclair v Brougham* [1914] A.C. 398; *International Sales & Agencies Ltd v Marcus* (1982) 34 C.M.L.R. 46. *But cf. Thavorn v Bank of Credit & Commerce International SA* [1985] 1 Lloyd's Rep. 259.

⁴⁶ *Re Bond Worth Ltd* [1980] Ch. 228; *Borden (UK) Ltd v Scottish Timber Products Ltd* [1981] Ch. 25; *Re Peachdart Ltd* [1984] Ch. 131.

⁴⁷ At common law it will not be possible, however, to ensure the return of the property in specie.

⁴⁸ *Graham ibid note 43 at 461.*

is analysed with reference to the vindication of property rights or unjust enrichment. It is certainly true that in many cases the same result will be achieved regardless of how the claim is analysed. But the proper analysis can matter for practical reasons, such as whether the defence of change of position should apply, what the elements of the respective causes of action might be and which remedies are potentially available. It also matters for intellectual reasons, since it is the legitimacy of the vindication of property rights principle which has become the battleground for vital theoretical discussion amongst commentators and increasingly judges about the proper classification of rights and remedies both at law and in equity.⁴⁹

Indeed, the core function of restitution is to detach from the defendant the right of a gain, rather than to give compensation to the claimant for the loss suffered. In the concept of this area of law, usually the restitutionary action will be that of strict-liability, meaning that the claimant will have the right to claim for restitution without being forced to show 'fault' on the defendant's position.⁵⁰ On the one hand are those academics that support the idea of a fault-based liability defence and on the other hand those who support the strict-liability defence, insisting to leave the law in the way it is today. So, opinions vary regarding the role, if any of the fault in the law of restitution.⁵¹

The law of restitution is concerned with the award of a generic group of remedies which arise by operation of law and which have one common function, namely, to deprive the defendant of a gain rather than to compensate the claimant for loss suffered. These are called the restitutionary remedies. Because there is a group of remedies having a common function of depriving defendants of gains, it can be assumed that there is an independent body of law which can be called the law of restitution.⁵² Bringing restitution into the common law fold involves convincing courts that it is a legitimate area of the law with defined rules that can be predictably applied. The hostility is predicated on the assumption that restitution is little more than accumulated bits of discretion garbed as doctrine. Inevitably, the association of unjust enrichment with natural law and equity, together with the historical fact that at least parts of the law of restitution trace their origin to courts of equity generated an aversion to restitution and led to its banishment to the nether regions of the common law.⁵³

The law of restitution is the law of gains-based recovery, in which a court orders the defendant to give up his gains to the claimant. It should be contrasted with the law of compensation, the law of loss-based recovery, in which a court orders the defendant to pay the claimant for their loss.⁵⁴ Depending upon the basis for the plaintiff's claim and the nature of the underlying remedies sought restitution may be either a legal remedy or an equitable remedy. Restitution and equitable tracing is generally an equitable remedy when the money or property wrongfully in the possession of defendant is traceable and in such a case, restitution comes in the form of a constructive trust or equitable lien.⁵⁵ Where the particular property at issue cannot be particularly identified, restitution is a legal remedy. This occurs, for example, when the plaintiff 'seeks a judgment imposing personal liability to pay a sum of money'. Unjust enrichment and quantum *meruit* are sometimes identified as types of disgorgement legal remedies.⁵⁶ This type of damages restores the benefit conferred to the non-breaching party. The registered owner has acquired his property right and will be seeking the direct enforcement of this primary right. The ownership of an asset cannot be detached from him, rather the equitable ownership in the substitute asset is newly created in response to unjust enrichment. Where the defendant has benefited from the commission of a wrong a restitutionary remedy will sometimes be available to deprive the defendant of the benefit and to transfer it to the claimant, and in such cases the remedy may sometimes literally be restitutionary, in the sense of restoring to the claimant what he has lost, or it may amount to disgorgement⁵⁷ where the, defendant benefited without causing a loss to the claimant, In such circumstances there is nothing which can be restored.

6. Conclusion

The basic purpose of restitution is to achieve fairness and prevent the unjust enrichment of a party. Restitution is used in contractual situations where one party has conferred a benefit on another party but cannot collect payment because the contract is defective or no contract exists. The use of unjust enrichment and restitution could be particularly important in evaluating the doctrine of adverse possession of registered land in Lagos State because

⁴⁹ Ibid.

⁵⁰ See Restitution Property Possession. LawTeacher.net. 11 2013. All Answers Ltd. <<https://www.lawteacher.net/free-law-essays/property-trusts/restitution-property-possession.php?vref=1>> accessed 05 April 2022.

⁵¹ Ibid.

⁵² See Graham, *ibid* note 49.

⁵³ See Sherwin, note 38.

⁵⁴ See American Jurisprudence 2d edition notes <<https://en.wikipedia.org/wiki/Restitution>> accessed 02 February 2022.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Smith *ibid* note 44.

the reasons for it are, for the most part, anachronistic, elevating the importance of fairness.⁵⁸ It could be applied in the without rebuffing the doctrine of adverse possession as a general rule. Having the rules of adverse possession bounded by an unjust enrichment standard would eliminate the perception of unfairness that adverse possession decisions have engendered in observers. Seeking to reform adverse possession of registered land by applying the restitution standards is further premised on the conclusion earlier on reached in this work that the exercise of adverse possession of registered land is undoubtedly a deprivation of the actual owner's property right without compensation contrary to the provisions of section 43(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended and Article 14 of the domesticated African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Adopting restitution standard a way of dealing with the problem of adverse possession is further justified by the fact that the advantages resulting from the application of proprietary restitutionary claim founded on unjust enrichment in seeking protection for registered land owner from adverse possessor and it is possible for a personal restitutionary remedy to be obtained by reliance on the vindication of the true owner's property rights.⁵⁹ This has the advantage that the true owner can obtain the restitution of value from direct recipient of the property, regardless of the fact that the recipient has not retained the property or its substitute.

⁵⁸ See *Sherwin* *ibid* note 54 at 2094.

⁵⁹ J. Chitty, *Chitty on Contract Volume I General Principles* (Thomas Reuters, 2008)