

KINGS LAW REPORTS (ALL SC)

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Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

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**CONVEYANCE - WHETHER DATE
THEREON PER SE MAKES IT FAKE**

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With the reception of English Law into Nigerian Legal System came along the procedure for the transfer of Legal interest in land by deeds. This may be by an assignment of the freehold interest in fee simple or by a sub demise. In Northern Nigeria, under the Land Tenure Law of 1962, title to land was evidenced by a Certificate of Occupancy and any assignment, mortgage or transfer of legal ownership thereon shall be with the consent of the minister. In addition to the assignment and the Certificate of Occupancy obtainable in Northern Nigeria, title to a crown land could be by a grant of mere licence - all these are paper titles.

The Land Use Act 1978 was enacted to vest legal interest in land in the Governor of each of the respective States to hold in trust for the people and administer it for the use and common benefit of all Nigerians. This means that henceforth no one could hold freehold interest in land in Nigeria. All that one can have is a right of occupancy. To ensure control, the Act provided that every assignment, mortgage or transfer of legal interest in land shall be with the Governor's consent. This requirement for consent has come under severe attack. To Lawyers, it makes conveyancing more expensive. And to businessmen, the delay in the procedure for obtaining consent is not encouraging to business.

To avoid chaos, Section 34 of the Act saved and preserved the right of all previous owners as "Deemed Right". For those that acquired their interests by assignment of a freehold, they could continue to enjoy the validity of their title. They were not bound to apply for a Certificate of Occupancy even though conveyance of that beneficial interest must now be subject to the Governor's consent. It is this privilege enjoyed by the holders of Deemed Right that has been exploited by conveyancers in Nigeria.

Conveyancers in Nigeria evolved a device where by the date on the instrument transferring the Legal interest in the land is dated in ar-

rears to pre March 29th 1978. This is to avoid the requirement of applying for Governor's Consent without also applying for a Certificate of Occupancy, and so as to secure free hold title from the vendor. This drafting device brings once more into focus the issue whether inconsistency in the date on the assignment without more would render the conveyance invalid?

This fear is heightened by the recent Supreme Court decision in *ISERU Vs. CATHOLIC BISHOP OF WARRI DIOCESE* (1997) 4 KLR, 618. In that case the appellant relied on a deed of lease dated 20/12/66 and registered as 14/14/122 of the Lands Registry, Benin-City for his title to the land in Warri. At the trial it was found that the survey plan attached to the said deed of lease was dated 20/7/73. The trial judge HELD that the lease ought not to have been registered and if it had not been registered it should not have been admissible as it was not validly executed. The Supreme Court, per Mohammed JSC, in supporting the trial court and the Court of Appeal said at p. 624 D-E, *"Exhibit 'M' has a number of features which establishes clearly that the learned trial judge was right to call it a fake document. The Deed of Lease was said to have been executed on 20th December, 1966. It had no plan attached to it. A plan was later drawn in 1973 and attached to it."* (Emphasis mine)

The impression created by this decision is that inconsistency in the dates on the deed and the survey plan per se renders the deed invalid on the ground that it was not properly executed. It may be difficult to support this view in law. It is a convenient practice for conveyancers to leave deeds undated until they are ready to stamp and register it within 30 days and 60 days respectively. None registration within this time limit only attracts payment of penalty and until this is paid and the document registered, the deed is inadmissible in proof of legal interest.

In addition to the time limit for registration, Section 10(1) of the Lands Instrument Registration Law of Bendel State provides that "No Instrument executed after the Commencement of this law, other than a power of attorney, shall be registered unless it contains a proper and sufficient description and, subject to the regulations, a plan of the land affected by such instrument." This makes it clear that the absence of a plan will only invalidate any registration of the deed, it does not affect its execution. In conveyancing procedure, the execution of the deed is part

vi of the process of completion whilst registration is a post completion matter.

To suggest that a deed properly signed, sealed and delivered is invalid on the ground per se of any inconsistency in the dates thereon is contrary to the law in *ANUKU V. STANDARD BANK* (1972) 2 UILR 106. A deed is presumed to take effect from the date of delivery. This means that even if at the execution of the deed, no survey plan was attached, but one is subsequently prepared and attached to it before registration, the conveyance is still valid notwithstanding the difference in the dates on the deed and the survey plan attached.

Perhaps the appellant in *ISERU's Case* (Supra) would still have failed on the ground that the deed of lease ought not to have been registered. It was also bad for them not to have summoned any of the lessors, from whom they derived their title, to give evidence. As the court rightly observed, how did the lessors come to derive their title to the parcel of land which is known to be either Crown or State land? This second reasoning will give credence to the long standing principle that paper title only (in this case the deed of lease) without a corresponding legal or equitable right in whatever form is not sufficient to prove absolute ownership of land in Nigeria.

Let us assume argumentum, that the appellant in *ISERU's Case* (supra) were able to prove other acts of ownership in circumstances where the land is not a state land, but there is still evidence that the date on the deed is inconsistent with the date on the survey plan, would this per se deprive them of their ownership of the land? I venture to answer this in the negative. Therefore *ISERU's Case* (Supra) does not pose any treat to conveyancers provided they can prove other acts of ownerships. If they must rely on a paper title such as an assignment (even pre 1978), it must be executed according to law and a plan attached or incorporated by reference to the assignment for stamping and registration.

We hereby call for any contrary reaction to this article from lawyers, lecturers, judges and justices, which we shall publish. Failure to receive any such contrary write up would suggest that this article has properly stated the position of the law on this issue.

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INCREASE IN THE PRICE OF THE KINGS LAW REPORTS

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It has become necessary to now throw more light on the reasons for the recent substantial increase in the price of the KLR which are as follows:-

1. The KLR is now set to be published fortnightly within months that have sufficient judgments that can make up two books. This is geared towards ensuring prompt release of latest Supreme Court decisions. For instance, July 1997 judgments which are 26 cases in all, are split into two books (Parts 53 & 54).

2. We have introduced lots of dynamism into law reporting such as footnotes, editorial articles in form of review of some of the judgments - like the article on Conveyancing published in this pt. 54, causing lecturers, senior advocates and professors to become some of the actual reporters, and lots more. All these plus the recent increase in the cost of paper, justify the recent substantial increase in KLR price.

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