A SYSTEMATIC/LEGALISTIC APPROACH TO THE PROSECUTION OF LAND CASES. A REVIEW OF THE REQUIREMENTS OF ASCERTAINING THE ACTUAL IDENTITY OF THE LAND IN DISPUTE.

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ABSTRACT

Legalistic approach is one of the diverse methods parties contending over a land can explore in order to maintain or retain title to their acclaimed land. Moreover, there are procedures and guidelines which must be adhered to for a successful prosecution of a land dispute.

This work examined the guidelines and procedures which includes the jurisdiction under which a party can institute his action considering the parties and location of the land in dispute; what the claimant needs to prove in order to succeed in his claim for a declaration of title to a land in Nigeria; and the fact that the party claiming title to the land need to act timeously as time is of essence in most legal proceedings if not all.

1. INTRODUCTION:

Generally, there are different approaches towards the prosecution of land cases across the globe, which are relatively different one from another. Different legal jurisdictions have different approaches towards the prosecution of land cases and delving into these numerous approaches is bound to place this work out of range. Thus, this paper limits its focus to the legalistic approach to the prosecution of land cases in the Nigerian legal system.

Legalistic approach to the prosecution of land cases is one of the means by which a party claiming ownership or title to land can explore to retain his ownership or title to land where such land is in dispute. Nobody wakes up and decides to prosecute land matters when there is no contention over the land. It is only when there is a dispute over the land and most particularly where ownership of a land is in contest that one looks for different approaches towards retaining his title or ownership of land.

Before anyone commences the prosecution of land dispute in Nigeria, the Claimant has basic consideration to make in order to succeed in his claim, some of which are; jurisdiction, how he became seized of the land, and most importantly, if he can successfully prove his title to the land in dispute by any of the legally recognized means of proving title to land in Nigeria.

There is also the question of whether a claimant in order to succeed in his claim for title to land needs to plead and prove the actual identity of the land in dispute even where the adverse party has not made the identity of the land an issue.

2. BASIC CONSIDERATION TOWARDS A SUCCESSFUL PROSECUTION OF LAND MATTERS IN NIGERIA

Any party that has opted for a legalistic approach for a declaration of his title to land, has some basic consideration to make, the underlisted are some of those considerations he has to make and come up with satisfactory and convincing response in order for him to succeed in his claim;

a. Jurisdiction
b. Method of proving ownership

c. Methods of land acquisition.

d. Limitation period

2.1 JURISDICTION

In considering a legalistic approach to the prosecution of land matter, one of the first consideration to make is, jurisdiction; which court has the jurisdiction to entertain the matter. The issue of jurisdiction is fundamental to the just dispensation of any matter. It follows that where the court lacks jurisdiction to adjudicate over a matter and goes ahead to do so, such proceedings becomes a nullity ab initio no matter how well conducted the matter went and despite the decision reached in such matter.

Even though Jurisdiction are of various types, the basic two areas of jurisdiction to consider are; substantive and territorial jurisdiction. Substantive jurisdiction refers to matters over which the court can adjudicate and it is usually expressly provided by the constitution or enabling statutes. Territorial jurisdiction is the territorial limit a court has power to decide[1].

Section 3 of the Land Use Act (LUA), Cap L5 LFN 2004 gives the Governor of a state the power to designate certain areas of the territory (the state) as urban area. This is to say that not all lands in the state can be designated as urban areas, while some are designated as urban areas other lands within the same state are designated as rural area. Lands within the areas designated as urban areas are covered by a statutory right of occupancy while lands within the areas designated as rural areas are covered by a customary right of occupancy.

Having in mind the provision of section 3 of the LUA in considering the substantive jurisdiction to the prosecution of land matters in Nigeria, recourse should be had to the provision of sections 39(1) and (2) and 41 of the LUA. **Section 39(1)** which provides thus:

> (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings-
>
> (a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings includes, proceedings for a declaration of title to a statutory right of occupancy;

[1] Audu v. APC (2019) 17 NWLR (1702) 379

(b) Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act.

The above statutory authority has shown that the High court has exclusive original jurisdiction in respect of land dispute with regards to lands covered by a statutory right of occupancy. However, Area courts, customary courts or other courts of equivalent jurisdiction in a state have jurisdiction in respect of proceedings in respect of lands covered by customary right of occupancy granted by the local government under this Act.[2]

In other words, where a party has opted for the legalistic approach for the prosecution of a land in dispute, he should inquire if the land in dispute is in an urban area and therefore covered by a statutory right of occupancy or a rural area covered by a customary right of occupancy which will inform his decision as to which court has jurisdiction to hear and entertain the matter.

After considering the substantive jurisdiction, the party should also consider the territorial jurisdiction of the court. Territorial jurisdiction implies a geographical area within which the authority of the court may be exercised and outside which the court has no power to act.[3]

Just as substantive jurisdiction is important in the proper determination of a matter before a court, so also is territorial jurisdiction. A court in one state does not have jurisdiction to hear and determine a matter which is exclusively within the jurisdiction of another state. By the Nigerian constitution, each state of the federation is independent of the other and the jurisdiction of each state is limited to matters arising in its territory.[4] Where a land dispute arises from land situate in a particular state irrelevant of the state of origin or state of residents of the parties involved, the right place to institute that action is a court within the state where the land is situated.

One may ask, what if the dispute over the land is brought against a federal institution where it is the Federal High Court that has jurisdiction to entertain matters against them, yet the subject matter is not one that is within the jurisdiction of the Federal High Court, which court then becomes the appropriate court to institute such action. The Supreme Court has answered that in the case of **C. B. N v. Rahamaniyya G. R. Ltd** that by virtue of the provision of section 39(1) of the LUA, it is the

[2] Section 41 of the LUA
[3] Golit v. IGP (2020) 7 NWLR (Pt 1722) 40 @ 61 para C
[4] Audu v. APC (Supra)

State High Court that has exclusive jurisdiction to entertain proceedings in respect of land disputes[5].

2.2 METHODS OF PROVING TITLE TO LAND

Any party who wishes to succeed in an action for declaration of title to land must prove with credible evidence that he is entitled to the declaration sought. In doing so, he must succeed on the strength of his own case and not rely on the weakness of the adverse party[6]. In order to prove to the court that he is entitled to his claim of declaration of title to land, he must be ready to prove to the court the root of his title; how he became seized of the land.

How a Claimant successfully pleads and proves his title to land is closely tied to how he acquired the land. For instance, a Claimant that acquired his land through deforestation, community allotment and intestate succession may not be able to prove title to same land by title document.

However, the law has provided different ways, but basically five (5) ways by which a person laying claims may prove his title to land. There are plethora of judicial authorities that has described the five (5) ways by which a party can prove title to land, particularly, the Supreme Court in the case of **Gaba v. Tsoida**[7] which held that the five ways by which a party can prove his title to land are;

a. By traditional evidence;
b. By production of title documents duly authenticated, unless they are 20 years old or more;
c. By acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive to warrant an inference that the person in possession is the true owner;
d. By acts of long possession and enjoyment of land;
e. By act of possession of a connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land could in addition be the owner of the land in dispute.

[5] (2020) 8 NWLR (Pt 1726) 314

[6] Edosa v. Ogiemwanre (2019) 8 NWLR (Pt 1673) 1

[7] (2020) 5 NWLR (Pt 1716) 1

For a Claimant to successfully prove his title to land, he need not prove all the five ways as provided by judicial authorities, he can succeed in his claims if he proves even one of the ways successfully[8].

2.2.1 TRADITIONAL EVIDENCE

Traditional evidence is the oldest method of proof of title to land and has been used in time past even before the emergence of documentary evidence. The Supreme Court in Edosa v. Ogiemwanre[9] defined traditional evidence as;

> *'The evidence as to right alleged to have existed beyond the time of living memory proved by members of the community or village who claim the land as theirs or who defend a claim to such land. It is hearsay evidence only elevated to the status of admissible evidence by the provision of section 66 of the Evidence Act, 2011, formerly section 44 of the Evidence Act, Cap. 62, Laws of the Federation of Nigeria, 1958 and section 45 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990 …'*

Traditional evidence is usually relied on where the title or interest is in family or communal land. That doesn't mean because a land is a family or communal land that proof of same must be done by traditional evidence. Parties who also acquired their title via customary means, e.g pledge, intestate succession, deforestation, community allotment, etc usually rely on traditional evidence in proving title to land.

In most cases, proof of title to land by traditional evidence is done by oral evidence and is usually hearsay. By virtue of section 38 of the Evidence Act, 2011, hearsay evidence is inadmissible in law, however, by virtue of the exception provided in section 66 of the same act, evidence of family or communal history of interest or title to land is admissible.

A party relying on traditional history in proving title to land has a burden of pleading and proving facts such as;

a. Who founded the land in dispute;
b. In what manner the land was founded;

[8] Alh. Isiyaku Yakubu Ent Ltd v. Teru (2020) 2NWLR (Pt 1707) 27
[9] (2019) 8 NWLR (Pt 1673) 1 @ pp15 16 para H - A

c. The successive persons to which the land had devolved and how he came to own the land. Where he fails to establish the traditional history, he cannot turn around to rely on acts of ownership and possession to prove his title to land as there will be nothing upon which such acts of ownership will be based. In the circumstance, the court will be obliged to dismiss the claim[10].

However, the c above mentioned facts might not be a strict rule as it will also depend on how the party acquired the land. A party who acquired the land by pledge, even though he decides to use traditional evidence as a means to prove his title to land, might not be expected to know who founded the land and in what manner the land was founded.

Nevertheless, the Supreme Court has held that the best way to test traditional history is by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is more probable[11]

2.2.2 PRODUCTION OF TITLE DOCUMENT

Another method for a party to prove title to land is by production of title document. There is more than one document evidencing title to land, they are deed of conveyance/assignment, deed of gift, deed of transfer, certificate of occupancy, grant of probate and/or letter of administration. However, we will only consider the three most popularly used ones.

a. DEED OF CONVEYANCE/ASSIGNMENT

Deed of conveyance/assignment is one of the foremost documents that is executed in a land transaction, particularly, during a sale of land and can be used as one of the means or methods in proving title to land. **Section 2(v) of the Conveyancing Act 1881** defines conveyance as "a conveyance which includes any assignment, appointment, lease, settlement and other assurance and covenants to surrender made by a deed on sale, mortgage, demise or settlement of any property or on any other dealing with or for any property and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance.

In a suit for title to land where the Claimant relies on a deed of conveyance/assignment, he has to tender such deed as evidence. However, production of such deed of conveyance or any document

[10] *Dikibo v John* (2019) 12 NWLR (Pt 1686) 183
[11] *Ozuzu v. Emewu* (2019) 13 NWLR (Pt 1688) 143

of title does not automatically entitle a party to a claim in declaration of title to land. Before a document of title is admitted as sufficient proof of ownership, the court must satisfy itself that:

a. The document is genuine or valid
b. It has been duly executed, stamped and registered
c. The grantor has authority and capacity to make the grant
d. The grantor has in fact what he proposes to grant
e. That the grant has the effect claimed by the holder of the instrument[12].

Where a party relies on a disputed deed of conveyance in a suit for title to land, in addition to tendering the deed of conveyance in evidence, the Claimant is obliged to call those who conveyed the land to him including those who witnessed the transaction to testify to that effect.

It should also be borne in mind that a deed of conveyance/assignment that can be used as title document in proof of title to land must be registered because an unregistered can only be used as evidence of transaction and not proof of title.

b. CERTIFICATE OF OCCUPANCY

Certificate of occupancy is usually issued by the state government in respect of land that has been allotted/allocated to members of the society. In other cases, those who also acquired their land through other means, like purchase, gifts, inheritance/succession, etc. can apply to the state government for the issuance of a certificate of occupancy provided such land are in urban areas.

A certificate of statutory or customary right of occupancy issued under the Land Use Act 1978 is not conclusive evidence of any right, interest, or valid title to land in favour of the grantee. It is at best, only prima facie evidence of such right, interest, or title without more, and may in appropriate cases be effectively challenged and rendered invalid[13].

The same principle that applies for a deed of conveyance also applies for a certificate of occupancy. A party relying on a certificate of occupancy as his proof of title to land is also expected to tender same in evidence and before a document of title (whether deed of conveyance or certificate of occupancy) is admitted as sufficient proof of ownership, the court must satisfy itself that:

a. The document is genuine or valid

[12] *Maneke v. Maneke* (2020) 13 NWLR (Pt 1741) 311
[13] *Aderonpe v. Eleran* (2019) 4NWLR (Pt 1661) 141 @169 – 170 Para A– H.

b. It has been duly executed, stamped and registered
c. The grantor has authority and capacity to make the grant
d. The grantor has in fact what he proposes to grant
e. That the grant has the effect claimed by the holder of the instrument[14].

It is only after the court is satisfied with the above stated condition that the certificate of occupancy that the court will rely on in granting the relief sought by the claimant. Where there is dispute over the title document, it is necessary ***though not compulsory*** that they call the vendor to testify as a witness. The Court of Appeal in **Alh. Isiyaku Yakubu Ent. Ltd. v. Teru**[15] held that the trial court was wrong when it held that the appellant's failure to call the Ministry of Land and Survey, Yola or its official to present oral evidence in respect of the certificate of occupancy which was tendered and admitted in evidence without objection amounted to withholding of evidence by the appellant as stated in **section 167(d) of the Evidence Act, 2011** and thus relied on it in refusing to grant the claimant the relief sought.

C. **GRANT OF PROBATE OR LETTER OF ADMINISTRATION**

Where a person claims title to land by inheritance, his title document is mostly likely to be a grant of probate or a letter of administration depending on whether the testator died testate or intestate. In a situation where the testator died testate, that is, leaving behind a valid Will, and the claimant's title to that land is tied to that will, such claimant's title document will be a grant of probate. A grant of probate is a form of document that is derived from proving a will of a deceased person. Whereas, where the benefactor died without a valid Will, the beneficiary of the land will apply for a letter of administration. Letter of administration on the other hand is gotten when the deceased who is to bequeath the land dies intestate. However, both documents can be obtained at the Probate Registry of the High Court.

2.2.3 POSSESSION

Possession is also another means by which a person can prove title to land. Possession can be described as the right under which one may exercise control over something to the exclusion of others; the continuing exercise of a claim to the exclusive use of a material object.[16]

[14] *Maneke v. Maneke* (2020) 13 NWLR (Pt 1741) 311
[15] (2020) 16 NWLR (Pt 1751) 505
[16] Black's Law Dictionary, 10th Ed

Proving title to land through possession can be done in three ways:

a. By acts of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive to warrant an inference that the person in possession is the true owner;
b. By acts of long possession and enjoyment of land;
c. By act of possession of a connected or adjacent land in circumstance rendering it probable that the owner of such connected or adjacent land could in addition be the owner of the land in dispute

The remaining three methods of proof of title to land can be classified under possession, even though with slight difference in its proof.

Hinging on possession alone is one of the worst ways of proving title to land but one of the easiest and often used means of proving title to land by those proving title by traditional evidence. where a party proves title to land by possession, he should not rely on it as his only prove of title to that piece or parcel of land, possession should be proved alongside any other means of proving title.

A party relying on possession as his source of title to land is merely saying he doesn't know how he got the parcel of land but knows that he has been in possession of the land for long without disturbance, which differs from relying on a known and traceable source of title to land[17].

A party relying on possession as title to land must plead and prove the nature of the possession as the radical title. This is to say that he must in clear words explain to the court how he has enjoyed possession of the land, whether he resides on the land, he has plants that he cultivates and harvest on the land, whether he has tenants on the land, etc, but the party must be able to establish before the court in what way and manner he has enjoyed possession.

Notwithstanding the above stated, proof of title to land by possession must be predicated on any other means of proving title to land, this is because long possession and acts of ownership alone cannot ripen into ownership of a land and oust the right of a rightful owner. Where a person with better title contends over a piece of land with another whose only proof of title is long possession, the latter is bound to fail.

[17] *Holloway v. Jimoh* (2020) 2 NWLR (Pt 1707) 27 @79 para E

2.3 METHODS OF ACQUISION OF LAND

In proving title to land, a claimant must specifically plead and prove the method/means by which or through which he acquired the said title that is now contended. Some of the methods of land acquisition in Nigeria are;

a. Deforestation
b. Succession/Inheritance
c. Allotment/allocation
d. Purchase
e. Gift
f. Pledge
g. Mortgage

2.4. LIMITATION PERIOD

For most legal proceedings in Nigeria including the prosecution of land dispute has limitation period. A party in consideration of all that he should do in order to succeed in his case, should also put into consideration the time within which he can institute such action. The limitation laws of various state define periods during which a party can institute an action and when the period specified in any of the limitation period has passed, it means that such suit is dead on arrival.

The Limitation Law of Rivers State provide different periods within which a party can institute an action in the prosecution of any land dispute depending on the claim and interest in the land. Particularly, Section 1 of the Limitation Law of Rivers State, which provides that no action shall be brought by any person to recover any land after the expiration of 10 years from the date on which the cause of action arouse.

The conspicuous effect of limitation law is that legal proceedings cannot be properly, validly instituted after the expiration of the prescribed period. The court is divested of its jurisdiction in the matter as it is no longer a live issue. It is dead in substance and form.[18]

The importance of this is to encourage claimant to institute their action diligently and timeously while the evidence is still available and the memories of witnesses still fresh as to testify to the true fact of things.

[18] *Toyin v. PDP* (2019) 9 NWLR (Pt 1676) 50

3. ASCERTAINING THE ACTUAL IDENTITY OF A LAND IN DISPUTE.

The burden of proof of the identity and boundaries of a land in dispute is squarely on the Claimant, and it can be discharged either by oral evidence or by documentary evidence. However, the most reliable if not the best evidence is documentary evidence: it is certainly more reliable than oral evidence[19]

Is it necessary for a claimant to prove the identity of a land in dispute?

There have been several opinions whether it is in all cases that the Claimant needs to prove the identity of the land in dispute before his claim can be successful. The Court of Appeal in R. R. C. C (Nig) Ltd v Alhassan[20] held that the question of whether or not a Claimant in a land matter should lead credible evidence in proof of the identity of the land in dispute will only arise where the identity of the land is in issue between the parties. Where it is not in issue, a Claimant has no duty to lead credible evidence thereon; a proper description of the land is sufficient. The court went further to give instances when the identity of a land in dispute need not be proved and such instances are;

a. Where the identity of the land is admitted by the defendant
b. Where the identity of the land is ascertained with clarity from the pleadings of the parties.
c. Where the area of land in dispute is well known to the parties
d. Where there is enough evidence for the court to infer the identity of the land.

Worthy of note is the fact that, because parties to a land in dispute call the same land by different names will not by any means give rise to any question or issue of identification so long as the parties and their witnesses are clearly making reference to one and the same piece of land; once the defendant admits knowing the land over which the Claimant has instituted an action and the identity of the land in dispute is not in doubt there will be no need to lead credible evidence to identify the land.[21]

The same court in R. R. C. C (Nig) Ltd v. Alhassan[22] also held that it is an age long principle that any person claiming an interest in land must prove the exact location of the land and the precise area to which his claim relates. This is a foremost and fundamental duty on a claimant even where

[19] *Osunbor v. Oshiomhole* (2009) All FWLR (Pt 463) 1366 @ 536 para A
[20] (2020) 9 NWLR (Pt 1729) 233
[21] *R. R. C. C (Nig) Ltd v. Alhassan* (supra)
[22] supra

the identity and location of the land is not in dispute, the claimant must in his pleadings and evidence show an identifiable area of land to which his claim relates[23]. In proving the identity of the land, the claimant must prove its boundaries and features with certainty. This is to say that the proof of the identity of the land in dispute in a claim of title to land is ***sine qua non*** to the success of the claim.[24]

On the contrary, the court in Oke v. Sotunde[25] is of the view that a plaintiff will not be required to prove the identity of the land where the defendant does not dispute same in his statement of defence. This is to say that a defendant who does not in his statement of defence and/or counter claim make the identity of a land an issue cannot turn around to argue that the claimant is not entitled to his claim because he did not or has not proved the identity of the land in dispute clearly and with certainty. For the identity of the land to be an issue, the adverse party must in his statement of defence and/or counter claim, specifically dispute either the area of the land, the location, the size or some features on the land.

However, it is suggested that in order for a party to succeed in his claim for a declaration for title to land, the claimant should as a matter of importance always plead and prove with all certainty and clarity the identity of the land to which his claim relates as he is not to wait till the adverse party raise same as a defence and/or counter claim.

The Court of Appeal in Dauda v. Iba[26] has held that a claimant in trying to prove the identity of the land and boundaries with certainty must be done by the claimant proving clearly the following;

a. The boundaries of the area and location of the land he is claiming;
b. His neighbours and their names on all sides of the boundaries. Where some of the boundaries are marked by river, stream or road, names of them;
c. Any other physical features on the land like rocks, buildings, trees, etc. that may assist in its identification.

The identity of a land in dispute may be established by;

a. The Claimant giving an oral description of the land sufficient to make it ascertainable.

[23] Ibid
[24] Ibid
[25] (2019) 4NWLR (Pt 1661) 119 @134
[26] (2007) 2 NWLR (Pt 1018) 321

b. Filing a detailed and accurate survey plan showing the various features on such land sufficient to point to the clear boundaries thereof[27].

N/B: sometimes it might be difficult to know the names of the neighbours that share boundaries with you on the land in dispute especially if the land is till undeveloped and the claimant do not reside around that area, however, even where you don't know their names you should to an extent be able to properly describe them one way or the other without necessarily stating their names.

4. PURPOSE OF IDENTIFICATION OF A LAND IN DISPUTE.

Whether the defendant makes the identification of the land in dispute an issue or not, it is believed that in any claim for declaration of title to land, the land should in all cases be clearly and precisely described. This is to enable the person claiming to know precisely the area of land to which the judgment or order relates for the purpose of enforcing the decision. It is also important for the purpose of obviating the possibility of a future litigation on the area of land as between the parties and their privies[28].

5. CHALLENGES ASSOCIATED WITH PROSECCUTION OF LAND CASES

A claimant that has chosen the legalistic approach for the prosecution of a land dispute for the declaration of his tittle to land might be faced with some or all of the following challenges;

a. Cost of litigation
b. Length of litigation
c. How do you ascertain that the vendor actually has the right to sell/transfer the property?
d. Loss of contact with your vendor/grantor
e. Issue of witness(es)

CONCLUSION/RECOMMENDATION

Identification of a land in dispute in a land matter can never be over emphasized, this opinion has been reiterated by the courts which have described it as an age long practice and a fundamental duty on the claimant. Therefore, it is advised that, it is in the best interest of the claimant to always do so. Whether the adverse party makes the identity of the land in dispute an issue or not, it is

[27] *Oke v. Sotunde* (2019) 4 NWLR (Pt 1661) 119
[28] *Offodile v. Offodile* (2019) 16 NWLR (Pt 1698) 189 @202 – 203 paras H -B

necessary that a party that claims title to any land in dispute should at all times plead and prove the identity of the land in dispute with certainty and clarity.

A party claiming title to land in a land dispute should never use possession as his sole means of proving title, even where he intends to use long and uninterrupted possession as a means of proving title, this should be predicated on other legally recognized means of proving title. For example, possession and title document or possession and traditional evidence.

Finally, time is of the essence in every legal proceeding. A party in approaching the court should always have that at the back of his mind while if he intend to approach the court, because, no matter how well couched his processes are and even where the court is clothed with jurisdiction, where the period within which a party has to approach the court has passed, according to the limitation period of that state considering the cause of action, everything the party has done in bringing the action before the court goes to no issue.

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