Globally, Real Estate (RE) is a most sought after capital resource; acquiring it is also one of the most profitable investments to make. RE includes: bare land (whether mineral-rich or having some unique attribute or not), or developed property which could be one or a mix of residential, commercial or industrial RE.

Title refers to the legal right to a property which is obtained by a requisite registered document. Every time a property changes hands, there is also a change in the title. Somewhere in the chain of transfers and transmissions of the property, certain lacuna could emerge with resultant defect in the title; it is important to avoid such lacunas or ensure that regularisation steps are taken.

It is trite that purchase is a common means of acquiring ownership of land in Nigeria, as elsewhere. To be clear, buying real property is not all about finding a vendor willing to sell and agreeing the price for the property. Buying property is a big deal, and for many people, it may be one of the most significant one-time transactions, they will ever make. The point of doing it right can never be overemphasized, and as with all major decisions, it is “better to be safe than sorry”!

On the effect of property sale without valid title, the Court of Appeal (CA) stated in *Sanni-Omotosho v. Obidairo*
per Iyizoba, JCA, thus: “…on the submission ... that the family agreement could not bind third parties who had acquired legitimate interests in the land without prior notice, the Supreme Court held in the case of Mohammed v. Klargester (Nig) Ltd [2002] 14 NWLR (Pt. 335) 787 at 360 para D-G that where the vendor of a property does not possess the authority to sell the property, the maxim 'nemo dat quod non habet' will apply to nullify the sale. This Court also held in Dantata Jnr v. Mohammed [2012] 14 NWLR (Pt. 1319) 122, at 170 C-F that where a seller is shown as not having title vested in him at the time of sale, the contract of sale must be vitiated on application of the 'maxim nemo dat quod non habet', such contract is void ab initio.”

Using transactions in Lagos State as an example, it is critical to take certain steps prior to, during and after the purchase of land, so as to secure an unimpeachable interest in the property. This also obviates the 'fire-fighting' that could follow a flawed transaction; for example, having to pay twice or pay double consent fees for the same property; such is a 'loss', if the 'defect' had not been factored by way of 'risk discount' into the purchase price.

An intending purchaser must investigate (conduct searches, etc) the title of the vendor to the land and in some cases, the track record of such vendor, in order to forestall any future legal issues. In Odunukwe v. Administrator-General, East-Central State the Supreme Court (SC), per Obaseki, JSC ruled: “If a purchaser fails to investigate title at all, he is fixed with constructive notice of everything that he would have discovered had he investigated the whole title for the full statutory period.”

The nagging question is: how do prospective purchasers proceed with RE transactions without falling victims to fraudulent and sham vendors? This article focuses on navigating the minefields around the issues of having a valid title in Nigerian RE transactions.

1. Acquiring and Perfecting Title in Lagos State: Buyers' Procedural Steps

1.1 Pre Contract Inquiries

Things typically start with when the prospective purchaser becomes aware of the availability of the land in question through an agent, personal contacts or via advertisement. The advertisement medium, whether or not the agent is a registered professional or how well one knows the personal contact who made the introduction (and how well such person knows the vendor) could impinge on the credibility of the prospective property and its vendor.

Thus, it is only if the signals are positive, that next steps are worth exploring. Accordingly, once interested, the prospective purchaser (or his agent) reaches out to the vendor/agent for preliminary discussions or further inquiries. The vendor/agent could then provide additional information (e.g. price and other terms/conditions for the sale). Usually, the parties will not 'close the deal' at this point.

The parties can, pursuant to the prospective purchaser's preliminary interest, then proceed to plan a visit to the property. Again, the intended transaction may not materialize if the prospective purchaser is not pleased with the land; for example, if it is swampy, not fit for

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3 The prospective may not like swampy land; is unable or unwilling to incur the extra spending that sand filling the swampy land entails, especially given the intended use of the land.
proposed use or is smaller in size than what is actually required. However, if the prospective purchaser is happy with all his findings, they can proceed to the next stage.

An offer letter may subsequently be sent to the purchaser; the offer letter is a document containing details of the terms and conditions of the transaction, including the roadmap for its consummation. Vendors use it to further measure the interest of the prospective purchaser; acceptance is usually a signal that prospective purchaser (with requisite financial capacity) would be willing to conclude the deal, subject to positive findings from his investigation of title.

1.2 Investigation of Title

After signing the offer letter, the purchaser collects copies of title documents or their details from the vendor in order to investigate title at the Lands Registry or within community/family circles for unregistered land. Amongst minefields to avoid are properties subject to litigation, to public acquisition or government properties. If the property had been excised (and allegedly no longer subject to acquisition), it is imperative that the solicitor confirms that fact as part of his due diligence (DD) – usually by reviewing the Government Gazette in addition to Lands Registry documentary records. This process has however been simplified since 2015 in Lagos State with the introduction of the "Land Information Management System," which allows for electronic searches of the Lis Pendens Registry of the Lagos State with the introduction of the Lis Pendens Electronic System. Users can use parameters like location/description of property, Court, Suit Number etc. to make their searches easier to conduct.

Rights of encumbrances is on a purchaser who must satisfy himself by a full investigation of title before completing his purchase. A purchaser would be able to plead absence of notice only if he had made all the usual and proper inquiries and still found nothing to indicate the equitable interest.

Investigation is the process of confirming the title of the vendor as deduced by him.” Yusufu Yilzum Dadem, 'Property Law Practice in Nigeria' (3rd ed., 2015), p.258. Without a search (at the Lands Registry or within community/family circles for unregistered land), the risk of encumbrances on a purchaser who must satisfy himself by a full investigation of title before completing his purchase. A purchaser would be able to plead absence of notice only if he had made all the usual and proper inquiries and still found nothing to indicate the equitable interest.

Apart from the search(es) at the Lands Registry, there should be a further search at the Corporate Affairs Commission (CAC) to reveal whether or not there is an encumbrance or any charge whatsoever on the property. CAC search is necessary where the current vendor or its predecessor-in-title is a company. CAC search may also provide the opportunity to check the company’s audited financial statement which usually accompanies the Annual Returns filed yearly with the CAC.

Such documents could be or include Certificate of Occupancy, Land Certificate/Registered Title, Deed of Assignment (DoA), (with or without Governors' Consent)/Deed of Conveyance, and Survey Plan, court judgments (for example on communal/family land confirming ownership), etc. It is also important to ensure that the land being purchased is not subject to litigation as the doctrine of lis pendens works against the purchaser of a property if the litigation is unfavourable to his vendor. Olori Motors Co. Ltd v U.B.N Plc (2006) LPELR-3589 (SC). In such situation, he may have to pay a second time to the successful party (and that is assuming such party is willing to sell); also, he may not be able to recover his money on the original transaction especially if the vendor no longer has capacity to repay. If he institutes an action against the vendor for recovery of the purchase consideration, such may suffer delay in the courts as the wheels of justice could grind relatively slowly, not to talk of the vendor frivolously going on appeal to delay realisation of any fruits of judgment against him. During the pendency of litigation between his vendor and competing parties, the purchaser may be unable to progress his plans for the property, for example if the court issues a prohibitive injunction against any development pending the determination of the suit. Disobedience could result in contempt proceedings, and possibly a jail term. See Bamgboye v. Olusoga (1996) LPELR - 736 (SC). It is worth emphasizing that a purchaser of a litigated property buys same at his own risk. In Yaro v. Manu & Anor (2014) LPELR-24181 (CA) it was opined that “Caveat emptor, let the buyer beware, is the Latin maxim for persons dealing in property. The risk of encumbrances is on a purchaser who must satisfy himself by a full investigation of title before completing his purchase. A purchaser would be able to plead absence of notice only if he had made all the usual and proper inquiries and still found nothing to indicate the equitable interest.

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The CoS documents the agreed terms of sale and purchase of the property as well as relevant background information: parties and their description, root of title and nature of vendor’s title, price, mode of payment, deposit (if applicable), etc. A draft CoS may sometimes be sent whilst the purchaser is verifying the vendor’s title to ascertain its ownership and security status (whether subject to any encumbrance). At the point where the signed CoS is exchanged, the vendor effectively holds the land in trust for the prospective purchaser till he pays (fully), and all conditions are fulfilled. Thus, the purchaser acquires an equitable interest in the property while legal interest is acquired at completion.

Before parties thereto can enforce the CoS, the written memorandum must exist although it need not exist at the time the contract is being made. The CoS may also include indemnity clauses - to ensure that in case of defective title, the vendor would be liable to refund the entire purchase price, possibly plus interest at a given rate. The essence of such clauses are to adequately protect the purchaser from mischievous vendors.

1.4 Purchase Deposit
A deposit is money paid as security by the purchaser to the vendor as evidence of his intention to complete the purchase of the property pending all actions before ‘completion’, including but not limited to exchange of the executed transfer documentation. It may be forfeited if the depositor fails in his undertaking. The CA, in Edosa v. Zaccala, held that deposit may be forfeited where the purchaser fails in his undertaking.

The rationale for is the principle of promissory estoppel - that the vendor may have acted or relied on the purchaser’s intention to purchase the property. If the purchaser resiles, the deposit would then serve as compensation to the vendor. However, it is important to also protect the prospective purchaser’s interest by ensuring there is clarity around the conditions for losing the deposit. For example, there could be a

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8 Cap. E14, LFN 2004. “Admissions are relevant and may be proved as against the person who makes them or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or by his representative in interest.” See also, Anya v. Anya & Ors (2014) LPELR-22479 (CA).
9 Or if contract of sale were to be done prior to completion of investigations of title, it would be made conditional on satisfactory outcome of the title verification searches.
10 It is presumed that the parties have requisite capacity to enter into the CoS; absence of capacity will vitiate the contract see Goldmark (Nig) Ltd & Ors v. Ibafon Co Ltd & ORS (2012) LPELR-9349 (SC).
11 If prospective purchaser does not pay a deposit, any attempted enforcement could face the challenge of absence of consideration. In that wise, it is prescient to have the CoS under seal. See Bobal v. Achi & Anor (2015) LPELR-25901 (CA).
12 See Section 52(1) Stamp Duties Act, Cap. S8, LFN 2004 which defines “conveyance on sale” to include “every instrument, and every decree or order of any court whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.”
14 See Lawal v. UBN Plc & Ors (1995) LPELR-1762 (SC): where one party has by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his words and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous relations as if no such promise or assurance had been made by him.
timeframe within which the prospective purchaser may get his deposit back in full irrespective of the reasons for his change of mind.

Refund may also be graduated on a reducing basis: the longer, the period, the lower the refund entitlement, with an absolute time bar for any refund at all. Such timelines could be a function of the transactional realities. As a prospective purchaser’s solicitors, the question may be asked, what exposure should the vendor have if he chooses not to proceed? The remedy of specific performance and/or damages should avail the contentious issue would be measure of damages where specific performance was no longer feasible.\(^\text{15}\)

The balance of purchase price should be paid on completion; parties may also decide on whether, and what rate of interest is to be charged in the event of delayed payment. It goes without saying that the purchaser is entitled to recover it where the CoS is terminated through no fault of the purchaser.

2. Documentation Stage:

2.1 Deed of Assignment (DoA)

The usual practice, as endorsed by the CA in *Ezeigwe v. Awudu*,\(^\text{16}\) is that after the purchaser has ascertained through his solicitor that the vendor has good title to the property to be sold, the parties prepare and execute the DoA/Conveyance.\(^\text{17}\) The DoA is usually prepared by the vendor's solicitor and vetted by the purchaser's solicitor. Upon finalisation, several copies would be produced (usually called...
Engrossed copies) for execution by both parties, in compliance with requisite execution formalities.

At this stage, any balance of the sale consideration would be paid by the Purchaser. In Anuku v. Standard Bank Ltd, it was stated that the DoA or its equivalent must at the minimum, consist of: the names and description of the parties; description of the property; the agreed purchase price; the acknowledgement of receipt of that amount, etc. It is compulsory that every DoA contain a consent section for the State Governor where the land/property is situated to signify his consent to the transaction.

Other documents such as statutory transfer forms (such as Form 1C), purchase receipt, would be executed by or on behalf of the vendor as the case may be. Any other original documents relating to the property in the vendors possession should also be handed over. The key consideration is to avoid having to revert to the vendor again after deal completion. Careful attention must therefore be paid to ensuring that all documentation requirements are met including signing undated forms and obtaining copies of vendor’s tax clearance certificate for purposes of applying for Governor’s consent.

Usually the prospective purchaser will pay the legal fees associated with the transaction; he will pay both his own solicitor’s and the vendor’s solicitors fees, in addition to also paying agency fees (‘commission’ in popular parlance), for the transaction.

2.2 Perfection Stage

Perfection of title includes obtaining Governor’s consent, stamping and registration at the Lands Registry. This is a post completion matter and it is the duty of the purchaser to ensure that his title is properly perfected. Many people who are oblivious to the legal requirements have the notion that after executing the DoA or equivalent, they have done all that is required of them and can enjoy their newly acquired property without let or hindrance. The reality however is that such leaves room for issues of competing title to possibly arise in future or the ability of the purchaser (or his estate) to use the property as security for finance may be constrained.

3.2 Stamping

Stamp duties are taxes imposed on certain transactions, one of which is transfers of interest in land. After the government grants consent, the solicitor must ensure that the stamp duties charged on the transaction is paid. In order to compel compliance, stampable but unstamped documents are subject to the following: (a) they will not be accepted for registration at the Lands Registry; (b) non-admissibility as evidence in court (albeit the proceedings may be adjourned in

The legal consequence that arises is that no legal interest in land passes under the agreement until the necessary consent is obtained: it is thus inchoate until consent is obtained. In Awojugbagbe Light Industries Ltd v. Chinukwe & Anor, the SC stated that section 22(1) LUA “prohibits the alienation of a right of occupancy without the consent of the governor first had and obtained but does not prohibit agreement to alienate or in respect of terms and conditions for the purpose of effecting such alienation if and when the Governor gives his consent to the transaction in issue.”

3.1 Governors Consent (GC)

The Land Use Act (LUA) prohibits alienation of statutory right of occupancy or dealings in respect thereof, without the prior consent of the State Governor, otherwise the transaction shall be void. Where the property however is subject to a customary right of occupancy, the consent required is that of the local government where the land is situate: section 6 LUA.

It provides “(1) It shall be lawful for a Local Government in respect of land not in an urban area to- grant customary rights of occupancy to any person or organisation for the use of land in the Local Government Area for agricultural, residential and other purposes; (b) grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.”

21 According to Dadem (supra), at p.272: “It is advised that consent comes before stamp duties since if the Governor refuses consent, the duties paid cannot be recovered.”

References:

18 (1972) 1 ULR 106.
21 It provides “(1) It shall be lawful for a Local Government in respect of land not in an urban area to- grant customary rights of occupancy to any person or organisation for the use of land in the Local Government Area for agricultural, residential and other purposes; (b) grant customary rights of occupancy to any person or organisation for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.”

.22 (1995) LPELR-650(SC)
23 According to Dadem (supra), at p.272: “It is advised that consent comes before stamp duties since if the Governor refuses consent, the duties paid cannot be recovered.”
order for the document to be stamped upon payment of penalty, before it would be tendered);\textsuperscript{24} and (c) penalties for late registration, which is usually time based – thus, longer default attracts greater penalty.

### 3.3 Registration

Every instrument of transfer of interest or ownership in land is a registerable instrument under the \textit{Land Instruments Registration Law}\textsuperscript{25} and must be registered to have the backing of law and also to have priority over any other competing instrument(s) of transfer.

**Section 26(1) provides “Any holder in possession of any registerable document shall register it within sixty (60) days after obtaining the Governor's consent where applicable.”** Registration gives an indication if a property is encumbered and any subsequent purchaser would be duly informed upon carrying out a search at the registry.

However in \textit{Registered Trustees of Obosi Development Union v. Elebor},\textsuperscript{26} it was held that a registerable instrument that has not been registered is admissible to prove equitable interest.

Once all the foregoing steps are done and dusted, one can then rest easy and be assured of a solid title to the acquired property. The above processes could take a long time and one is required to be patient as there are no short cuts to perfection of title to land and real property in general. Again, the credo is to be “better safe than sorry”!

### Challenges

**Perfection Challenges**

According to the World Bank’s \textit{Doing Business in Nigeria 2018}:

“Transferring property in Nigeria requires on average 12 procedures and costs more than 15\% of the property value, making the process twice as cumbersome and expensive as in the average economy in Sub-Saharan Africa.”\textsuperscript{27}

Notably, one of the changes that led to the improvements in

\begin{itemize}
  \item Section 22 Stamp Duties Act, Cap. 58, LFN 2004.
  \item Lagos State Lands Registration Law No. 1 of 2015.
  \item \textsuperscript{26} (2018) LPELR-46657 (CA)
\end{itemize}
Nigeria’s ranking on 'Ease of Doing Business' was in the area of easing RE transactions, especially on aspects of property registration. Such include Lagos State's reforms in making property transfers easier and more transparent by removing the sworn affidavit for certified copies of the land ownership records, introducing a specific and independent complaint mechanism, and by publishing statistics on land transfers. Although progress have been made over the past decade, they need to go farther and faster too. The high cost of perfecting property transactions is still a sore issue that oftentimes discourages many parties from perfecting their property transactions.

**Land Grabbers**

Lagos State took decisive step to deal with the issue of individuals (otherwise known colloquially as 'omo onile' or land grabbers) taking possession of land illegally especially via self-help vide the enactment of the Lagos Property Protection Law 2016 (LPPL). According to its long title, LPPL was enacted to prohibit forceful entry and illegal occupation of landed property, violent and fraudulent conduct in relation to landed property in Lagos State and for connected purposes. The actions of the 'land grabbers' were particularly harmful as they caused prospective purchasers to institute endless actions in court trying to recover lost monies after 'omo oniles' would have been sold one property to multiple parties or other nefarious actions.

**Conclusion**

The article has tried to highlight how to navigate the minefields involved in purchasing property in Nigeria using Lagos State as case study. Given the challenges that could arise from a flawed transaction, it is imperative that the prospective purchaser must keep his eyes on the ball otherwise he may find out that he had purchased a lawsuit or paid for non-existent land, "a castle in the clouds". Nothing can be more unwise than to adopt a “penny wise, pound foolish” approach in RE transactions – for example, by not engaging a solicitor. Also, it is hoped that the governments across Nigeria will continue RE sector related reforms (including requisite constitutional and legislative changes) to ensure optimality of property transactions that will enable RE play its deserved role as a key engine of the economy, and catalyst of national development. This moreso that it has been noted that as Africa’s biggest economy, Nigeria has the potential of becoming one of the world’s real estate hubs.

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28. *Doing Business in Nigeria 2018*, doingbusiness.org/18/10/2018, http://www.doingbusiness.org/en/reports/subnational-reports/nigeria (accessed 23/3/2019). “Over the last four years, eight Nigerian States implemented reforms making it easier to register property.” Per Table 5.2 at p. 64, these are: Abia, Anambra, Bayelsa, Delta, Enugu, Gombe, Kaduna, Lagos and Ogun. Other findings include that “the governor’s consent is required to register property in Nigeria, a major bottleneck in many places. In States (such as Gombe and Jigawa), “where the power to grant consent has been delegated to the Commissioner of Lands, registering property is almost three weeks faster.” Also “landmark reforms have catapulted Kaduna to the top spot in Nigeria for ease of registering property.”

29. “In 2015, Lagos reduced several of its fees and removed the requirement to file an affidavit with the high court before being able to conduct a property title search. It also increased transparency by publishing fee schedules online as well as the list of steps an entrepreneur must undergo to transfer a property title. State authorities also introduced an independent mechanism to file complaints.” See *Doing Business in Nigeria – 2018*, p.7 (Overview), available at: http://www.doingbusiness.org/content/dam/dam/doingbusiness/media/Subnational-Reports/DB_in_Nigeria_2018_w-bookmarks.pdf (accessed 27.03.2019).

30. “On average, an entrepreneur has to go through 12 procedures over 73 days and pay 15.3% of the value of the property to transfer land, making Nigeria one of the most difficult and expensive places to register property in the world.” *Doing Business* ( supra), p. 9.

31. In 2015, LASSC reduced the fee on registration of properties from 15% to 13% and now 3% of the assessed value of the property to register it in the purchaser’s name. This was a marked improvement from the 30% rate under the previous administration of Senator Bola Ahmed Tinubu. On this note, LASSC’s model is commended. There is also the need to review downward some of the onerous rates and fees payable on land registration as well as the time lag for completing the processes in all the States. Most importantly, there cannot be any real and quantifiable reform unless and until strict adherence to the streamlined process is enforced and stiff sanctions laid down for non-compliance. See ‘Schedule of Fees’ at https://landsbureau.lagosstate.gov.ng/schedule-of-fees (accessed 27.03.2019).