VALIDITY OF INSTRUMENT RELATING TO TRANSFER OF INTEREST IN LAND PREPARED BY A NON-LEGAL PRACTITIONER IN NIGERIA

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Abstract

The Legal Practitioners Act conferred on legal practitioners the right to prepare documents for transfer of interest or title in land. This ordinarily should be an area of soft practice for qualified legal practitioners. But this area of practice has become prone to all kinds of invasion from fake lawyers andwily vendors/purchasers trying to get a piece of the action as it were. One aspect of the problem is a situation where powerful vendors/purchasers would not bother whoever prepares the document of transfer of such interest or title in land in a bid to cut corners. They seem to be aided by the present state of the law which grant validity to instrument prepared by a non-legal practitioner. Besides, no distinction is granted by the Land Instrument Registration Laws of states to instrument prepared by a legal practitioner and the one not so prepared by him once same is unregistered as both carry the evidential tag of being a receipt for payment of money. It is argued that if the purpose of the law is to be meant the continuous treatment of the vendors/ purchasers as a victim instead of a facilitator of denial of rights of lawyer should change. It is advocated that if the intendment of the law is that only legal practitioner should prepare title deed, there is need to amend such section of the law that donate to the profession this right, and make such right exclusive, otherwise other persons/group/communities may continue to interfere with this aspect of legal practice and thus continue to erode the pool of services statutorily reserved for lawyers in Nigeria.

1. Introduction

More often in a professional ethics and values classes[1] it is instructed that one of the exclusive rights of legal practitioners in Nigeria is the right to prepare instrument relating to transfer of interest in land and this always keep the students interested in the subject/the profession and eager to get it done with so that he may as well be in the position to exercise this exclusive right belonging to this noble class of men. Pontificating on this right, one learned author affirmed that a legal practitioner is entitled to the preparation of instruments relating to immovable property for a fee. Such instrument includes deed of lease, assignment, legal mortgage etc. name and address of the legal practitioner are stated on such instruments. This is also known as franking of such instruments. Where an instrument relating to immovable property does not contain the name and address of the legal practitioner who prepared it, it may not be accepted for registration at the Land Registry.[2] In a more decisive tone one other

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[1] Now known as Law in Practice in Nigeria (professional Responsibilities and lawyering skills.

[2] Okoye, A. O. Law in Practice in Nigeria: (Professional Responsibilities and Lawyering Skills), snap Press Nigeria Ltd., (2011), 29. This point is subject to debate in view of the level of corruption that exist in various registries across the states. Further, the law regulating registration of title gave some level of discretion to the Registrar to exercise and that may make this optimism misplaced. For example, in Delta State it is provided by

learned writer described the right to be in accordance with section 22 (d) Legal Practitioners Act 2004[3], which provides that subject to the provisions of this section, if any person other than a legal practitioner prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, he shall be guilty of an offence and liable, in the case of an offence under paragraph…. (d) of this subsection, to a fine of an amount not exceeding N200 or imprisonment for a term not exceeding two years or both, and in any other case to a fine of an amount not exceeding N100. It therefore means that no person other than a lawyer shall either directly or indirectly for or in expectation of any fee, gain or reward, draw or prepare any instrument.[4] The Penalty for contravening this aforesaid provision is Hundred Naira fine.[5]Subsection7 of Section 22 declared that any agreement to transfer, either directly or indirectly, any money or thing in consideration of any act which constitutes an offence under this section is void; and any money or thing so transferred, or the value of the thing, shall be recoverable by the transferor from the transferee or from any other person by whom the offence was committed, whether or not any proceedings have been brought in respect of the offence or the time for bringing such proceedings has expired.

Behind the veneer of these learned submissions on the point is a disturbing find that the right in question may not after all be exclusive to the learned profession. Thus, the provision/submissions of learned authors on this right need not to be taken hook, line and sinker as it were. The right donated to the legal profession by the provision seems not to be in doubt but what is not clear is whether a document prepared by persons, communities/organisation without reference to the legal practitioner can be accorded validity as if that document was prepared by the legal practitioner. This is key in view of the definition of the term instrument as we would see anon, which is so wide as to include any document prepared by another person affecting transfer of interest in land. Further, whilst punishment is attached to the person who prepares the instrument presumably on behalf of the purchaser/vendor who may, in a way, procure the services of the non-legal practitioner but no

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the Land Title Registration law, Cap L2, Laws of Delta State, 2008, Section 80 subsection 1 and 2 thereof that an instrument which is expressed to be made or to operate as a deed shall be deemed to be a deed and shall operate accordingly, but shall not on that account require to be sealed; and that covenants for title may be implied in any such deed by the use of the appropriate words in accordance with the provisions of the Property and Conveyancing Law.

[3] Cap L11 Laws of the Federation, 2004.

[4] This right is donated the Legal Practitioner by sections 2 and 24 of Legal Practitioner Act, (Supra). See Fawehinmi v. NBA &Ors. (No. 2) (1989) LPELR- 1259 (S.C.); Tijani & Anor. v. Oyemika (2017) LPELR-43502 (CA).

[5] Akinola O. B Principles of Law in Practice (Professional Ethics and Skills), St. Paul's Publishing House, 2nd edition, (2016), 44.

liability is attached to him and /or the document prepared on his/their behalf.[6] The narrative is presented as if the purchaser/vendor is always a victim of the crime. This may well be so in view of the fact that the prevailing situation were such that access to the registry to verify who is or not a legal practitioner was very cumbersome. But with the emergence of the era of information technology access to information about qualified legal practitioners in Nigeria is just a click away. Thus, there is a need for paradigm shift to reflect the new reality. This may not be achieved without overcoming some difficulties. One of which is the bulwark provided by the constitution which recognises the right to property and against expropriation of same by state authority without compensation. The other is the nebulous definition of the term instrument under the various extant laws and the lacuna in not attaching any liability to the purchaser/vendor. Next is the failure of the law to according same treatment to any document for title whether prepared by legal practitioner or not as receipt once they are not registered in line with the various land instrument registration laws of states. It is advocated that if these state of affairs remains the exclusive rights of a legal practitioner to prepare such instrument may be a mirage. It is therefore suggested that a change in the existing laws need to be made to stop the in road been made into the legal profession by quacks.

2. Preparation of instrument by solicitor

It often happens that solicitors are called in to prepare an instrument of sale of land when the parties have fully agreed upon the terms of the contract. If his instructions are limited to preparation of document, his duties are not as wide as when he is retained to investigate title, advise his client before preparing a document. Even here, solicitors should bear in mind that drafting a good conveyancing instrument requires more expertise than copying out a previous conveyance.[7] Every so often clumsy or obscure draftsmanship had deprived purchasers of both title to land and any remedy they would have had against vendors. A solicitor who is approached to prepare a legal document or provide professional advice should not for a moment forget that his client expects him to put forth his best professional competence, also a good deal of honest hard work and effort.[8]

Where a person retains a solicitor to assist him in the purchase of land a contractual relationship is created which obliges the solicitor to exercise reasonable care and skill. In the absence of obvious carelessness, the primary question is whether the solicitor acted in accordance with current conveyancing practice. If a sublease is to be created, a solicitor has a duty to check the head lease to ensure there is no prohibitive covenants that would hinder the sub-lessee from using the land for the purpose which he tells the solicitor.[9]

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[6] See section 22 subsection 7 of LPA (supra), which further protect the purchaser/vendor from any loss of money of thing transferred which is recoverable on his behalf.

[7] E. Chianu Law of Sale of Land, Law Lord Publications, (2009), 567.

[8] See section 9 LPA which provided for liability of Legal Practitioners for negligence.

[9]Chianu, 570.

The solicitor must do his best to see that no onerous and unexpected burdens will descend on his client as the result of the purchase of a particular property. He owes a duty to give competent advice on all matters relating to the transaction, of a legal nature.[10] But when the solicitor is expressly invited to act as an adviser over the whole procedure and advisability of a purchase then if he agrees to act he should be liable if his advice is careless in any respect.[11] It would seem that if in the course of proffering legal advice the solicitor should have realized that his client requires further help in order to complete his transactions satisfactorily, the solicitor owes him a duty either himself to give careful advice or to warn him of the risk of proceeding without obtaining other professional assistance.[12]

3. **Who Should Prepare the Document of Transfer of Title**?

This query should not ordinarily have posed a problem to answer having regard to the law and practice on the matter. But unfortunately, it is not ordinary, though, it may look so on the surface. The first aspect of the query which should be cleared is a situation that has almost become the norm nowadays when the vendor's solicitor assumed responsibility to prepare the deed of transfer with respect of the property as part of condition of sale of the property to the purchaser. This task is gleefully undertaken by the vendor's solicitor as a matter of right without slightest regard to the right of the purchaser to have his solicitor prepare the document on his behalf with a view to protecting his interest in the subject matter. This unwholesome practice has contributed in reducing standard fees chargeable by practitioners in this legal piece of work as it sometimes does happen that the vendor's solicitor may be at the mercy of the vendor who in some cases would have collected the fees from the purchaser and pay his solicitor what he desires. Such solicitor is never in any position to contest whatever is handed down to him and this has pauperised such solicitors the more as against the position he would have been if he was consulted briefed independently to carry the piece of legal work. The helplessness of such solicitor in this case is further complicated by the fact that the law is not on his side.[13] He so badly lacked the vires to challenge his benefactor!

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[10]A Legal Practitioner once called to the bar hold himself out as able and competent to handle any brief that may come his way. This is more so when there is no rule of law that mandates prospective clients of a Legal Practitioner in Nigeria to first investigate the professional competence of the Legal Practitioner before giving him any brief. In Lawson v. Siffre, 11 NLR 113 @ 114it was held that if a solicitor acts as a solicitor the question whether he is remunerated or not does not affect his liability; in either event, he is bound to discharge his duties with care and diligence equal to that ordinarily required of solicitors of competent skill and care. See also I. T. T. Nig Ltd. v. Okpan (1989) 2 NWLR (Pt. 103) 340.

[11]see Bello Raji v. X (A Legal Practitioner) 18, NLR 74; 11NLR 113.

[12] Brazier, M, "The Innocent Purchaser and His Professional Advisers," (1976) 40 Conveyancer, 191-195, cited in Chianu, 571. See also Saif Ali v. Sydney Mitchell (1978) 3AER 1033.

[13] The writer is not unmindful of the provision of Rule 2 of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order that permits the legal practitioner representing both parties in a mortgage transaction to be entitled to the full fees of the mortgagee's lawyer and half of the fees of the lawyer to

As an example, section 73 (1) of the Property and Conveyancing Law 1959[14] provides that a purchaser cannot be compelled to employ someone other than his own solicitor to prepare a conveyance; any stipulation of the sort in a contract of sale shall be void. The section permits a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared for which the vendor may charge a reasonable fee and nothing more. But the proviso may have been interpreted to mean that the vendor may as well draft the deed and collect the cost for so doing from the purchaser and hand a pittance to his solicitor! This ugly state of affairs have made it easy for one to agree completely with the learned writer when he observed that in land sale business it well known that this provision is obeyed more in breach as most vendors insist on their solicitor preparing the document in order to safeguard their interest.[15]

The second aspect of the query is in respect of preparation of document of transfer of title by a non-legal practitioner. Section 22 (1) (d) of the Legal Practitioners Act (LPA) provides that if a person other than a solicitor prepares an instrument relating to the transfer of an interest in land in expectation of reward, he shall be liable to a fine not exceeding N200 or imprisonment not exceeding two years. Section 4 of the Land Instruments Preparation Law[16] (LIPL) provides that no person other than a legal practitioner shall prepare any instrument for a fee intended to transfer an interest in land; a fine of N100 is imposed. Section 3 of the same law provides that every person who prepares an instrument relating to the transfer of an interest in land shall endorse his name and address on it; failure to do so attract sanction of a fine of N10.

None of these provisions touches on the validity of the instrument prepared, so the instrument remains valid. In *Barclays Bank v. Sulaiman*[17] counsel sought to annul a deed of conveyance on the ground that the solicitor who prepared it failed to sign it even though he endorsed his firm name and address on it. Aguda J. held that since section 3 LIPL is silent on the consequences of infracting the statute, he could not hold that the document was void or even voidable. In the case *Coker v. Ogunye*[18] here plaintiff relied upon a document a lay 'letter writer' prepared to prove his title to the land in dispute, counsel for defendant argued that the document was void as it infringed the LPA. Ames Asst J overruled him. The maker of the document would be liable to a penalty, but the document is not affected as the Act does not make it void or inadmissible in evidence. However, in *Fasanya v. Adekoya*[19]where the facts

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the mortgagor. No rationale can be given for the operation of this provision in the Order in view of the present realities where many lawyers are now chasing after few briefs from this aspect of practice.

[14] Laws in force in states created out of the old Western Nigeria one of which is Delta State of Nigeria. See The Property and Conveyancing Law, Laws of Delta State, 2008 vol. 4 Cap P.17

[15] E. Chianu,568.

[16] Cap 55 Laws of Western Nigeria, 1959 applicable in all the states created out of the old Western Nigeria.

[17] [1970] (1) ALR Comm 415

[18] (1939) 15 NLR 57

[19] [2000]15NWLR (Pt.689)22, 42.

were that the appellant sued the respondent in the High Court claiming declaration of title, an order for an account and injunction against the respondent. At the trial of the suit, the appellant testified for himself and called five other witnesses to substantiate his claim. The respondent on the other hand testified for herself and called three other witnesses. The main plank of the respondent's defence was that her mother by name Falilatu Durojaiye, bought the land in dispute sometime in 1962 from one Salami Buraimoh. When the respondent sought to tender the memorandum of sale of the land, the appellant objected to the admissibility thereof on the grounds that the document is a registrable instrument but was not registered and that it was also not prepared by a legal practitioner. The trial court admitted the document in evidence as Exhibit 'C'. At the conclusion of the trial, the trial court in a considered judgment dismissed the appellant's claim. Dissatisfied with the judgment, the appellant appealed to the Court of Appeal. The main thrust of the appellant's appeal was the admission in evidence of Exhibit C by the trial court. Onalaja JCA, in his judgement said that legal documents relating to the disputed land which were not prepared by a legal practitioner were both "inadmissible [and]nullities."

In the words of the law lord

> In addition, it offends against the provisions of Land Instrument Preparation Law, Cap 52, Laws of Ogun State, being a law to prohibit *unqualified person* from drawing instruments affecting land for record as provided in sections 2, 4, and 5 of the said law…. Having declared them not only inadmissible, they are nullities under sections 2, 4, 5, Cap.52 Ogun state Law, therefore, they are null and void, the finding based on them by the lower court is a non-sequitur.[20]

Let it be quickly stated here that the law of Ogun State relied on by the learned law Lord is imparimateria with the provision of sections 3,4 and 5 of LIPL earlier mentioned in this work and does not bear repeating here. It is humbly submitted that the above dictum of the learned justice of the Court of Appeal (as he then was) is a stand-alone pronouncement which is not in tandem with the statutory law on the point nor was it anchored on previous judicial precedent on the matter and cannot be relied upon as a precedent on the validity of an instrument prepared by a non-legal practitioner. As lucidly observed by a learned writer a judgment that does not refer to a statute it is bounding on a judge to apply is worthless for the purpose of precedent.[21]

Contrariwise, the Court of Appeal in the case of *Asowata v. Aihie*[22]seems to have towed a different line and have aligned itself with the decisions of lower courts on the point[23] and of

[20] At p.538 para A-C.
[21]Chianu E. 568
[22] (2019) LPELR-46432 (CA).
[23] see Barclays Bank v. Sulaiman and Coker v. Ogunye (supra**)**

course with the various statutes that may have a bearing on the issue. [24] In this present case, one of the issue before the Court of Appeal was whether in the light of the provisions of Section 5(1) of the Land Instruments Preparation Law, Cap. 80, Laws of the defunct Bendel State of Nigeria applicable in Edo State the lower Court did not wrongly admit Exhibit D in evidence. Exhibit D was the document of transfer of the title in the land to the Respondent which was prepared by a non-legal practitioner. In resolving the issue the Court of Appeal speaking through Tur, JCA in his leading judgment penned that:

> This issue revolves around the interpretation of the Land Instruments Preparation Law, Cap. 80, Laws of the defunct Bendel State as applicable to Edo State. I must say at this juncture that I am more persuaded by the arguments of learned counsel for the Respondent that the intendment of the law was to void agreements for payments of fees to non-lawyers for preparation of title documents and not necessarily to void the title document itself. This statue appears to be penal in nature since it is capable of depriving a citizen of his proprietary right….

It is also imperative to check the commencement date of the law so as to ascertain whether or not it is applicable to the instant appeal. In the final analysis, I do not share the view that because Exhibit D was not prepared by a legal practitioner it should be inadmissible and thereby defeating the Respondents title to the land in dispute. Such reasoning borders on technicality to the extreme which will defeat the ends of justice. To my mind, this issue ought to be resolved in favour of the Respondent

Perhaps one of the reasons for the faulty finding of the learned justice in the *Fansaya's* case was the non-consideration of the meaning of the word 'instrument' which is clearly defined in the enabling laws to mean 'any document conferring, transferring, limiting, charging or extinguishing, or purporting to confer, transfer, limit, charge or extinguish any right, title or interest in land, but does not include a will.'[25]

This broad meaning of the term instrument in the law, it is submitted, is not only capable of admitting document prepared by legal practitioners but as well as those that may not have been prepared by them. This contention is ably anchored on the case of *Ogbimi v. Niger Construction Nig. Ltd.*[26]the facts of the case was that the Appellant had claimed pecuniary damages from the respondent being compensation for the damage he suffered when the respondent without justification entered land in the possession of the plaintiff to excavate therefrom some quantity of laterite.

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[24] see Legal Practitioner Act, Cap L11 LFN, 2004. Various Law Instrument Preparation Law of States and Land Instruments Registration Laws.

[25] see the Legal Practitioners Act Cap L11 LFN, 2004, Land Instruments Preparation Laws of states and Land Instrument Registration Laws of States.

[26](2006) LPELR-2279 (SC), (2006) 9 NWLR (Pt.986) 474.

The parties filed and exchanged pleadings. At the trial, appellant called four witnesses and also testified on his own behalf while the respondent called one witness. At the end, the trial court found that appellant had proved his case and entered judgment in his favour resulting in an appeal before the Benin division of the Court of Appeal. In its judgment, the Court of Appeal, dealing only with issue 1 of issues submitted to it for determination, allowed the appeal. That resulted in the appeal to the Supreme Court. Delivering the leading judgement of the apex Court Onnoghen, JSC, observed and held thus:

> The question is whether the above contents, even though written in the form of a letter qualifies as an instrument under the Land Instruments Registration Law Cap. 81 Laws of Bendel State 1976 as applicable to Delta State.
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> To answer the question, we have to have recourse to the provisions of Section 2 of that law which defines "instrument as follows: "Instrument' means a document affecting land in the State whereby one party (hereafter called the grantor) confers, transfer, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in the State…"
>
> Does Exhibit B qualify as an instrument within the definition reproduced above? There is no doubt that Exhibit B, is a document in the form a letter. A cursory look at Exhibit B clearly shows that it purports to transfer and/or confer an interest in the piece of land described therein on or to the appellant. Exhibit B was written for and on behalf of Amukpe Community, the original owners of the land in dispute who thereby qualify to be described as grantors while the appellant, on whom the interest is conferred or transferred to, is clearly the grantee. By the transfer or conferment of the said interest, the Amukpe Community thereby extinguished its interest in the land in favour of the appellant. I therefore agree with the conclusion of the lower court that Exhibit "B" purports to transfer the land in dispute to the respondent by Amukpe Community. Exhibit "B" is therefore an instrument as defined under section 2 of the Land Instrument Registration Law Cap. 81 Laws of Bendel State of Nigeria 1976-applicable in Delta and Edo States."

I hold the further view that what is material in interpreting Exhibit "B" for the purpose of the applicable law is not the form the document was written but its contents. There is no doubt that Exhibit B was written as a letter addressed to the appellant but its contents reveal it as an instrument affecting land and therefore subject to registration before it can be admissible in evidence in any proceedings. In the present case both parties and the court agree that Exhibit "B" was neither stamped nor registered but was duly tendered and admitted in evidence at the trial despite the objection of learned counsel for the respondent. The question that follows is whether that admission in evidence by the trial court is right in law. Section 16 of the law under consideration provides thus:

> "No instrument shall be pleaded or given in evidence in any court as affecting any land unless same shall have been registered in the proper office as specified

> in section 3. From the above it is clear and I agree with the lower court that Exhibit "B" which was not registered in accordance with the above provisions is thereby rendered inadmissible and that its admission by the trial court was erroneous and subject to be set aside. I therefore hold the view that the lower court was correct in expunging the said Exhibit "B" from the record on the ground that it was legally inadmissible in the first place.[27]

It is worthy to observe at this juncture, that there now appear to be two conflicting judgments of the penultimate court in the same subject matter. In such circumstance the law is trite that the latest in both judgements should be followed by the lower courts.[28] Be that as it may, it is apropos to examine the pronouncement of learned Justice Tur in Asowata v. Aihe with respect to the protection being enjoyed by purchaser of property in a situation where the deed of transfer was prepared by a non-legal practitioner.

4. Interpreting Penal/Exproprietary Statute

Having regard to the judgement of the Court of Appeal in *Fasanya v. Adekoya*[29], where it was held that the document prepared by non-legal practitioner are nullities and void ab initio, it would appear to have presented some difficulties especially with the party who the title to the property enures. If the view of the court is taken to its letter it would also mean that the purchaser would be deprived of all benefit of the property because same was prepared by a non-legal practitioner. This would work a lot of hardship for the purchaser as posited by the same court in the case of *Asowata v. Aihie.*[30]

While it may be conceded that many a legislation is citizen-friendly, others are quite harsh in the sense that they tend to strip them of their rights, both personal and proprietary. Those enactments, which fall within the category that deprive rights, are classified as expropriatary laws. Hence, in the *Halbury's Laws of England*, it is stated:

> Unless it is clearly and unambiguously intended to do so, a statute should not be construed so as to interfere with or prejudice established private rights under contracts or title to property, or so as to deprive a man of his property without his having opportunity of being heard.[31]

In construing such laws, that denude citizens of their rights, save they are unequivocally stated to erode them, the courts are charged to adopt the principle of strict construction encapsulated in the legal maxim: *fortissimo contra preferntes*- sympathetically in favour of the citizens,

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[27]See pp 12-14 para C-C. see also Oraka v. Oraka (2019) LPELR-476765 (CA).
[28]Dahiru& 1 Or. v. Kamale (2005) 9 NWLR (PT.929) 8. The writer could not lay hand on any authoritative decision of the Apex Court, yet on the subject matter.
[29] supra
[30] supra.
[31] Vol 14, para. 906 and as noted in Abioye v. Yakubu (1991) 6 SCNJ 69.

whose rights are tinkered with, and strictly against the law maker or the acquiring authority. It is indubitable that such "statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction in the same as penal Acts." In sum, the acquiring authority loses while the citizens gain.[32]

The guiding parameters for determining the applicability of expropriatary laws, in a given case, was propounded in *Nwosu v. Imo State Environmental Sanitation Authority*[33]**,** where it was stated by the Apex Court that:

> If there should be any doubt, gap, duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right…. If there is a reasonable construction which will avoid the penalty in any particular case, the court will adopt that construction…. If there is any doubt as to whether the person to be penalised or to suffer a loss of the right comes fairly and squarely within the plain words of the enactment, he should have the benefit of that doubt…. If after the above approach and application of the above principles the person to be affected comes squarely and fairly within and is affected by the words of the statute, the court has no alternative than to apply it.

This rule of construction does not offend the inviolable constitutional provision against compulsory acquisition of citizens' property without adequate recompense.[34] Its acceptability is borne out in *Abioye v. Yakubu*[35], involving the interpretation of section 36 of the Land Use Act, in which Bello, CJN, stated:

> This rule of interpretation is in accord with the provisions of sections 31 and 40 of our 1963 and 1979 Constitutions respectively which prohibit compulsory acquisition of property without compensation.

It appears that the *locus classicus*on the application of this rule in Nigeria is *Bello v. Diocesan Synod of Lagos***.**[36]The principal issue, in that case, was whether the plaintiff's property was duly acquired by the Lagos Executive Development Board under the Lagos Town Planning Law. The Supreme Court, unhesistantly, applied this rule of construction against the Board and the expropriatary law. Following Bello case, was *Peenok Investment Ltd. v. Hotel Presidential*,[37] where Irikefe, JSC, concurred that any law which seeks to deprive one of his vested proprietary rights must be construed strictly against the law maker.

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[32]Ogbuinya, O. F. Guidelines to Interpretation of Nigerian Statutes, Snaap Press Nigeria Ltd, (2019), 145.
[33] (1990) 2 NWLR (Pt. 135)688 at 723, per Nnaemeka-Agu, JSC.
[34] See sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[35] (1991) 6 SCJN69 at 100.
[36] (1973) 1 ANLR 247 at 214.
[37] (1982)13 NSCC 477 at 487

The stubborn question then is how do courts actualise the application of this rule? As can be discerned from the preceding case-law authorities, Bello case for one, it poses no difficulty. To begin with, such rights depriving enactments usually stipulate conditions to be satisfied before one's rights are tampered with. Then, the courts are expected to be strict by ensuring that all those pre-conditions, provided in such laws, are met to the letter. A deficit/shortfall in the satisfaction of the conditions will amount to playing into the waiting hands of the citizens whose rights are being denied.[38] The courts have demonstrated this stiff attitude in a galore of cases. In *Bello v. Diocesan Synod of Lagos*[39]Coker, JSC, warned that:

> Very often the legislation concerned prescribes formalities to be adhered to or complied with as pre-requisites of the exercise of compulsive powers. In the application of the law, the court insists that the formalities prescribed should be fully complied with.

In *Ndoma-Egba v. Chukwuogo***r**[40]**,** the formalities prescribed in the Deserted Property (Control and Management) (South Eastern State) Edict No. 10 of 1970 was ignored by the acquiring authority, the Abandoned Properties Implementation Committee, that sold the first respondent's properties. The Supreme Court applied the rule in favour of the first respondent.

Another important case was that of the *Administrator/Executor, Estate of Abacha v. Eke-Spiff*[41]**.** The first respondent was allocated plot No. 228, Diobu, G. R. A. Phase II, Port Harcourt by the Government of Rivers State and the same registered as 78/78/25 of the Lands Registry in the office at Port Harcourt. Later on, he discovered that his right of occupancy was revoked without notice to him or payment of compensation and the same plot of land allocated to late Major General Sanni Abacha, the late former military head of state. Consequently, the first and second respondents sued the appellant, third and fourth respondents for an order of repossession of the property. The third and fourth respondents admitted that the first respondent was once the holder of the building lease, but it was revoked because he failed to build thereon within two years of its allocation. The trial High Court found for the first and second respondents and same was affirmed by the Court of Appeal and the Supreme Court.

The point must be made here, that the application of this rule is not restricted to expropriatary statutes that divest persons of their rights over land. Legislations that undercut people's personal rights, over property other than land, have been subjected to the application of *fortissime contra preferentes*against government authorities or bodies. A good example is

[38]Ogbuinya, O. F. at 147.
[39] (supra) at 214.
[40] (2004) 6 NWLR (Pt. 869) 382 at 410-412.
[41] (2009) 7 NWLR (Pt.1139)97 at 130-131

found in *Kotoye v. Saraki*[42]where the provision of section 11 of the Banks and Other Financial Institutions Decree No. 25 of 1991 was construed as decreed by the rule. It must be stressed, that criminal statutes, penal legislations, much more admit of this rule of interpretation for the citizens. While upholding the acquittal of the respondent, a Naval Personnel under the provision of section 57 of the Armed Forces Decree No. 105 of 1993 (as amended) in *Nigerian Navy v. Lambart*[43]Tabai, JSC, observed:

> It is settled law that penal statutes are to be construed strictly to the benefit of the accused person and that where there is a reasonable construction that avoids the penalty in any particular case, the court must adopt that construction…. And if there are two possible constructions the court must adopt the more lenient one.

In criminal adjudications, this rule appears to be in keeping with the *cliché* that where thereis doubt in criminal proceedings, it must be resolved in favour of an accused person.[44]

A fine thread that needs to be pulled from the authorities is that penal/expropriatary statutes are more often than not construed in favour of the citizens as against the legislature if and only if the steps to be followed was not met. It is humbly submitted, that same should apply to a citizen that wants to claim a right to immovable property, but failed to follow the due process for so doing. If in the wisdom of the legislature the right to prepare document of transfer of interest in land is conferred on a legal practitioner, it is expected that the citizen will obey the law by ensuring that a legal practitioner but no other person prepares such document of transfer of such interest in land. If in crass disregard of the law a purchaser/vendor patronises a non-legal practitioner to prepare such document, he should not be aided to take benefit of the law under the guise of right against expropriation. Hence the exception created in section 44 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The restriction or derogation must be for the purpose of protecting the rights and freedoms of other persons such the legal practitioners whose rights to prepare instrument for transfer of interest in land was preserved by the Legal Practitioners Act and other relevant laws on the matter. Failure of the purchaser/vendor to abide by such laws ought to be met by one sanction or the other which is not the case now. It may be argued that it is difficult for citizen to easily ascertain who is, and who is not a legal practitioner in Nigeria. That may be true, but that argument may not hold water now in view of the increase use of information technology that have made access to information about who is, and who is not a legal practitioner in Nigeria, just a click away.

5. Title deed of transfer as a receipt

Section 15 LIRL provides that "No instrument shall be pleaded or given in evidence in any

[42] (1994) 7-8 SCNJ 524.
[43] (2007)18 NWLR (Pt. 1066) 300 at 317
[44] see Namson v. The State (1993) 6 SCNJ (Pt. 1)55; Oladele v. State (1993) SCNJ 60.

court as affecting any land unless the same shall have been registered." With this draconic consequence for non-registration the courts have been forced to attenuate the effect of the law by circumscribing the scope of section 2 of the law that defines the term instrument to encompass a broad spectrum of disposition of interest in land[45]. In *Okoye v. Dumez (Nigeria) Ltd***.**[46]**,** an interesting point that arose in the Court of Appeal was whether instruments which granted first a one-year lease and later a six-month certain were registrable. Olatawura JCA, relying on section 9 LILR, said the instruments were not registrable because they were leases 'for less than 3 years. They are merely agreements. They cannot even be registered as required having been so exempted by section 9 of the law. On appeal, Karibi-Whyte JSC said Olatawura JCA was in error:

> On a calm examination of [the documents] there is no doubt each of them entitles the respondents described as lessees to stay on the land in dispute for the purpose of storing of construction materials…. It thus confers on, and transfers to the respondents, the right to use the land for those purposes and at the same time limits or extinguishes the right, interest, or title of the land owners, described as lessors, for the period of the lease…. There is no doubt that [the documents] fall within the definition and are instruments for the purposes of the law, which by section 15 are inadmissible in proceedings unless registered…. The definition of instrument… did not speak of a period or limitation of time.[47]

His Lordship proceeded to show, quite rightly, that regulation 3 (a) of the Land Instruments Registration Regulations which provides that leases for a term not exceeding three years (without a right of renewal) may be registered without a plan of the land (as section 9 requires), does not justify the admission of an instrument that confers an interest that is less than three years.

However, with respect, Olatawura JCA is right because since an interest in land that is less than three years need not be in writing, any defect in either the writing or registration should not affect its validity. And there is judicial authority in favour of his Lordship's position. In *Cole v. Jead*[48] a power of attorney given to an agent who executed a deed granting the lease in dispute did not authorise him to execute leases by deed. However, since the lease he granted was for less than three years, the West African Court of Appeal held that the lease was valid. If Karibi-Whyte JSC's literal interpretation of the law is followed, it means that even monthly tenancies that are in writing would require registration. Parliament could not have intended that. The work of Lands Registry would be so overwhelming that their staffs and offices would need to be more than quadrupled. In a world where it is costless to perfect legal

[45] E. Chianu, 217.
[46] [1952]2 NSCC 760.
[47] Ibid at 794-795.
[48] (1939)5 WACA 92.

instruments through registration, all instruments should be registered. But in the real world trivial infringements of the law must be ignored lest the Lands Registry as well as the court becomes overburdened. Excess of rules will produce nonsense.[49]

A core part of the definition of instrument is that it must affect a transfer of interest from vendor to purchaser, transferor to transferee. A look at decisions from our courts would enlighten the reader. In *Nnubia v. Attorney-General Rivers State*[50] the Chairman of the Abandoned Property Authority sent a lessee a document headed 'Instrument of Transfer' and therein stated that he 'thereby transferred piece of land with buildings thereon' to the lessee. The Court of Appeal held that his instrument was registrable. Onalaja JCA stated:

> After a hard look at section 2 [LIRL] the words are not ambiguous thereby giving it the plain, ordinary, natural and grammatical meaning that Exhibit 3 falls within the meaning of section 2 … as an instrument because it transferred to the [lessee] the control and management of that plot [and] it must be registered.[51]

In *Ole v. Ekede*[52]the instrument in question gave authority to certain persons proclaiming them 'owners and caretakers of ten fishing villages.' Plaintiffs pleaded it 'to show their proprietary rights in, and control over, the land in dispute.' The issue turned on whether this instrument was admissible without registration. The Court of Appeal held it was a registrable instrument and since it was not registered, it could not be pleaded or admitted in evidence. Edozie JCA stated:

> The document…*ex facie* is inadmissible since it affects land and is not registered. To determine whether or not it is admissible, one has to consider the purpose for which it was tendered and the use into which it was put…. I take the view that Exh D is not pleadable and is inadmissible in evidence and the learned trial Judge was wrong to have relied on it in awarding title of the land in dispute to the respondents.[53]

The foregoing is indicative of how the courts have viewed issue regarding registration of title and its effect if not so registered. This has been the position since the decision of the court in the case of *Ogunbambi v. Abowab*[54] which was an action for damages for trespass in which the issue of title was raised, both parties traced their claim to title through the Oloto family being the original owners of the land. The plaintiff claimed by virtue of direct purchase from the Oloto family in 1929 by his predecessor in title while the defendant relied on a conveyance by the Oloto family in 1948. Learned counsel for the defendant submitted that the defendant had a better title than the plaintiff and challenged the admissibility of a "purchase

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[49] E. Chianu
[50] [1999] 3NWLR (Pt. 593) 82.
[51] Ibid at 105.
[52] [1991]4 NWLR (Pt. 186) 569.
[53] Ibid at 581-83
[54](1951) 13 WACA 222.

receipt" as any proof of title on the grounds that it was an instrument within the meaning of section 2 of the Land Registration Ordinance[55] and had not been registered. In its judgment, the West African Court of Appeal held *inter alia:* that the purchase receipt, being an unregistered instrument, was not admissible to prove title, but was admissible as an acknowledgement of the payment of money. This principle of law has been followed by the courts of this country in very many cases right from the Supreme Court.[56]

To circumvent this hurdle trial lawyers have accepted as a matter of practice to regard the deed of title as a receipt of payment of money whether or not same was prepared by a legal practitioner. And the courts have never hesitated in according the document such status and rendering same admissible. Where counsel have picked hole in and objected to the tendering of such an unregistered deed of transfer of title as a receipt of payment not prepared by a legal practitioner same has not found favour with the courts. This is so because there is no law as yet that prevent a non-legal practitioner from given receipt that evidenced the payment of money for a piece of land.

In *Olowolaramo v. Umechukwu*[57]The appellants commenced an action against the respondent at the High Court of Kwara State claiming entitlement to a right of occupancy over four plots of land situate behind Anglican Church, beside the New Market, Baboko, Ilorin; a declaration that the right of occupancy granted to the respondent was null and void; perpetual injunction and damages for trespass. After the completion of pleadings, the appellants opened their case in the course of which they sought to tender three purported title documents which were duly pleaded as receipts in evidence. This was opposed by counsel for the respondent on the grounds that the documents were registrable instruments within the provisions of the Land Instruments Registration Edict No. 6 of 1995 of Kwara State and that since they were not registered, they were inadmissible.

The second ground of objection was that the documents were prepared by a non-legal practitioner for fees contrary to the provisions of the Land Registration Law, and Land Instruments (Preparation) Law of Kwara State, 1994. In its ruling, the trial court sustained the objection and declined to admit the documents as exhibits. The court placed reliance on its previous ruling delivered in another case in 1996.

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[55] Cap 108.

[56]*Akingbade* v. *Elemosho* (1964) 1 All NLR 154; *Fakoya* v. *St. Paul's Church, Shagamu* (1966) 1 All NLR 74; *Obijuru v. Ozims* (1985) 2 NWLR (Pt.6) 161*; Reg. Trust of The Apostolic Faith Mission v. James* (1987) 3 NWLR (Pt.61) 556; *Adesanya* v. *Otuewu* (1993) 1 NWLR (Pt.270) 414; *Agwunedu v. Onwumere* (1994) 1 NWLR (Pt.321) 375; *Okoye v. Dumez (Nig.) Ltd.* (1985) 1 NWLR (Pt.4) 783; *Usman v. Garke* (1999) 1 NWLR (Pt.587) 466; *Alaya* v. *Akinduro* (1998) 4 NWLR (Pt.545) 311; *Alimi* v. *Obawole* (1998) 6 NWLR (pt. 555) 591; *Lawal v. Ejidike* (1997) 2 NWLR (Pt.487) 319; *Paye* v. *Gaji* (1996) 5 NWLR (Pt.450) 589; *Nnubia* v. *A.-G., Rivers State* (1999) 9 NWLR (Pt.593) 82.

[57](2003) 2 NWLR (Pt. 805) 537

Being dissatisfied with the ruling of the trial court, the appellant appealed against it to the Court of Appeal. Unanimously allowing the appeal, the Court appeal speaking through Onnoghen, JCA (as he then was) stated:

> There is no law against a non-legal practitioner issuing receipts acknowledging payments of money. In the instant case, the argument of counsel for the respondent that the receipts being sought to be tendered by the appellants are void because they were not issued or written by a legal practitioner is not supported by any law.[58]

In *Enadeghe v. Eweka*[59], the land situates at No 147, Ekenwan Road Ogieka Quarters, Benin City, Edo State was acknowledged to originally belong to late Prince George Eweka. The appellant was the plaintiff in the High Court of Edo State where he commenced an action claiming that the land had been sold to him by the deceased before his death under the customary law. He prayed the court for declaration, damages for trespass and perpetual injunction restraining further trespass. The respondent who is a son of the deceased, also claimed ownership of the land, basing his claim of ownership on gift made by his father inter vivos to him. He counterclaimed for declaration of title, damages for trespass, perpetual injunction and a declaration that the deed of conveyance registered thereon was irregularly granted and order setting same aside, the trial court dismissed appellant's claims and granted the counterclaim. Dissatisfied, the appellant filed an appeal to the Court of Appeal contending that the trial court erred by granting the counterclaim in view of the evidence led by both parties.

The Court of Appeal held that a purchase receipt does not convey title or legal estate in a landed property to the purchaser. However, it can be tendered as proof of actual purchase or indeed exchange of money between the vendor of land and the purchaser. In the instant case, where there was evidence that the disputed land was sold to the appellant coupled with the purchase receipt, the trial court erred by dismissing the appellant's claims.

It is gratifying to note here that there are instruments, which have been held by the courts as not registrable. A mere receipt that evidences payment of money and pleaded as such is not registrable.[60] A deed of release is not a registrable instrument.[61] Unexecuted deed of assignment is not an instrument.[62] Vendor recorded transactions of payments in instalments for land was held by the Supreme Court not to be instruments.[63] An instrument which vested in trustees all the real estate of a family was held by the court not to be registrable

[58] pp.552, para H; 554, para. D
[59][2015] All F W L R (Part795) 328 @335 paras B-C
[60] see Elegbede v. Savage (1951) 20 NLR 9, 10.
[61] See Adeyemo v. Ida [1998] 4 NWLR (Pt. 546) 504.
[62] See Adefisayo v. Makinde [1969] 1 NMLR 213; Udolisa v. Nwanosike (1973) 3 ESCLR 653, 658.
[63] See Elegbede v. Babalola [1969] 1 NMLR 311,315.

instrument.[64] An instrument used by a community to share its land among its members is not registrable.[65] So also are estate contracts which is statutorily exempted from registration by Regulation 4 (a) of the Land Registration (Agreement Exemption) Regulation 1944 applicable in Lagos State and Federal Capital Territory but not states created out of the old Western Region.[66]

Despite the above exceptions, the effect of the law on non-registration has not edified the legal profession as the law on registration of instrument accord same status to all documents that are registrable if they are not registered be they prepared by legal practitioner or not. If such document of title prepared by legal practitioner is allowed by law to be admissible in evidence subject to registration, and the one prepared by a non-legal practitioner is not countenanced at all by the court as to be of any evidential value, a lot may have changed in the conveyancing practices in Nigeria. Every conveyancer would seek for a legal practitioner to prepare such document and would spare no moment in ensuring that a qualified legal practitioner prepares the document of title upon payment of the proper remuneration.

6. Instrument Laws and the Land Use Act

At the commencement of the Land Use Act there was the initial period of anxiety over whether the statute had swept away the various instrument Registration Laws applicable in the States of the federation. It would seem that in view of the provisions of section 48 of the Land Use Act the Instruments Laws survived the Act and cannot be validly said to have been repealed. Section 48 of the Act enacts:

> All existing laws relating to the registration of title to or instrument, in land or the transfer of title to or any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intendment.

Section 48 of the Act is therefore a saving provision for the instruments laws. These laws survive but subject to any alterations, additions or omissions that would bring them into conformity with the provisions of the Act or its general intendment. The provisions of the Instruments Laws could be conveniently accommodated within the general scheme of the Land Use Act. There are no provisions of the Laws which are manifestly irreconcilable with the provisions of the Land Use Act, such that the former cannot be conveniently modified in order to be accommodated within the general scheme of the latter. Thus, it would safely be submitted that the Instruments Laws still apply as usual but to the extent that their application

[64] See Gbenebiche v. Awosika (1952) 14 WACA 101, 105.
[65] See Ajao v. Adigun [1993] 1 NSCC 321.
[66] See section 2 of LIRL.

is not inconsistent or at variance with the Land Use Act or its general intendment.[67]

Omotola has however suggested that instruments registration should be discarded with or abandoned. He suggested that the registration of instruments could safely be substituted with a register of consent.[68] To justify this proposition, he submitted that:

> Under the present practice all transactions in law are being required to receive the Governor's approval. A register of consent can then be kept which will serve all the advantages derived under Instruments Registration. Instrument Registration does not guarantee title. Consent registration also will not guarantee title, priority will be as on the date of the Governor's consent is received and of course a document without the Governor's consent will be invalid and cannot be used as evidence of a right in land.[69]

This is a very sleek and flawless suggestion. But respectfully, it would seem more plausible and practical to require all instruments already registered to be converted to be certificate of occupancy which is state-backed. Those instruments not yet registered would then constitute appropriate documents upon which the state ought to base or premise the issuance of the certificate of occupancy. This is the only process in which the intention of the draftsman, namely, that the certificate of occupancy would replace or supersede all other registrable instruments would become reality. The state can compel observance of this proposition by activating its powers under section 46 of the Act to make regulations in matters relating to transfer by assignment or otherwise however of any rights of occupancy whether statutory or customary including the condition applicable to the transfer of such right to persons who are not Nigerians; and to determine by such regulation the form to be used for any document or purposes.[70]

The provisions evidently carry with them the power of the state to determine the scope and status of registration of instruments under the Land Use Act, and the forms and procedure which they must take by way of regulations made pursuant to the Act. The state is also thus empowered to determine the relevant or necessary documents in relation to all forms of alienations as defined under the Act or any other transactions relating to land which are recognised by the provisions of the Act.[71]

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[67]Umezulike, I. A. ABC of Contemporary Land Law in Nigeria (Revised and Enlarged Edition) Snaap Press Nigeria Ltd. (2013),424.

[68]Omotola J. A. Essays on the Land Use Act, (1980) 22. Cited in Umezulike, I. A. ABC of Contemporary Land Law in Nigeria (Revised and Enlarged Edition) Snaap Press Nigeria Ltd. (2013),425.

[69] Ibid.

[70]Umezulike, I. A., 426.

[71] Ibid.

It is worthy to note with respect to the admissibility of instrument under the various land instruments registration law vis-à-vis the Evidence Act that the Supreme Court had held in the case of *Benjamin &Ors vs. Kalio*[72] that the Land Instrument Registration Law which requires that all Land instrument must be registered is subject to the Evidence Act 2011 which is the main law on evidence. The Evidence Act 2011 being a federal law supersedes the Land Instrument law which is a State law. This decision was beginning to get the attention of land conveyancers and litigants when what seem to be a contrary decision was subsequently rendered by the same Supreme Court in the case of *Abdullahi v. Adetutu*[73] restoring the pre-eminence given to Land Instrument Registration Laws in regulating admissibility of a registered instrument in land. In other words, once a registered instrument is unregistered in line with the requirement of Land Instrument Registration Laws of the various States such instrument would not be admitted. This in a way has demonstrated that the Land Instrument Registration Law did not only survive the Land Use Act it has also survived the Evidence Act!

7. Conclusion

The popular aphorism in Nigeria is that there is no smoke without fire. No non-legal practitioner would prepare any document of transfer of title or interest in land without getting a brief from the purchaser/vendor as the case may be. The days of shielding the purchaser/vendor from the effect of section 22 of the Legal Practitioner Act, from the adverse effect of patronising a non-legal practitioner with regard to preparing an instrument relating interest in land should be over and done with. For the reason that there is now greater access to information to verify who is, and who is not, a legal practitioner. There is the need to amend the relevant laws to reflect this reality.

[72] **[2018] 15 NWLR (Pt.1641) 38;** (2018) All F.W.L. (Pt. 920) 1.
[73] (2019) 293 LRCN 30-31.