

EXAMINATION OF THE RIGHTS OF WOMEN TO PROPERTY IN NIGERIA*

Abstract

The place of women in property in Nigeria is an unsettled issue between the law and customs. In other words, related legislation seems to grant equal rights of property to men and women. On the other hand, the various traditional practices influenced by patriarchal hegemonies restrict women access to property. Therefore, re-examination of proprietary rights of women is prerequisite for proper integration into the diverse Nigerian customs. Thus, the aim of this article was to examine the rights of women to property in Nigeria. The scope was also tailored accordingly. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures from the physical and e-libraries. It was observed that the concept of property is so vast and apply to women variously. Also, that the law has provided some leverages to women to assume possessory right of properties without discrimination, though the law is not fully implemented because of customary bottlenecks. It was recommended that the National and State Houses of Assembly should modify customary laws to meet the repugnancy test and codify them to be reliable tools in the Nigerian legal system. Also, every stakeholder should apply customs in line with the decisions of final courts with regards to proprietary rights of women. The significance of this article is that it has helped to reshape Nigerians' dispositions towards dogmatic cultural heritage which favours patriarchal hegemony. Also, spurs up the court to considering modalities for efficacious judgments on proprietary rights of women.

Key words: Property, proprietary, right, women, alienation, custom, equal right

Introduction

Nigeria being a multi tribal society,¹ the customs of the people are varied as to the number of ethnic societies. This also affected the proprietary rights of women. Proprietary rights are enjoyed in different ways which include by acquisition of land. For instance, a person may acquire land in Nigeria through any of the following means:

- (a) Family land under Customary Law by allotment or apportionment; (b) Allocation of State land; (c) By purchase; (d) By gift *inter vivos*; (e) By inheritance.

Proprietary right in relation to land is rooted in the common law principle that the owner of a land owns everything in the land and can use same for any purpose. In the case of *Birma & Ors v. Damcida & Anor*,² it was held that:

It is settled in our land tenure law that ownership of property is a complete and total right over a property. The owner of the property is not subject to the right of another person, as long as he has the full and final right to put the property or make use of it anyway, including planning of the land, if the need arises. The owner of a property can use it for any purpose; material or immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose detrimental to his personal or

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¹ Meaning that Nigeria is a heterogeneous society with different cultural components.

²*Birma & Ors v. Damcida & Anor* (2016) LPELR-41610 (CA).

*proprietary interest. In so far as the property inheres in him nobody can say anything. The property begins with him and ends with him – Nasir v. Abubakar (1997) 4 NWLR (Pt. 497) 32, Attorney General of Lagos State v. Attorney General of the Federation (2003) 12 NWLR (Pt. 833) 1.*³

This chapter aimed at appraisal of the proprietary rights of women in Nigeria under the law and the various customs in Nigeria, whilst focusing on the statutory interventions on the proprietary rights of women as recognized and upheld by the courts. This chapter also seeks to examine the provisions of existing local and international laws that deal with proprietary rights of women and progress each law has made in combating ugly trend of discrimination in this milieu.

Meaning of Proprietary Rights and related Concepts

The word proprietary signifies a relationship to a proprietor or owner; of, relating to, or involving ownership. Its variance includes proprietary interest, proprietary lease, and proprietary rights.⁴The difference between proprietary rights and personal rights is that proprietary rights are rights in relation to one's own property, which consists of things, assets, belonging in possession and ownership rights of a person or entity. The personal rights are relating to the body of the concerned person which may affect his /her character, liberty, and status in the society.⁵

Proprietary right is closely related to possessory right. This is because a person holding physical possession of an object is in a fairly strong position. Such a position has been consistently protected by English law. The only title that can defeat a possessory title is a proprietary title. Therefore, giving credence to the old adage, 'possession is nine-tenths of the law'.⁶

Proprietary right is also closely related to property. The meaning of 'property' varies in context and function in a particular context. Property is a socially constructed concept; and former perceptions of property as a monopolistic right of control and exploitation have long since been eroded by wider conceptions of the public good. Proprietary right relates to right in a private property. The three basic elements or features of private property are (1) exclusivity of rights to choose the use of a resource, (2) exclusivity of rights to the services of a resource, and (3) rights to exchange the resource at mutually agreeable terms.⁷

The Concept of Property

The notion on approach to property is often misconstrued. Basically, property does not have a univocal definition, though arguable. Property may be defined in layperson's terms and in economic, social and legal terms.⁸ To the layperson or unprofessionally understanding, property is tangible or physical things like land, house, car, book, etc. In the economic sense property is a means of distributing wealth. To the socialists, property is a means of protecting liberty and autonomy of things as relating to persons like asserting my car, their house, our land, etc. this socialists' perspective of property is closely related to the legal perspective.

³*Birma & Ors v. Damcida & Anor (supra)* Per Abiru, J.C.A (P. 60, paras. B-F).

⁴ D Wex, *Property and Real Estate Law* (Oxford University Press, 2019) 48.

⁵ 'Proprietary Rights and Related Concepts', *Online Database* <<https://www.google.com/search?q=what+is+proprietary+rights&client=firefox-b-d&sxsr=ALiCzsZHM3sIdqmH->> accessed on 8th October, 2022.

⁶ P Seisin, 'Ownership in Real and Personal Property' *Online Database* <<https://lawexplores-possession.com/possession-seisin-and-ownership...>> accessed on 5th October, 2022.

⁷*Ibid.*

⁸*Ibid.*

To the liberalists and some philosophers, over attachment to overemphasis on property is meaningless because there is no moral justification for a man born naked. Thus, Underkuffler moderated this view by asserting that “the idea of a man’s coconuts being his property makes no sense if he is stranded, irrevocably, on an uninhabited island; property has meaning only when human relations, or conflicting claims among people, are at stake.”⁹ Gold expatiated further as follows:

... it is no good for me to claim ownership of a pen against the demands of a martian because the martian does not live by and under the rules imposed by our society. The pen is an instantiation of a norm – the exclusive rights of use and possession – that we, as members of this society at this time, have agreed or acquiesced in following. When we grant property rights to each other – assuming that we grant property rights for certain nonarbitrary reasons – we do so on the basis of one or more ways of valuing the object or the individual to whom we grant the rights. That is, the determination of who should get which rights to which object depends on how we, in society, value the object – as beautiful, as a luxury, or as a commodity – and the recipient of the right – as deserving, as having highly developed tastes, or as a consumer.¹⁰

This philosophic voyage unravels the legal appraisal of property. Therefore, the idea is that property is not considered in isolation but in the context of the owner’s relationships with others. With this dynamic understanding of the concept of property based on societal norms, the paradigm shift rests on property being attached to person(s) based on the person(s)’ interrelationship with other persons.

However, the phenomenon of property is broader than the mere tangible and possessory. Matthews espouses that:

The ambit of ‘property’ had broken its bounds, and there was no stopping it. Debts ... became ‘property’, governed by the same principles. So did rights of action. Intellectual property was invented, and subsumed into the property framework. Shares in companies, confidential information and goodwill, all were taken under the property wing. In the twentieth century, we see energy as property and other forms of information, and maybe personality and image as well.¹¹

⁹ L S Underkuffler, ‘The Idea of Property: Its Meaning and Power,’ In C Rotherham ed., *The Modern Law Review* (Vol. 67, No. 3, Oxford University Press, 2004) 534-6.

Underkuffler notes that there is apparent inconsistency in takings cases in American law and property rights are sometimes strongly protected.

¹⁰*Ibid.*, p.6.

¹¹ D Matthew, *Property Law: Prevailing of Legal Interest* (London School of Economics and Political Science, LSE, 2021) 49.

Sequel to afore given, further exploration would be taken to examine property as a thing, property as a commodity, property in relation to other and property in relation to right. The wide view of property as a ‘thing’ was glorified by Blackstone in about two centuries ago. He described property rights as comprising: “that sole or despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”¹² Also, Paulsson affirmed that property must be a physical object and categorically stated that debts, patent and copyright were not property.¹³ In Madison’s insightful adumbration on property, he maintains as follows:

*In the former sense, a man’s land, or merchandize [sic] or money is called his property. In the latter sense, a man has property in his opinions and the free communication of them. He has a property of peculiar value in his opinions and the free communication of them. He has property of peculiar value in his religious opinions and in the profession and practice dictated by them ... He has property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have property in his rights.*¹⁴

But with legal revolution in the contemporary society, it becomes an untenable argument that property confers absolute dominion. Therefore, Blackstone’s theory is subjected to heated scrutiny as property rights are subject to restrictions. For instance, on what may be built, where, and how the rights may or may not be enjoyed.

Despite the long existence of this broader concept of property and the legal revolution, there are scholars who still uphold the narrower definition of property as a thing.¹⁵ For Gray, property is not a thing but a concentration of power over things,¹⁶ but for Penner property is what the average citizen thinks it is, i.e. as the right to a thing.¹⁷ He argues that the concept of property as a bundle of rights in defining relationship among people lies at the root of property’s identity crisis, and not in defining property in isolation.

According to Penner:

Property is a creature of its environment, the legal system. We make a mistake if we think we can just wrestle it to the ground,

¹² R P Burns, ‘Blackstone’s Theory of the “Absolute” Rights of Property’ *Online Database* <https://heinonline.org/hol-cgi-bin/get_pdf.fcgi?urlnr54> accessed on 12th October, 2022.

Blackstone defines the absolute *right of property* as consisting in the individual’s “free use, enjoyment, and disposal of all his acquisitions. Blackstone’s famous definition is somewhat wordy: “The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. For him, there is nothing which so generally strikes the imagination, and engages the affections of mankind, as the *right of property*; or that sole and despotic dominion. The third absolute *right*, inherent in every Englishman, is that of *property*: which consists in the free use, enjoyment, and disposal.

¹³ J Paulsson, *3D Property Rights* (Diva Condominium & Co., 2007) 37.

¹⁴ J Madison, *Concise Introduction to Property Law* (LexisNexis, 2011) 19.

¹⁵ S Cretney, *Family Law in the Twentieth Century: A History* (Oxford University Press, 2003).

¹⁶ Gray and Gray, *Elements of Land Law* (5th ed., Oxford University Press, 2020) Property as ‘self-defining fact’ (Gray and Gray) pertains to the legal assessment of ‘title’, which denotes an owners right or entitlement to assert his ‘estate’ in land. *Entick v Carrington*, per Chief Justice Camden held that the property of ‘every man so sacred that no man may step foot on his neighbour’s close’.

¹⁷ J E Penner, *Property Rights: A Re-Examination* (Oxford University Press, 2000) 105.

*take its measurements and fingerprints, and set it on its way again, satisfied that we have done all we need to understand it. We must be ecologists, and see how it behaves in its environment, interacting with its fellow creatures. But we cannot go too far in the opposite extreme, either. Property is not just its interaction with others. If we are inattentive to the categories themselves, these interactions may make us lose a sense of where property ends and other legal concepts begin.*¹⁸

Penner opined that the social and legal dimensions of property are intertwined and the consequence of going too far in the opposite extreme should be avoided. In his view, legal concept of property should be developed to cover the right to property which is thus a right to a liberty to dispose of the things one owns as one wishes within a general sphere of protection. The duty in rem of property correlates with the right to a liberty to dispose of property, not to a specific right in the value of property, or a right to any goal one may set on one's use of it, and so on.¹⁹

Penner goes further to answer the puzzle, if property is a thing and property rights are rights to things, what 'things' can be property?

*Only those 'things' in the world which are contingently associated with any particular owner may be objects of property; as a function of the nature of this contingency, in theory nothing of normative consequence beyond the fact that the ownership has changed occurs when an object of property is alienated to another.*²⁰

However, Penner's analysis helps to clarify various attributes of property but is unlikely to withstand the tide of change that has been creating new objects of property, many of which are not tangible things.²¹ It is therefore necessary project the established classification of property as real or personal. Real property is land. Personal property (or personality) is all the property that is left once real property has been subtracted. Personal property may be chattels real (principally leasehold interests in land) or chattels personal (all other personal property). Chattels personal are divided into choses in possession and choses in action. Choses in possession are tangible, movable things, and are called 'goods' when they are the subject of a sale.²² Proprietary interests in tangible personal property are defined in terms of possession and ownership. Unlike choses in possession, choses in action are intangible and cannot be physically possessed.²³ Examples of choses in action are debts, shares in companies and intellectual property. A chose in action is a property interest that can be enforced only through legal action.

In *National Provincial Bank Ltd v. Ainsworth*, Lord Wilberforce held that property right must be definable, identifiable by third parties, capable in its nature of assumption by third parties,

¹⁸*Ibid*, 109.

¹⁹*Ibid*.

²⁰*Ibid*, 119.

²¹*Ibid*.

²² W S Holdsworth, *An Historical Introduction to the Land Law* (The Lawbook Exchange Ltd, 2013) 331.

²³*International News Service v. Associated Press*, per Justice Brandeis, the fact that a product had a value for which others were willing to pay was not sufficient to endow it with the legal attribute of property.

and have some degree of permanence or stability.²⁴ This may have been helpful in distinguishing between property and personal rights, but it promotes the obsolete image of property as something merchantable. Property need not necessarily be alienable, nor does it have to be tangible.

Finally, the concept of property is as well expanded to include rights against others or rights in, to or over a thing. Property is not just as a thing or a relationship between a person and a thing, but as rights against others, in or over things. That is to say, property can be seen as defining the obligations of persons with respect to a tangible or intangible object. In this parlance of property being seen in terms of rights against others, rather than as a thing of commercial value, the concept of property rights in the human body seem to have a legitimate acceptance.²⁵

This clarity is tenable in the sense that property interest indicates not necessarily that the holder owns something, but that someone owes him an obligation. As different from contractual rights which are enforceable against a particular person or persons (rights *in personam*), property rights are enforceable against the whole world (rights *in rem*). In Matthews' view of property:

The common law sees property as essentially negative, the right to exclude others from something, or from some aspect of something. This negative right may be absolute, as for example 'This is my pen'. I can exclude everyone from everything in relation to it. Or it may be limited – even isolated as in for example 'I have a right to light over (your) land'. I can prevent you from building in a certain way on your land. Sometimes the negativity imposes a positive obligation on another person, as in 'You owe me £10'.²⁶

Proprietary Rights of Women as the Necessity to Economic Development

Generally, women carry out farming on land to both feed their families and make a living, yet they have no say in how it is managed. The common African saying perfectly embodying women's struggle to own and inherit property throughout is stemmed from the belief that "land belongs to the man, the produce in it to the woman."²⁷ This belief recently gained public detest and condemnation in the event that happened to Helene Tiro.

Helene was living in the small village of Guinkin, Côte d'Ivoire. For more than 20 years, Helene lived on and cultivated the land that provided for her, her husband, and their seven children. But when her husband was killed in election violence in 2011, everything was in comatose for her. In accordance with custom, their property was given to his extended family, leaving her with no place to go and no food for her children. She had no legal recourse either. In fact, women in Côte d'Ivoire did not have equal rights to immovable property or equal administrative

²⁴*National Provincial Bank Ltd v. Ainsworth*, per Lord Wilberforce.

²⁵ N Brownlie, 'Principles of Public International Law Community Care Practice and the Law Construction Contracts' *Online Database*<http://www.google.com_proprietaryrights_genderbase_edu.research/6768tvo9n0....comopd56f8hs> accessed on 10th October, 2022.

²⁶ K Matthew, 'Offshore Construction Law and Practice: Problems of Normativity Research on Selected Legal Issues of E-Business Rules and Rule-Following,' In L Xion, Ed. *Mixed Legal Systems* (Knowledge Base Corporation, 2013) 91-2.

²⁷N Arekapudi, N L Almodóvar-Reteguis, and J Nyamao, *Women's Property Rights: The Key to Economic Development* (NP, 2020) 72.

authority over assets during marriage. Fortunately for women who have been subjected to such patriarchal hegemony, a reform to the Marriage Law in 2019 overhauled these discriminatory provisions. Spouses were granted equal rights to manage and dispose of marital property.²⁸ However, the heinous practice is not completely curbed. Accordingly, the World Bank Group has released an empirical research to expose the fact that two-fifths of countries worldwide limit women's property rights.²⁹ In 19 countries, women do not have equal ownership rights to immovable property. In 44 countries, male and female surviving spouses do not have equal rights to inherit assets. Thus, reforms related to property ownership and inheritance are the most difficult to pass, especially in countries where social norms dictate how land is acquired and passed to future generations.³⁰

The fact that proprietary right of any individual is the key to economic development, denial of women of such right is incontrovertible evidence of holding back their empowerment for socioeconomic development. When women have access to assets, including those they are already the primary caretakers of, the communities thrive. It increases their ability to start and grow businesses by giving them the collateral they need to secure credit. It allows them to invest in their families, changing outcomes for their children. Perhaps most importantly, it ensures that they can live with agency and dignity.³¹

Therefore, equality in property rights acknowledges women as the important drivers of economic growth and development. This is because economic opportunity practically impacts much across borders. The Sustainable Development Goals (SDGs) recognize the critical role that secure land rights play in alleviating poverty, fortifying food security, and enhancing women's empowerment and gender equality. Notwithstanding, women still face legal and customary barriers that impede their land and inheritance rights in more than half the countries in the world, and women are especially vulnerable to losing their land since their access often depends on their relationship with a surviving male relative.³²

A woman's proprietary right to land ensures her secure rights to the land that she cultivates. As such, the household status is increased in terms of better health outcomes, improved nutrition, increased incomes and a host of other benefits. It is imperative to tenaciously secure women's proprietary rights for sustainable and socioeconomic development.

Alienation Rights

Alienation rights are not restricted to only males but females are inclusive in the enjoyment of such right. It is statutory right for all adults both men and women. However, customary alienation may be restrictive and discriminates against women as already examined under inheritance right. Alienation is specifically concerned with the statutory provisions. Thus, it is imperative to critically examine the elements and intricacies of alienation for proper sensitization of women and in order to fully equip them with the process and technicalities in alienation.

²⁸*Ibid.*

²⁹ The World Bank Group, *Women, Business and the Law* (World Bank Groups, 2020).

³⁰ SDGs, 'Women's Rights and Impacts in Economic Development' *Online Database* <<https://datawrapper.dwcdn.net/drSDp/2/>> accessed on 5th October, 2022.

³¹*Ibid.*

³²C O'Holleran, *Land Rights for Women: On Paper and in Practice* (Masmile Publishers, 2022).

Legal Instruments for Alienation includes deed of conveyance. However, in Awojugbagbe's case, it was held that section 22 of the Land Use Act does not prohibit contract agreement, like the contract of sale, before alienation.³³ Thus, there are three types of contracts:

- (a) Oral Contract.
- (b) Open Contract.
- (c) Formal Contract.

Nature of interests that may be alienated include:

- (a) Bare land
- (b) Developed land
- (c) Structures, for instance buildings

Legal Instruments Regulating Alienation

These are not restricted to the following:

- (a) Land Use Act
- (b) Interpretation Act
- (c) Wills Act,
- (d) Survey Act/Law;
- (e) Town and Country Planning Law;
- (f) Capital Transfer Tax Act/Law;
- (g) Auctioneer Law;
- (h) Probate (Resealing) Act
- (i) **Case Law:** The judge's interpretation of Common Law rules and statutes constitute a source of law in Nigeria. Depending on the status of the court, decisions of higher courts are binding on the lower courts.
- (j) **Registration of Titles Law:** This is applicable only to some parts of Lagos, that is, the Island, the old Colony of Lagos.
- (k) **Stamp Duties Act/Law:** The Stamp Duties Law is applicable to every State and the Federal Capital Territory providing, *inter alia*, the procedure for the stamping of documents. Stamp Duty statutes are tax laws meant to generate revenue for the government. Stamp duty on land within the control of the State is paid to State Internal Revenue Board and that under Federal is paid to the Federal Inland Revenue Service. Stamping of documents should be within 30 days of the execution of the document thought it may be stamped out of time, which will attract penalty. The amount payable is either a flat rate or *ad valorem*, that is, according to the value of the transaction. The effect of an unstamped document is that such a document cannot be tendered in evidence and it cannot be accepted for registration.
- (l) **Land (Instrument) Registration Law:** Each State of the Federation has its own Land (Instrument) Registration Law. This law establishes the Land Registry Office usually located in the State capital and regulates the procedure for the registration of instruments. The object of the law is to protect title by preventing the suppression of documents. It is the instrument that will be registered and not the title. The law defines an 'instrument' for the purpose of registration and it further provides for the effect of non-registration which sometimes may mean that the document is inadmissible in evidence to prove title or void. Furthermore, non-registration of a registrable instrument will affect the priority rights of the document against other competing documents. The registration of an instrument constitutes a constructive notice of the content of the document.

³³*Ibid.*

- (m) **Property and Conveyancing Law, 1959:** This law is applicable in the States of the old Western and Midwestern Region of Nigeria except Lagos. The law adopts the English Law of Property Act, 1925 (not being a Statute of General Application) which consolidates all the laws relating to conveyance in England. This law is the principal law on conveyance in the States where it is applicable.
- (n) **The Conveyancing Act And Law of Property Act, 1881 And 1882:** These are English Statutes of General Application applicable in the States of old Northern Region, the Eastern Region and a part of Lagos. They constitute the principal Acts on Conveyance in those States. The Conveyance Act, 1882 is re-enacted by the Law of Property Act of the UK, 1925. Our courts take judicial notice of the provisions of both statutes, where applicable. In *Ihekwoaba v. Acb and Ors*,³⁴ particularly at 626, the court took judicial notice of both statutes, where applicable.
- (o) **The Constitution of the Federal Republic of Nigeria, 1999 (as amended):** Section 43 of the 1999 Constitution provides for the right to acquire and own immovable property anywhere in Nigeria. Section 44 provides for compulsory acquisition of property. That section also provides for the payment of compensation to the owners of moveable/immovable property, which has been compulsorily acquired.

Alienation of Right Subject to Land Use Act

The Land Use Act is the most important statute on land ownership in Nigeria. It came into force in 1978. Before then, land ownership in Nigeria was in private hands. Basic factors which gave rise to the enactment of the land use Act in relation to alienation right were as a result of:

- (a) The inflexibility in the rules of alienation.
- (b) The uncertainty and insecurity of title under the customary land tenure.
- (c) Alienation and conferment of valid title to purchasers were cumbersome, erratic and not capable of precise definition.
- (d) The Land Tenure Law which had a single system recorded limited success as land was not easily marketable.
- (e) There was the problem of land profiteering and speculation which posed constraint to development.

By virtue of the Land Use Act, ownership of all urban land in a State is vested in the Governor who holds the land in trust for the people. Whereas, all lands in Abuja, within the coverage of the Federal Capital Territory, is vested in trust of the President of Nigeria who delegates same power to the Minister of Federal Capital Territory. By virtue of Section 5(a),³⁵ the Governor, or the Minister of F.C.T, as the case may be, is empowered to grant Right of Occupancy for a term of the years upon an application for that purpose made by a prospective landowner. The courts are precluded from questioning the Governor's powers to grant rights of occupancy.³⁶ With the introduction of the Act, it became mandatory to obtain Governor's consent for any alienation. By Section 22 of the Land Use Act, it shall not be lawful for a holder or a deemed holder of a statutory right of occupancy to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without a prior consent of the Governor first had and obtained.³⁷

³⁴*Ihekwoaba v. ACB and Ors* (1998) 10 NWLR (Pt. 571) 590.

³⁵ Land Use Act, 1978.

³⁶ Land Use Act, 1978, section 47.

³⁷*Kachalla v Banki* (2001) 10 NWLR (Pt. 721) 4342.

That is to say, any person who has interest in land and has right of occupancy cannot successfully alienate same without first sought and obtained the consent of the Governor of a state or Minister of F.C.T. to do so. In this case, the right of alienation is subject to the statutory consent. Therefore, absence of the statutory consent makes any acclaimed alienation void.³⁸ Section 26 of the Act renders the transaction void. In other words, where consent is not obtained before such alienation, as envisaged by Section 22 of the Land Use Act, the entire transaction is void *ab initio*.³⁹

Alienation Rights in relation to Family Land or Customary Alienation

Basically, family land belongs to the descendants of a common progenitor. It can be created by conveyance *inter vivos*. Purchase of family land with family money is by declaration in a Will or in intestacy. The concept of alienation is the incidence of modernization, colonization and English law. It was not indigenous to the Nigerian customary land tenure system.⁴⁰

In communal land, the general rule is that a member is only entitled to possession of a portion allocated to him. He cannot alienate or transfer family land. Family land can, however, be transferred with the consent of the family head and principal members. Alienation without the consent of the family head is void but voidable without the consent of principal members.⁴¹

Therefore, restriction as to lands subject to customary law is that before one can alienate, the law is that one needs consent of the head and principal members of the family. In other words, if one has been apportioned a particular parcel of land, one cannot alienate the land without the head and principal members of the family.

Statutory Restrictions to Alienation Right

The statutory restrictions to alienation right affect all adults, that is to say it is not restricted to women. These statutory restrictions are connected to the power of attorney, contract of sale and Wills. In the case of Wills, alienation is said to be successful and title is fully passed when beneficiary obtains probate from the probate registrar.

Power of attorney, on the other hand, is used only as an interim device to protect the interest of a client pending when the deed of assignment is executed, stamped and registered for proper alienation. A power of attorney is and will continue to remain an agency relationship. This is the principle that is restated in *Ude v Nwara*, where Nnaemeka-Agu held that:

*A power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers, limits, charges or alienate any title to the donee.... It is only after, by virtue of the power of attorney, the donee leases or conveys the property, the subject of the power, to any person including himself then there is alienation.*⁴²

Furthermore, regarding the contract of sale of land, it creates a binding relationship between the vendor and the purchaser and the law is that the death of either or even both parties does not vitiate the transaction. The personal representatives of either of the parties can perform or enforce all the rights acquired under the contract to perfect the alienation process. A contract of sale of land or other interests therein is an estate contract being an agreement to alienate the

³⁸ International Textiles Ind. (Nigeria) Ltd. v. Aderemi (1999) 8 NWLR (Pt. 614) 268.

³⁹ Savannah Bank Ltd v Ajilo (*supra*).

⁴⁰ Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417, particularly at pages 444 and 448.

⁴¹ Ekpendu v. Erika (1959) 4 FSC 79.

⁴² *Ude v Nwara* (*supra*), per Nnaemeka-Agu.

land and not alienation of the land itself and is, therefore, registerable in some States and not registerable in other States. It all depends on the location of the property.

Finally, it must be noted that alienation follows from lands with title documents. That is to say, it is only land that has Right of Occupancy or Certificate of Occupancy, or the necessary requirements for obtaining same are fulfilled, that can be alienated. Thus, the holder of such title document, who wants to transfer the title must first had and obtained the consent of the Governor or the F.C.T. Minister as the case may be.⁴³

However, per Onu JSC in the case of *Awojugbagbe Light Ind Ltd. v Chinukwe*, has held that:

*...although Section 22 of the Land Use Act prohibits the alienation of a right of occupancy without the consent of the Governor first had and obtained, it does not prohibit agreement so to do for preparation for the purpose of effecting such alienation.*⁴⁴

Thus, contract of sale of land remains valid as instrument for conveying interest in land or property pending the completion of the alienation process. It is not the alienation instrument itself.

Conclusion and Recommendations

Nigeria is yet to appreciate that legal rights are also accruable to women and the drawbacks include legal, extra-legal, socio-economic, religious, and cultural impediments. Also, the different actors in Nigeria are yet to assimilate the judgments delivered by the various courts upholding the proprietary rights of women particularly at Onitsha.

It is therefore recommended that, to fill the perennial lacuna in knowledge gap, the National and State Houses of Assembly should modify customary laws to meet the repugnancy test and codify them to be reliable tools in the Nigerian legal system. Also, every stakeholder should improve customs in line with the decisions of final courts with regards to proprietary rights of women. The significance of this study could not be overemphasized as Nigerian legal system vis-à-vis the women's right to property could be compared with the international best practices and no longer tagged as 'barbarous'.

From the foregoing, it is further recommended that the civil society organizations, governments, and the private sector can work collaboratively to address important issues facing women in relation to alienation right and other proprietary rights. Additionally, as women agitate for right to acquire land and other proprietary interest, they should be properly informed to also embrace the risks and challenges associated with these rights which the men counterpart are successfully contending with.

⁴³ The requirement of consent is regulated by sections 22 and 26 of the Land Use Act, 1978. Section 22 of the Act provides that: "It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained." Section 26 of the Act provides that: "Any transaction or any instrument which purports to confer on or vest in any person interest or right over land other than in accordance with the provisions of this Act shall be null and void." In *Ishola Williams v Hammon Properties* (1988) 1 NWLR (Pt. 72) 481, it was held that if it is an agreement to assign, the consent of the Governor is not required.

⁴⁴*Awojugbagbe Light Ind Ltd. v Chinukwe (supra.)*, per Onu JSC.