

PROOF OF TITLE TO LAND IN NIGERIA: RE-APPRAISING JUDICIAL DOCTRINE AND REMEDYING REGULATORY AND ADMINISTRATIVE GAPS

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Abstract

Land remains Nigeria's most litigated species of property, and over five decades the courts have developed an elaborate doctrine on the proof of title. This article doctrinally re-appraises a selection of leading decisions to restate the recognised methods of proving title, assess the reformative effect of the Land Use Act 1978, and identify the regulatory and administrative gaps that presently limit the protection of genuine owners. Adopting a strictly doctrinal method, the article relies principally on primary sources, namely statutes and law reports, supplemented by secondary academic commentary. Although the courts have achieved doctrinal clarity on the methods of proving title, significant gaps persist in the forensic verification of documents of title, the reconciliation of documentary and equitable interests, and the protection of owners whose original title documents are removed by a trusted relative. These gaps bear directly on contemporary practice challenges given the prevalence of intra-family land disputes and forged instruments before Nigerian courts. The study finds that judicial doctrine is sound but is not matched by corresponding administrative and forensic safeguards. The article recommends digitisation of land registries, mandatory forensic verification of contested instruments, specialised land divisions of court, cross-checking of applications for replacement survey plans, and enhanced public legal literacy on the safekeeping of title documents.

Keywords: *Proof of title; Land Use Act; Certificate of Occupancy; traditional history; forgery; doctrinal research.*

1. INTRODUCTION

Land occupies a singular position in Nigerian social and economic life, functioning simultaneously as an object of familial inheritance, a means of agricultural and commercial production, and a store of accumulated wealth.¹ Its significance is sharpened by the plurality

¹B O Nwabueze, *Nigerian Land Law* (Nwamife Publishers, Enugu, 1972) 1-15.

of tenurial regimes operating concurrently across the country: customary tenure, rooted in community and family-based allocation, coexists with the received English doctrines of estates and equitable interests, and both operate within the overarching statutory framework introduced by the Land Use Act 1978.² This plurality has generated a correspondingly complex jurisprudence on how title to land is established, contested, and defended in litigation—a jurisprudence whose internal coherence and practical adequacy are the central subject of this article.

The landmark decision is *Idundun v Okumagba*³ in which the Supreme Court identified the five recognised methods of proving title to land that have structured Nigerian land litigation for half a century. Since that decision, Nigerian courts have applied and refined these methods across a vast and still-growing body of reported authority. Yet the decisions reviewed in this article reveal that doctrinal clarity in the methods of proof has not been matched by equivalent clarity—or practical adequacy—in the administrative and forensic infrastructure through which those methods are given evidential effect in court. Claimants and defendants alike routinely tender survey plans, receipts, and certificates of occupancy whose authenticity is never independently verified before trial, leaving courts to resolve, often years after the relevant transaction, disputes that turn on handwriting, dates, and discrepancies in land area that a timely forensic or administrative check at the registry stage could have resolved conclusively. The Land Use Act, intended to simplify land administration by vesting radical title in the Governor of each state,⁴ has paradoxically added a further layer of complexity by introducing the requirement of Governor's consent to alienation and by creating statutory rights of occupancy whose relationship with pre-existing customary and equitable interests remains a fertile source of litigation.

This article adopts a strictly doctrinal methodology, relying principally on reported decisions of the Nigerian appellate courts, the provisions of the Land Use Act 1978 and the Evidence Act 2011,⁵ and secondary academic commentary where relevant to contextualise the case law.⁶ The doctrinal method is appropriate to the objectives of the article, which are questions of legal

²Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004 (LUA).

³(1976) 9-10 SC 227.

⁴LUA (n 2) s 1.

⁵Evidence Act 2011, Cap E14, Laws of the Federation of Nigeria (as amended).

⁶T Hutchinson and N Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 *Deakin Law Review* 83.

content, doctrinal coherence, and judicial reasoning rather than questions of social fact, and are therefore most suitably addressed through case analysis, statutory interpretation, and comparative reading of judicial reasoning across time. The article examines, in turn, the five methods of proving title as applied in the reviewed decisions (Sections 2 to 8), identifies the regulatory and administrative gaps which those decisions disclose (Section 9), presents findings (Section 10), draws conclusions (Section 11), and proffers recommendations (Section 12).

The study is of relevance to several constituencies: to the Bench, as a collation of the doctrinal thread running through the cases reviewed; to legal practitioners, as a guide to which method of proof is best suited to particular factual circumstances; to policymakers and land registry administrators, as a foundation for the reform recommendations advanced; and, crucially, to the ordinary Nigerian landowner, whose practical vulnerability to document fraud and family betrayal is the central concern animating those recommendations. The article proceeds on the premise that the integrity of Nigeria's land title system depends not only on the quality of its judicial doctrine—which, as this article confirms, is generally sound—but also, and perhaps more significantly, on the quality of the administrative and forensic infrastructure that surrounds that doctrine.

2. THE RECOGNISED METHODS OF PROVING TITLE

The starting point of any doctrinal survey of Nigerian land law on the proof of title is the Supreme Court's decision in *Idundun v Okumagba*⁷ in which Fatayi-Williams JSC (as he then was) identified five distinct methods by which title to land may be established: (i) proof by traditional evidence; (ii) production of documents of title duly authenticated; (iii) acts of ownership extending over a sufficient length of time, numerous enough and positive enough to warrant the inference that the person exercising them is the true owner; (iv) acts of long possession and enjoyment of the land; and (v) proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such adjacent land would also be the owner of the land in dispute. The Court emphatically established that these five methods are independent of one another, and that success on any single method is, in principle, sufficient to establish title without the necessity of proving the remaining four.

⁷(1976) 9-10 SC 227, 246-250, per Fatayi-Williams JSC (as he then was).

The principle of independence established in *Idundun v Okumagba* has proved to be among the most consequential contributions of that decision to Nigerian land law. It prevents a court from dismissing a well-grounded claim merely because the claimant has not satisfied all five methods simultaneously, and it correspondingly prevents a claimant with a weak claim under one method from shoring up that weakness by accumulating equally weak evidence across the remaining methods. The principle was reaffirmed in *Nwosu v Udejaja*⁸, *Anabaronye v Nwakaihe*⁹, and, more recently, in *Olusi v Saidi*¹⁰, each of which confirms that documentary title constitutes an independent and sufficient basis for a declaration, provided that the document is genuine, validly executed, and properly connects the grantor's chain of title to the land in dispute. These decisions reinforce the proposition that a claimant who is in possession of an authentic and properly traced documentary title need not supplement that documentary claim with evidence of long possession or traditional history.

Documentary title has attracted the closest judicial scrutiny in recent years, partly because of the increasing sophistication of document forgery and the administrative failures that have enabled competing instruments to be created over the same parcel of land. The requirement that a document 'properly connect' the grantor's title to the disputed land imposes a burden not merely of producing the document but of tracing the transactional chain—from the original grantor, through each successive disposition, down to the current claimant. A break in this chain, caused, for example, by a missing deed of assignment, an unregistered conveyance, or an alienation effected without the mandatory Governor's consent, may defeat a claim that would otherwise have succeeded on documentary evidence alone. Courts have on occasion shown willingness to bridge apparent gaps through cumulative secondary evidence, but the governing rule remains that a document of dubious provenance or questionable authenticity will not sustain a declaration of title however compelling the surrounding circumstances may appear.

The third and fourth methods—acts of ownership extending over a sufficient period, and acts of long possession and enjoyment—are frequently pleaded and proved alongside each other, as each reinforces the probative force of the other. Acts constituting ownership include the erection of permanent structures, the planting of economic trees, the leasing of portions to third

⁸(1990) 1 NWLR (Pt 125) 188, 199.

⁹(1997) 1 NWLR (Pt 482) 374.

¹⁰(2016) LPELR-CA/L/272/2014.

parties, the payment of ground rents and rates, and the exercise of rights of exclusion against strangers, provided always that these acts are clearly referable to the specific disputed parcel and are exercised with the requisite degree of openness and notoriety over a sustained period. The fifth method—proof of possession of connected or adjacent land—is the least frequently relied upon as a sole ground of proof but assumes particular relevance in cases involving extensive rural parcels whose outer boundaries have never been formally demarcated.

3. TRADITIONAL HISTORY AND ITS LIMITS

Where a claimant relies on traditional evidence as the primary method of proving title, Nigerian courts have consistently required a credible, coherent, and unbroken account of the root of title. The origin of that account—whether in the founding, settlement, grant, or gift under which the claimant's ancestor first came to occupy and own the land in question—must be specifically pleaded and credibly established through the testimony of persons with direct or transmitted knowledge of the relevant community's land history. In *Akinloye v Eyiola*¹¹, it was accordingly held that a bare assertion of ownership, unsupported by a coherent narrative of original acquisition by settlement or grant, cannot ground a declaration of title. This requirement of coherence is not a mere procedural formality but reflects the forensic reality that a claimant who cannot explain how land came to be owned by his ancestors is in a weakened position to resist a competing narrative advanced by an opponent, however improbable that competing account may itself be. The insistence on a traceable and credible root of title is therefore an indispensable safeguard against the manufacture of ancestral narratives for forensic purposes.

The difficulty of competing traditional histories—a difficulty endemic to Nigerian land litigation, where both parties frequently trace title to different sets of founding ancestors over the same parcel—was authoritatively addressed by the Privy Council in *Kojo II v Bonsie*¹², a decision of Ghanaian provenance that has been received and consistently applied as persuasive authority in Nigeria. The Privy Council directed that where two conflicting traditional accounts cannot be reconciled by direct evidence, trial courts should test each account against the more recent acts of ownership and possession of the respective parties, on the reasoning that recent, observable, and contemporaneous conduct is a more reliable indicator of which traditional account is more probably accurate than the unaided memory and oral testimony of any single

¹¹(1968) NMLR 92.

¹²(1957) 1 WLR 1223, 1226-1227.

witness. This principle has proved especially valuable in adjudicating disputes between communities or rival family branches, each of which may sincerely, though mistakenly, believe in the accuracy of its own ancestral account. The *Kojo II v Bonsie* test effectively makes traditional history and acts of ownership complementary and mutually reinforcing rather than independent alternatives.

*Owoade v Omitola*¹³ and *Awodi v Ajagbe*¹⁴ extend this insistence by holding that the root of title must not only be pleaded with specificity but proved with sufficient particularity to establish the chain of devolution from the founding ancestor to the present claimant without material gaps or unexplained interruptions. A claimant who pleads derivation of title from a named ancestor is bound to establish, through credible evidence, that the named ancestor did indeed found or acquire the title asserted, and that the chain of inheritance or devolution from that ancestor down to the present claimant is traced and established at each link. The more time that has elapsed since the founding event, and the greater the number of generational links in the chain, the more important becomes corroborating evidence of consistent possession and user to fill any gaps in the oral or documentary account.

*Aromire v Awoyemi*¹⁵ demonstrates that where traditional evidence alone is equivocal or uncertain—as may occur, for instance, where the founding events are so remote that living witnesses cannot testify with personal knowledge—numerous and positive acts of ownership exercised over a substantial period without challenge or protest from the opposing party may independently fortify, or in appropriate cases entirely substitute for, the traditional account. The cumulative weight and consistency of acts of ownership, stretching across generations without interruption, can provide a basis for a declaration of title that is more reliable, in evidential terms, than a contested or imperfectly recalled oral history. This principle is of practical importance in the substantial proportion of Nigerian land disputes in which formal documents of title do not exist, and in which the relative strength of the parties' competing traditional narratives cannot be definitively assessed without reference to their respective conduct on the land.

¹³(1988) 2 NWLR (Pt 77) 413.

¹⁴(2014) LPELR-24219(SC).

¹⁵(1972) 1 All NLR (Pt 1) 101.

4. IDENTITY AND BOUNDARIES OF THE DISPUTED LAND

A recurrent and frequently decisive defect in Nigerian land suits is the failure to establish, with reasonable certainty, the precise identity of the parcel to which the claim relates. The legal requirement is not that boundaries be described with mathematical exactitude, but that the claim and the evidence adduced in support of it enable the court to identify the specific parcel with sufficient certainty to grant effective and enforceable relief. *Piaro v Tenalo*¹⁶ holds that a claim for a declaration of title must fail outright where the land cannot be identified with reasonable certainty, even where the claimant's underlying title is not otherwise in genuine doubt, because a court cannot grant meaningful relief in respect of a property whose extent has not been adequately established. This principle is grounded in the practical reality that a judgment of title which fails to identify the land in question with precision provides no effective protection against future encroachment, competing claims, or further disputes about boundary lines.

*Elias v Omo-Bare*¹⁷ reinforces *Piaro v Tenalo* by holding that inconsistencies in the description of the land's dimensions or boundaries across a claimant's own documents may in themselves defeat the claim, even where each document individually appears regular and unobjectionable on its face. The court's reasoning is that a claimant who tenders contradictory descriptions of the same parcel across different instruments—whether in terms of acreage, boundary beacons, or adjacent land-owners—invites an adverse inference against the genuineness or accuracy of at least one of those instruments. *Ajibulu v Ajayi*¹⁸ carries this principle further by establishing that where material discrepancies exist between a claimant's survey plan and other instruments of title tendered in support of the same claim, and where those discrepancies are not adequately explained, the court is entitled to treat them as destructive of the claim. Taken together, these decisions impose a significant and non-delegable duty of documentary consistency on claimants in land matters: the survey plan, the deed of assignment, the certificate of occupancy, and any other title instruments must cohere with one another in their description of the land, both as to extent and as to boundary.

¹⁶(1976) 12 SC 31.

¹⁷(1982) 5 SC 25.

¹⁸(2014) 2 NWLR (Pt 1392) 483.

*Owie v Igghiwi*¹⁹ underscores the primacy of the survey plan as the principal forensic instrument by which the court ascertains and demarcates the extent of the land in issue. A survey plan that is duly authenticated by a licensed surveyor and filed with the relevant state survey registry is presumed to be accurate in its description of the parcel to which it relates, and any challenge to that accuracy must be supported by evidence—typically expert evidence from another licensed surveyor—rather than by mere assertion. The practical significance of this principle is sharpened by the increasing prevalence, in Nigerian land litigation, of cases in which parties tender competing survey plans that bear materially different land areas and different boundary descriptions for what is asserted to be the same parcel of land. Where a respondent produces a survey plan that describes a larger or differently-bounded parcel than that shown in the claimant's plan, and where both plans bear the outward indicia of authentication, the court is left to resolve the authenticity dispute through inference and probabilistic judgment in the absence of any reliable administrative cross-check. This is a significant gap in the current framework, which Section 9 below examines in detail.

5. BURDEN AND STANDARD OF PROOF

Civil claims to land in Nigeria, as with all civil claims, are determined on the balance of probabilities. The trial court is enjoined to assess the totality of the evidence on both sides, placing everything in the scale of justice and determining in favour of the party whose evidence is more cogent, credible, and logically consistent. This approach was authoritatively stated by the Supreme Court in *Mogaji v Cadbury Nigeria Ltd*²⁰ and has been consistently followed in all subsequent land cases. The formulation is deceptively simple in expression but demands a highly disciplined evidential analysis in its application. The court is not entitled to count the number of witnesses or the volume of documents on each side; it must assess the quality, consistency, internal coherence, and logical compatibility of each piece of evidence, having regard to the totality of the record, and determine which party's version of events is the more probably accurate.

The rule that a claimant seeking a declaration of title must succeed on the strength of his own evidence, and cannot take advantage of any weakness or absence of evidence in the defendant's case, is a fundamental and consistently applied principle. It was affirmed by the Supreme Court

¹⁹(2005) 5 NWLR (Pt 917) 184.

²⁰(1985) 2 NWLR (Pt 7) 393, 431.

in *Kyari v Alkali*²¹ and *Atanda v Ajani*²², and most recently restated in *Adeniran v Adio*²³ which confirms that the court determines competing claims to land by identifying which party has adduced the more credible and internally consistent evidence of title, and not simply by determining which party has exposed the greater weaknesses in the opposing case. The practical significance of this rule cannot be overstated: a claimant whose own evidence is internally inconsistent, or whose chain of title is broken, cannot save the claim by pointing to corresponding or greater inconsistencies in the defendant's documentation. Each party's evidence must stand and fall on its own merits, subject to the court's assessment of the comparative weight of the two bodies of evidence.

A foundational clarification of the architecture of the burden of proof in land cases is provided by *Onobruchere v Esegine*²⁴ where the Supreme Court held that the burden of proof is not a free-floating concept but is specifically tied to the particular issues joined between the parties on the pleadings. Where a fact is admitted, or where a party is by law presumed to be in possession of title, no burden of proof arises in respect of that specific admitted or presumed matter. This means that a party in long, undisturbed, and open possession of land may assert a possessory title without being required to prove the precise historical root of that possession, at least unless and until the opposing party adduces credible evidence sufficient to raise a genuine and live issue of ownership. The interaction between this principle and the equitable protection of purchasers in possession—discussed in Section 8 below—creates an important and practically significant zone in which long, open, and unchallenged possession may provide a robust, if rebuttable, foundation for resisting a paper title asserted by a party who has never been in actual occupation of the land.

6. THE LAND USE ACT, STATUTORY RIGHTS OF OCCUPANCY AND REVOCATION

The Land Use Act 1978 introduced a transformative alteration to the framework of land tenure in Nigeria. By section 1 of the Act, all land comprised in the territory of each state is vested in the Governor of that state, to be held in trust and administered for the use and common benefit of all Nigerians in accordance with the Act's provisions. The effect of this vesting provision is

²¹(2001) 11 NWLR (Pt 724) 412.

²²(1989) 3 NWLR (Pt 111) 511.

²³(2024) SC.147/2019.

²⁴(1986) 1 NWLR (Pt 19) 799, 805-806.

not to be understood as a blanket expropriation of all pre-existing land rights; rather, as the Supreme Court clarified in *Nkwocha v Governor of Anambra State*²⁵, the Act operates by recasting existing proprietary rights within a new statutory framework, transforming them into statutory or customary rights of occupancy which the Act expressly recognises and protects, subject to its procedural and substantive requirements. The Act thus does not destroy the existing landscape of land rights but superimposes a regime of governmental oversight, trusteeship, and consent over all transactions.

*Abioye v Yakubu*²⁶ is the definitive authority confirming that the Land Use Act did not operate to extinguish existing rights in land as at its commencement. Rights existing at the commencement of the Act—whether founded in customary tenure, documentary conveyance, or any other recognised source of title—are deemed to continue as rights of occupancy within the Act's framework unless and until they are lawfully revoked by the Governor in the exercise of the powers of revocation expressly conferred by the Act. This is an important protection for pre-existing landholders: it means that the mere enactment of the Act in 1978 did not render their established titles worthless, unenforceable, or incapable of being vindicated in litigation. They are simply required, if challenged, to establish the nature and root of the right of occupancy which the Act deems them to hold, and to demonstrate that this right has not been lawfully revoked.

Where a holder of a statutory right of occupancy seeks to alienate that right by assignment, mortgage, sublease, or other disposition, the Act imposes the cardinal requirement of prior written consent from the Governor, in the absence of which any purported alienation is rendered void. *Savannah Bank Ltd v Ajilo*²⁷ is the locus classicus establishing this rule with unambiguous clarity: the Supreme Court held that any alienation of a statutory right of occupancy effected without the prior consent of the Governor is null and void and incapable of passing any legal or equitable interest in the land to the purported transferee. The practical consequences of this rule for the Nigerian land market have been extensive and, in significant measure, adverse to the orderly functioning of that market. The consent requirement has become a chronic source of administrative bottleneck, bureaucratic delay, and litigation in its own right, as parties who have transacted without first obtaining the requisite consent face the

²⁵(1984) 6 SC 362.

²⁶(1991) 5 NWLR (Pt 190) 130.

²⁷(1989) 1 NWLR (Pt 97) 305.

risk of having their transactions voided long after completion, often in circumstances where the land has been further developed or resold and where the original transacting parties are no longer available.

*Adagun v Satumari*²⁸ reaffirms the principles established in *Savannah Bank* (n 27) and underscores that the broad statutory powers vested in the Governor in respect of land must at all times be exercised within the four corners of the enabling legislation. The Governor's trusteeship of land for the benefit of all Nigerians imposes correlative obligations of procedural regularity and substantive justification whenever those powers are exercised, whether by granting, revoking, or endorsing rights of occupancy. Revocation, in particular, must comply strictly with the statutory grounds and procedural requirements prescribed by the Act. *Osho v Foreign Finance Corporation*²⁹ confirms that revocation is only lawful where it is justified by one of the specified grounds of overriding public interest and where the prescribed procedures have been observed. An arbitrary, procedurally defective, or otherwise unauthorised revocation is susceptible to judicial review and may be set aside, thereby restoring the right of occupancy to the holder from whom it was purportedly revoked.

7. THE CERTIFICATE OF OCCUPANCY AS EVIDENCE, NOT CONCLUSIVE PROOF, OF TITLE

A Certificate of Occupancy (C of O), issued under section 9 of the Land Use Act, constitutes the principal documentary evidence of a statutory right of occupancy and is the primary instrument of formal land title for urban land in Nigeria. The Supreme Court settled the important and frequently litigated question of the evidentiary weight of a C of O in *Olohunde v Adeyoju*³⁰ holding that while a Certificate of Occupancy constitutes *prima facie* evidence of title and of the right of its holder to exclusive possession of the land described therein, it does not constitute conclusive proof of ownership and is not immune from challenge by a party asserting a better or prior title. A C of O may therefore be overridden where the challenging party establishes a superior title through any of the recognised methods—including documentary evidence predating the certificate, a credible and well-supported traditional history, or acts of long and exclusive possession inconsistent with the certificate-holder's claimed ownership. The qualification that a C of O is *prima facie* rather than conclusive proof

²⁸(2024) SC.438/2015.

²⁹(1991) 4 NWLR (Pt 184) 157.

³⁰(2000) 10 NWLR (Pt 676) 562.

of title is not a weakening of the certificate as a legal instrument but reflects the foundational principle that an administrative act of issuance cannot, of itself, create ownership where none previously existed or extinguish a title whose validity predates and overrides the certificate.

The practical significance of the *Olohunde v Adeyoku* principle (n 30) is considerable in cases where a Certificate of Occupancy is shown to have been issued over land already the subject of an earlier, valid, and unrevoked customary or documentary title held by a different person. In Nigerian land practice, it is not uncommon for state governments to issue Certificates of Occupancy to new applicants over land in respect of which earlier rights of occupancy or customary grants have never been formally extinguished or revoked, resulting in competing certificates over the same parcel—each bearing the outward indicia of a valid, government-issued title document. Where both parties hold apparently valid Certificates of Occupancy, the court must investigate the underlying history of each certificate—including the administrative files, the allocation or conversion process, and the pre-existing rights of all persons in occupation—to determine which of the two instruments represents the superior, and legally unimpeachable, right of occupancy.

The principle that a C of O is *prima facie* rather than conclusive evidence also has significant implications for the burden of proof. A party who relies on a Certificate of Occupancy as the primary instrument of his title enjoys an evidential presumption of ownership which the opposing party must discharge by establishing a better or prior title through credible evidence. Where the opposing party fails to discharge this burden, the certificate will be decisive in favour of the holder. Where the burden is discharged, the certificate must yield to the superior title thus established, and the court may, in an appropriate case, order the revocation or cancellation of the certificate as part of the relief granted. The interplay between the C of O presumption and the five methods of proving title thus creates a nuanced and contextually sensitive framework that demands careful evidential management by legal practitioners on both sides of a land dispute.

8. EQUITABLE INTERESTS, POSSESSION, AND THE PROTECTION OF PURCHASERS

A distinct and practically significant strand of the reviewed case law addresses the protection of equitable interests in land, arising principally from the conduct of purchasers who have paid the purchase price and been placed in actual possession of land before all necessary formalities—registration of title, Governor's consent, formal conveyancing—have been

completed. *Awojugbagbe Light Industries Ltd v Chinukwe*³¹ affirms the foundational equitable principle that equity will enforce a beneficial interest in land notwithstanding an outstanding registration defect or other incomplete legal formality. The court reasoned that equity regards as done that which ought to be done, and will not permit a vendor who has received the purchase consideration and given the purchaser possession of the land to subsequently rely on the absence of a registered instrument or a formal certificate as grounds for resisting the purchaser's claim to a beneficial proprietary interest. The recognition of this equitable interest is important as a corrective to the rigidity that could otherwise result from a strict insistence on documentary and registered title as the sole basis of ownership.

*Ogunleye v Oni*³² and *Dauda v Bamidele*³³ extend and confirm this equitable protection by holding that a purchaser who has paid the purchase price and been let into actual possession of land thereby acquires an equitable interest that the court will protect even against a party asserting a superior documentary or registered legal title. The rationale is that possession, combined with payment of the full purchase consideration, gives rise to a constructive trust under which the vendor holds the legal title on behalf of the purchaser pending completion of the legal formalities. In the interim, the purchaser's equitable interest takes priority over any subsequently created legal interest of which the subsequently dealing party has notice, whether actual or constructive. *Agboola v UBA Plc*³⁴ extends this reasoning further, holding that an unregistered, but registrable, instrument may in itself create an enforceable equitable interest in favour of a purchaser for value without notice, reinforcing the principle that registration operates to perfect and publicise a title rather than to create the underlying proprietary right.

The interaction between the equitable protection of purchasers and the Land Use Act's mandatory consent requirement has generated its own unresolved tension. Where a purchaser in possession holds an equitable interest under a contract of sale that has not received the Governor's consent required by the Act, courts have not consistently stated whether the equitable interest itself is voided by the absence of consent or whether equity will intervene to protect the purchaser against the vendor's reliance on that non-compliance. The strict *Savannah Bank* (n 27) position—that the absence of consent renders the transaction null and void—sits uncomfortably alongside the equitable protection extended to bona fide purchasers for value

³¹(1995) 4 NWLR (Pt 390) 379.

³²(1990) 2 NWLR (Pt 135) 745.

³³(2000) 9 NWLR (Pt 671) 199.

³⁴(2011) 11 NWLR (Pt 1258) 375.

who are in actual possession. This tension constitutes one of the more significant unresolved doctrinal issues in Nigerian land law and is one to which Section 9(e) below returns.

*Balogun v Akanji*³⁵ introduces an important qualification by holding that while possession raises a rebuttable presumption of ownership, that presumption is displaced where the opposing party adduces credible evidence of a superior legal title. The rebuttable character of the possessory presumption means that it provides no protection to a party whose possession is shown to be precarious, permissive, or otherwise referable to a right that is inferior to the right asserted by the opposing claimant. *Amakor v Obiefuna*³⁶ completes the picture by confirming that a person in lawful possession may maintain an action in trespass even against the true legal owner of the land, save only where the owner holds an immediate right to possession superior to that of the party in occupation. This principle is of direct practical relevance to disputes between family members over a residential property in which one sibling has been in continuous occupation while the other, armed with a documentary title obtained under circumstances not wholly transparent, asserts a right to immediate and exclusive possession.

9. REGULATORY AND ADMINISTRATIVE GAPS IN THE EXISTING FRAMEWORK

(a) Absence of a forensic verification standard for contested instruments

The cases reviewed in this article disclose a significant and practically important gap in the evidential framework for adjudicating land disputes: none of the decisions lays down a clear or binding protocol for the forensic authentication of contested documents of title. Courts are left to resolve disputes about the genuineness of survey plans, receipts, and certificates of occupancy largely through the probabilistic weighing process articulated in *Mogaji v Cadbury Nigeria Ltd* (n 20)—placing the evidence of both sides in the scale of justice and determining which is more probably accurate. While this standard is appropriate to the generality of civil claims, it is demonstrably inadequate for detecting sophisticated document forgery, particularly where an original title document has been removed by a person with domestic access to the title-holder's premises, leaving only secondary evidence—photocopies, certified true copies, or oral testimony—to be weighed against a forged original now in the hands of the opposing party.

³⁵(1988) 1 NWLR (Pt 70) 301.

³⁶(1974) 3 SC 67.

The institutional inadequacy of a purely probabilistic approach to contested title documents is compounded by the reality that Nigerian courts are not equipped, without expert assistance, to determine questions of ink composition, paper dating, laser printing characteristics, or the microscopic features of handwriting that distinguish originals from sophisticated copies. The absence of any practice direction, either from the National Judicial Institute or from the respective State High Courts, requiring the appointment of a forensic document examiner in land suits where forgery is specifically and credibly pleaded, represents a serious gap in the court's armoury against document fraud. Where forgery is alleged and the stakes are high, the outcome of the litigation should not be determined exclusively by the court's unaided assessment of demeanour and documentary appearance; forensic expertise is both available and necessary, and the current framework provides no systematic mechanism for deploying it.

(b) Unresolved tension between documentary title and equitable possessory interest

While *Olohunde v Adeyoju* (n 30) correctly establishes that a Certificate of Occupancy is not conclusive proof of title, and while the equitable line of authority beginning with *Ogunleye v Oni* (n 32) protects possession coupled with payment of purchase price, the decisions reviewed do not articulate a consistent hierarchy for resolving cases in which both parties hold facially valid, but mutually inconsistent, documents purporting to relate to the same parcel of land. The result is a significant degree of legal unpredictability for litigants: the outcome of any particular dispute between a registered holder and an equitable possessor depends too heavily on the specific facts presented to the trial court and too little on any principled rule of priority that the parties could identify in advance.

This unpredictability creates an elevated incentive for the opportunistic creation of competing documents: a party who knows that a court will balance the probabilities afresh on each new set of instruments has a rational incentive to procure additional—and, in some cases, fabricated—documents in support of a questionable claim. The introduction of a statutory statement of the priority of competing land interests, analogous to the registration priority rules in English land law, would provide a principled and predictable framework for resolving such disputes and reduce the incentive for the documentary fraud that currently afflicts so much Nigerian land litigation.

(c) Inconsistent treatment of discrepancies in land area and survey dates

Although *Owie v Ighiwi* (n 19) and *Piaro v Tenalo* (n 16) emphasise the centrality of accurate land identification, and *Ajibulu v Ajayi* (n 18) treats material discrepancies in boundary

descriptions as potentially fatal to a claim, none of the reviewed decisions articulates a structured analytical framework—or any rebuttable presumption—for resolving the scenario in which two competing survey plans bear different dates, different land areas, and different boundary descriptions for what is asserted to be a single parcel of land. Such a presumption—that, for example, a survey plan bearing a demonstrably later date and a materially larger land area than the claimant's original survey plan should be presumed to be the less reliable of the two instruments—would provide trial courts with a workable starting point for the increasingly common scenario of competing plans of doubtful provenance.

The gap is acute because the administrative mechanism that should prevent competing plans from being created in the first place—cross-referencing any new application for a survey plan against existing registered plans before authentication—is inconsistently observed across Nigerian state survey registries. Fraudulent survey plans bearing inflated land areas or altered boundary descriptions can and do enter the evidentiary record with the outward appearance of duly authenticated instruments, and courts are left to detect the fraud through inference rather than through direct administrative validation. This is an administrative failure of the land registry system, not a doctrinal deficiency of the courts, and it requires an administrative remedy, as elaborated in the recommendations below.

(d) Limited guidance on intra-family land disputes involving alleged document removal

None of the cases reviewed squarely addresses the evidential consequences that flow from a family member's surreptitious removal of original title documents for the purpose of asserting a false or exaggerated claim. This fact pattern is far from rare in Nigerian succession and family property disputes: it arises frequently in urban settings where several members of a family share occupancy of the same residential premises and one member, discovering the location of original documents of title, removes those documents to gain an evidential advantage in anticipated litigation. The genuine title-holder is left with only secondary evidence—photocopies, bank statements recording purchase consideration, testimonial recollections—to be weighed against the forged original in the hands of the dishonest family member.

The absence of settled doctrinal guidance on this scenario leaves genuine title-holders without a clear evidential pathway to vindicate their title. A structured judicial approach—recognising, for instance, that where a claimant establishes to the court's satisfaction that original documents were removed by an identified family member with known access to the title-holder's premises, secondary evidence of those documents should be admitted and accorded the same probative

weight as the originals, absent credible explanation from the party now in possession of those originals—would substantially address this gap. In the absence of such guidance, the courts are left without a principled analytical framework for cases that are both practically common and evidentially complex.

(e) Slow judicial and administrative response to the Governor's consent requirement

Decades after *Savannah Bank Ltd v Ajilo* (n 27), the requirement of Governor's consent continues to generate disproportionate litigation relative to its regulatory value. The decisions reviewed disclose no coherent judicial effort to reconcile the strict consent rule with the equitable protection extended to purchasers in possession under *Agboola v UBA Plc* (n 34) and related authorities. The consequence is that parties who have transacted in good faith—who have paid the full purchase price, been let into possession, and remained in occupation for many years—face the serious risk that their transactions will be voided on the ground that the consent was never obtained, notwithstanding that the administrative system responsible for facilitating and expediting the consent process has itself failed to make that process accessible, affordable, or timely. This is the one gap, among those identified in this article, that has a directly jurisprudential as well as administrative dimension: it calls for a clear and authoritative judicial reconciliation of the strict statutory rule with the equitable protection of bona fide purchasers, as well as administrative reform to make the consent regime genuinely workable.

10. FINDINGS

The doctrinal review conducted in this article yields the following five principal findings. First, the five methods of proving title identified in *Idundun v Okumagba* (n 7) continue to command consistent judicial application across all levels of the Nigerian appellate court system and remain, in principle, doctrinally adequate to determine the full range of land title disputes presented before the courts; no deficiency has been identified in the methods themselves, and their independence from one another provides the courts with a flexible and contextually sensitive framework that can accommodate the diverse circumstances of Nigerian land disputes.

Second, the practical vulnerability of genuine landowners in Nigeria arises not from any inherent deficiency in the five methods of proof but from the absence of a reliable, enforceable, and institutionally grounded mechanism for authenticating the documents through which those methods are put into evidence at trial. The problem is, at its heart, administrative and forensic

rather than doctrinal: a doctrine that is sound in its formulation becomes inadequate in its application where the instruments on which proof depends cannot be verified as genuine before they are tendered in court.

Third, the Land Use Act's consent and revocation requirements, though doctrinally settled through a now substantial body of authoritative case law, continue to generate unnecessary and avoidable litigation because of poor public awareness of the legal consequences of non-compliance, inconsistent and occasionally corrupt administrative practice at the sub-national level, and the absence of a principled and authoritative judicial framework for reconciling the strict statutory consent rule with the equitable protection of bona fide purchasers for value.

Fourth, the equitable line of authority protecting possession coupled with payment of purchase consideration, while doctrinally well-grounded and socially important, does not yet provide a fully worked-out framework for resolving disputes between two parties each armed with facially valid, but mutually contradictory, documents, one of which is later shown to have been fabricated. In such cases, the outcome depends too heavily on judicial discretion and circumstantial inference, and too little on principled rule, to achieve the degree of legal certainty that the importance of land as an asset demands.

Fifth, and finally, none of the decisions reviewed provides adequate specific guidance for the protection of a genuine title-holder whose original documents have been removed or destroyed by a trusted family member with access to the title-holder's premises. This is a gap of considerable practical significance, given the demonstrated prevalence of intra-family document fraud in Nigerian land disputes, and it calls for a structured judicial approach to the admission and weighing of secondary evidence in cases where the removal of original documents by a family member has been credibly established.

11. CONCLUSION

The Nigerian judiciary has, across the decisions examined in this article, constructed a coherent, principled, and generally sound doctrinal architecture for the proof of title to land. The five methods established in *Idundun v Okumagba* (n 7) remain adequate to determine most land disputes; the equitable protection of purchasers in possession provides a meaningful corrective to the undue rigidity that would result from an exclusive reliance on formal documentary title; and the Land Use Act's regime of statutory rights of occupancy, despite its

practical complications, provides a nationally uniform foundation for land tenure. The quality of the doctrine is not, on the whole, in question.

The gaps identified in this article are, for the most part, not failures of judicial reasoning. They are, more accurately characterised, as regulatory and administrative lapses: deficiencies in the forensic and institutional infrastructure that surrounds the courts and the land registry system, which together determine both the quality of the evidence presented to the courts and the reliability of the instruments on which titles are founded. The primary causes of injustice in Nigerian land disputes are forged instruments that go undetected, competing survey plans that should never have been issued, administrative consent processes that have failed to keep pace with the volume and complexity of land transactions, and the exploitation of family relationships to misappropriate original title documents. None of these causes is amenable to purely judicial correction; all require reform that operates upstream of the courtroom, at the points of land registration, document authentication, and public education.

Closing these gaps is not simply a technical legal or administrative matter. It is a social and economic imperative. Land is the primary store of wealth for millions of Nigerian families, and the integrity of the systems by which title to that wealth is established, recorded, and protected determines, in significant measure, whether that wealth can be put to productive use, inherited across generations, and defended against fraudulent attack. The recommendations that follow are directed at this practical and urgent objective.

12. RECOMMENDATIONS

The following recommendations are advanced in the light of the findings above, each intended to produce practical and measurable improvement in the protection of genuine landowners in Nigeria and in the overall integrity of the land title system.

First: state land registries across Nigeria should adopt mandatory digitisation and centralised electronic indexing of all registered survey plans and Certificates of Occupancy. A publicly accessible online portal should enable any court, legal practitioner, or member of the public to verify, in real time, the existence, date, assigned area, boundary description, and current registered holder of any instrument of title before that instrument is relied upon in litigation or in a proposed land transaction. Such a system would render redundant the principal administrative mechanism by which forged or conflicting instruments presently enter the evidential record undetected. The Federal Government's National Land Digital System,

announced in 2024 and reinforced through the National Land Registration and Documentation Programme, provides the appropriate institutional vehicle for establishing these standards on an interoperable, national basis, and its full implementation should be treated as a matter of legislative priority.

Second: the National Judicial Institute, in conjunction with the Body of Benchers and the Nigerian Bar Association, should develop and issue binding practice directions requiring trial courts, upon the filing of a credible pleaded allegation of document forgery in any land suit, to routinely order forensic document examination by a qualified examiner before delivering judgment on the authenticity of the contested instrument. The current practice of resolving such disputes through demeanour evidence and probabilistic inference alone is demonstrably inadequate against sophisticated forgery. Forensic document examination should be funded from consolidated court fees in cases where the party alleging forgery demonstrates financial inability to retain a private forensic expert.

Third: State High Court Rules throughout the federation should be amended to establish specialised land dispute divisions or dedicated fast-track land causes lists, staffed by judges with proven expertise and interest in land law. Land disputes are among the most complex, fact-intensive, and evidence-heavy categories of civil litigation, and their indiscriminate assignment to a general civil list—alongside simpler contractual and personal injury claims—contributes to the delay, expense, and evidential deterioration that encourage vexatious and fraudulent claims. A specialised land division, equipped with its own case management protocols and its own dedicated land registry liaison function, could materially reduce the average time from filing to judgment in contested land suits.

Fourth: state Ministries of Physical Planning and Urban Development should institute a mandatory verification protocol requiring cross-referencing of any application for a reproduced, replacement, or amended survey plan or building plan against the registry's original authenticated records before the new instrument is processed, authenticated, and filed. The widespread failure to cross-check replacement plans against originals is a primary source of the competing survey plan problem identified in Section 9(c) of this article, and its correction requires no new legislation—only an enforceable administrative directive backed by appropriate sanctions for registry officials who process applications without completing the required verification.

Fifth: targeted and sustained public legal literacy programmes, particularly those directed at families and communities holding land under customary tenure or under informally documented title arrangements, should educate landowners on three critical matters: (i) the importance of formally registering their title even where land has been held in the family for generations under customary arrangements; (ii) the importance of keeping certified true copies of all documents of title in physically separate and secure locations, distinct from the originals; and (iii) the legal consequences of permitting family members access to original title documents without appropriate safeguards, including the risk that those documents may be removed and used to support a fraudulent competing claim. Such programmes, delivered through the network of local government structures, religious institutions, community development associations, and broadcast media, would reduce both the opportunity for and the profitability of intra-family document fraud—one of the most significant and under-addressed sources of land dispute in Nigeria today.

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