THE INCREASING ROLE OF EQUITABLE INTERESTS IN LAND TRANSACTIONS: A COMPARATIVE ANALYSIS OF NIGERIA AND ETHIOPIA

BY

SOLOMON O. AFOLABI

LL. B (Hons) Ife, B. L, LL.M (ABU), M.BA (Unilorin). PhD (ABU), Associate Professor of Private & Property Law, University of Ilorin, Nigeria.

Email: solomonafolabi101@gmail.com

THE INCREASING ROLE OF EQUITABLE INTERESTS IN LAND TRANSACTIONS: A COMPARATIVE ANALYSIS OF NIGERIA AND ETHIOPIA

ABSTRACT

Land law in Nigeria, like in many African nations, continues to grapple with the balance between formal legal rights and equitable interests, particularly in a landscape marked by diverse customary practices and evolving statutory frameworks. This article explores the increasing role of equitable interests in land transactions under Nigerian land law, drawing comparisons with Ethiopia's unique approach to land tenure. In Nigeria, equitable interests often arise from informal agreements, long-standing possession, or contributions to land improvements, creating a tension with legal rights enshrined in the Land Use Act of 1978. Similarly, Ethiopia's public land ownership system emphasizes fairness and equity, recognizing customary land rights, shared familial interests, and community claims despite the absence of formal legal documentation. The article examines the legal and equitable dimensions of landholding, the role of judicial systems in adjudicating disputes, and the socio-economic implications of prioritizing equitable interests in both nations. Using Ethiopia as a comparative framework, the discussion highlights how principles of fairness and long-standing usage—whether under formal statutes or customary practices—shape the recognition of equitable interests. Special attention is given to spousal contributions, informal settlements, and communal rights, illustrating the transformative potential of equitable principles in land administration. The analysis underscores the growing need for Nigerian land law to align with equitable considerations, not merely as a supplement to legal rights but as an integral mechanism for promoting inclusivity, justice, and sustainable land management. Drawing lessons from Ethiopia's integration of equity in land use policies, the article advocates for reforms that balance statutory provisions with informal and customary claims, ensuring equitable access and protection for vulnerable populations in both contexts.

KEYWORDS: Legal Rights, Equitable Interests, Land Transaction, Social Justice

1.1 Introduction

Property can sustain a wide range of interests and rights. Traditionally, property rights were distinguished from personal rights. Property rights arose in relation to land and personal rights in relation to every other "thing" not being land. [1]An interest in property is a comprehensive term to describe any right, claim or privilege that an individual has toward real or personal property[2]. It is all or part of a legal or equitable claim to or right in property.[3] In other words, while interest in property could be referred to as right, claim or title, such interest can either be "legal" or "equitable".[4]

The distinction between legal interests and equitable interests in property has been of tremendous concern to legal studies since the medieval period when the common law began to develop.[5] The attempts by the Lord Chancellors and later by equity courts to remedy the hardships occasioned by the strict application of legal rules culminated in the growth of equity that led to an open confrontation between common law and equity.[6] This led to the enactment of the Judicature Acts of 1873 and 1875. The Acts fused the administration of the two systems,

---

[1] The distinction between real property and personal property is that property would be classified as real if the court will restore to a dispossessed owner the thing itself and not merely give compensation for the loss. Where the court would give the defendant a choice of either returning the "res" or paying the value therefore, property was deemed personal: Megarry R. and Wade, H. W. R. The Law of Real Property 4th ed., Stevens and sons, London, (1975), p. 10. See Smith, 1.0. Practical Approach to Law of Real Property in Nigeria, Ecowatch Publication, Lagos, (1999), p.1.

[2] Bryan, A.G. Black's Law Dictionary (7th Edition) West Group, St. Paul Minn, London (1999.) p.119.

[3] Ibid

[4] Megarry, R. and Wade, H.W.R. The Law of Real Property 4th ed., Stevens and Sons, London, (1975) pp 113- 115.

[5] Ibid. p. 10.

[6] On the historical relationship between common law and equity, see Megarry. R. and Baker, P. V. Snell's Principles of Equity 27th ed, Sweet and Maxwell, London, (1973) p.105, Maudsley, R. H. Hanbury and Maudsley Modern Equity 10ª ed., Stevens and Sons, London, (1976), pp. 3-30, and Megarry R. and Wade, H.W R., op cit., pp.110-128 at note 4. See also Kodilinye, G. An Introduction to Equity in Nigeria, Daybis Limited, Nigeria, Ibadan, (2001), pp.1-6, Ikpo, C. Issues and Principles in Equity, Dimathis Objective Press Ltd., Lagos, (2003), pp. 23-24, and Jegede M.I., Principles of Equity, Ethiope Publishing Corporation, Benin, (1981) p.52.

providing inter alia, that in all cases where the rules of common law and the rules of equity were in conflict, the rules of Equity were to prevail.

Many scholars have noted that the Acts may have fused the two systems; they have not fused the rules and principles of law and equity.[7] In other words, the Judicature Acts notwithstanding, there exists a clear distinction between legal rights and equitable rights.

Property law in Nigeria is governed by customary law, statutory law, case law, common law and equity.[8] Customary law refers to the various customary laws that have governed Nigerian communities since the pre- colonial era. Common law was bequeathed to Nigeria by the British colonial authorities who introduced the common law of England and the doctrines of equity as sources of law in the country.[9] Common law and equity have remained sources of law in the country in the post-colonial era and have greatly influenced land law in the country. To this end, equitable rights and interests are proprietary rights in real property introduced into Nigeria under the doctrines of equity.

The problem associated with equitable interests generally is the quantum of value to be attached to them in a competition with legal interests in a given property. Generally, equitable interests are viewed as minor interests, largely unwritten or if written, have failed to comply with all the necessary requirements and therefore are vulnerable and may be lost upon sale of the land to a new purchaser. For this reason, equitable interests are generally omitted from the definitions of "conveyance" in property laws in Nigeria. [10] The paper argues that

---

[7] Jegede, M.I. Principles of Equity, Ethiope Publishing Corporation, Benin, (1981) p.8.

[8] See Smith, 1.0., Practical Approach to Law of Real Property in Nigeria, Ecowatch Publication, Lagos, (1999), pp. 3-5, and the more detailed analysis in Dadem, Y.Y. Property Law Practice in Nigeria, Jos University Press Ltd., Jos, (2009) pp. 6-26. For sources of law in Nigeria, see Asein, J. O. Introduction to Nigerian Legal System, 2nd ed., Ababa press, Lagos, (2005), p. 25 and Obilade, A. O. The Nigerian Legal System, Spectrum Law Publishers, Ibadan, (1979) pp. 9-10.

[9] See Asein, 1. O. Introduction to Nigerian Legal System, 2nd ed. Ababa press, Lagos, (2005), p. 102-107 and Obilade, A. O. The Nigerian Legal System, Spectrum Law Publishers, Ibadan, (1979) pp 69-72.

[10] See section 2 (v), Conveyancing Act, 1881 (applicable as a statute of general application in some states of northern Nigeria) which defines "conveyance as 23 including "any assignments, appointment, lease, settlement and other assurances and covenants to surrender made by deed on sale, mortgage, demise or settlement of any property or any other dealing with Other examples include section 2(1) Property & Conveyancing Law, Cap. 100,

Notwithstanding the traditional view of equitable interests, they have grown beyond mere rights in *personam* as they are now as powerful as legal rights in certain circumstances. In achieving this objective, the paper discusses the distinction between equitable interests and legal interests in property and analyses the modern enhanced status of equitable interests. The paper also examines the application of the enhanced status of equitable interests to transfer of interests in land in Nigeria. The paper ends with the conclusions and recommendations of the research.

1.2 Distinguishing Equitable Interests from Legal Interests

A legal right or interest can be defined as the right or title in property conferred on an individual by law.[11] It is always derivable from a legal instrument which must have been created according to laid down formalities. [12] It is a right historically recognized by the common law courts.

An equitable interest on the other hand, is simply a right or interest in property conferred by equity. [13] They are specie of rights over property not known to common law. They were recognized and enforced by the court of chancery administering equitable jurisdiction. [14] Equitable interest operates to protect a party at a risk of loss, by a strict application of legal rules, particularly when there is a failure to comply with legal formalities.[15] When the application of

---

Laws of Western Region of Nigeria, 1959. "A conveyance is a mortgage, charge, lease, assent, vesting declaration and every other instrument except will" and section 87(1) Property & Conveyancing Law, Cap. 65 Laws of Oyo State, 1994 which exclude equitable Icases the definition of conveyance

[11] Bryan A.G, op.cit p. 615. at note 2

[12] Ibid.

[13] Ibid, pp. 518

[14] Megarry R. and Baker, P.V., Snell's Principles of Equity 27th ed., Sweet and Maxwell, London, (1973) p. 13 See also Ikpo, C, Issues and Principles in Equity. Dimathis Objective Press Ltd., Lagos, (2003), p. 16

[15] Megarry R. and Baker, P.V., ibid.

legal rules will work hardship or lead to absurdities; equity will intervene to prevent injustice from being done to either of the parties.[16]

The general distinction is that a legal estate or interest is valid against all the world (it is usually expressed as right in rem) and any person who subsequently acquires a legal or equitable interest in the same property takes his interest subject to the prior legal interest whether he has notice of that interest or not.[17] A legal estate in property is enforceable against the whole world. An equitable interest in property is enforceable against the whole world except a purchaser for value of the legal estate in the property in question, provided that, when the purchaser acquired the legal estate, he had no notice either actual, constructive or inputted of the equitable interest. An equitable interest is said to be a right in *personam*, that is, enforceable only against specified people.[18]

1.3 The modern status of equitable interests in property

Under the common law, certain formalities have to be observed to create or transfer legal interest in property, short of which no legal interest vests in the purchaser. [19] Equity intervened in these imperfect legal formalities to fill the gaps in the law. However, the traditional view held that an equitable interest was never as strong as a legal interest, since an equitable owner never had an indefeasible title. This position was fortified by the maxim "Equity acts in *personam*" which underlies the fabric of early equity jurisdiction as equitable rights are only enforceable against the conscience of specified people. This meant that equitable rights and interests are in

---

[16] See also Kodilinye, G. An Introduction to Equity in Nigeria, Daybis Limited, Nigeria, Ibadan, (2001), p. 27 and Dadem, Y. Y., Property Law Practice in Nigeria, Jos University Press Ltd., Jos, (2009) pp.6-26. pp. 184-185.

[17] Megarry R. and Wade, H. W. R. op cit, pp.114 at note 4.

[18] Ibid, pp. 114-115. See, also Fabunmi, J.O. Equity and Trusts in Nigeria, University of Ife Press Ltd. Ile-Ife, Nigeria, (1986), p.120.

[19] Andy, G. Austin's Jurisprudence 4th ed., Sweet & Maxwell, London, (1979) vol. 1, p. 388.

personam and that equitable decrees bind the person to obedience on pain of imprisonment, but the decree does not operate on the subject matter of the dispute.[20]

However, the above traditional view of equitable interests has undergone tremendous changes. Given the contributions of equity in validating most transactions which would have been otherwise invalid by strict application of the law, equitable rights have advanced almost to the status of legal rights. For this reason, Hanbury, one of the leading equity scholars writing in the early part of the last century, argued that the traditional status of equitable rights has changed and that "Equitable rights and interests must … be regarded as hybrids, standing midway between *iura* in *personam* and *iura* in *rem*".[21] More recently, another learned scholar, Jill Martin, expressed the view that the status of equitable interests in property have advanced further than their traditional status. She argues that for example, "equitable interests under trusts are equitable proprietary interest corresponding to legal estates, and the beneficiary can properly be regarded as the owner of the beneficial interest and the ownership is a right in *rem*".[22]

1.4 The modern understanding of equitable interests is strengthened by developments showing they can now, in certain cases, defeat a purchaser of a legal estate. Additionally, equity has introduced new rights in property previously unknown to common law. The next section will show that Nigerian courts have recognized this expanded role of equitable interests.Application of the Enhanced Status of Equitable Interests in Property Transactions in Nigeria

[20] Jegede, M.I, op.cit. p. 42 at note 7

[21] Hanbury, G, The Field of Modern Equity (1929) 45LQR 196 at. 199

[22] Martin, J. E. Hambury & Martin Modern Equity, 7th ed., Sweet & Maxwell Ltd. London, (2005) p. 17

1.4.1 The increasing prominence of equitable interests is evident from Nigerian court decisions concerning property interests. These decisions highlight the role of equitable interests in validating transactions that are otherwise imperfect due to non-compliance with legal formalities. Additionally, this growth is seen in rulings related to transfers of land interests under native law and custom, as well as in obtaining the Governor's consent for land alienation under the Land Use Act.Validation of transactions that have incomplete legal formalities

Equitable interests have made possible the enforcement of certain transactions in land which would have been otherwise invalid because they fail to comply with legal formalities. These categories of transaction are enforceable on the basis that "equity treats as done that which ought to be done". Where this happens, equity will decree specific performance for the enforcement of the terms of the contract. Accordingly, it was held in *Eriosho v. Owokoniran & Ors* [23] that a sale of land which is imperfect because the legal formalities have not been complied with may give rise to an equitable interest in the property if there is evidence that the purchaser buys the land and goes into possession. This decision affirmed the rule in *Walsh v. Lonsdale*[24] that states that where a lease has not been made under a deed as required by law, equity will enforce the written agreement for the lease as if the agreement had been under deed.[25] Recently, in *Opard v. Dowel Schlumberger (Nig) Ltd*.,[26] the Supreme Court again affirmed the principles of *Walsh v. Lonsdale* by holding that an agreement for a lease is as good as a legal lease though the agreement confers only an equitable interest in the property. However, the equitable interest which the intended lessee has under an agreement for a lease does not exist in *vacua* but arises because the lessee has an equitable right to specific performance of the agreement. In such a case, what is agreed to be done and ought to be treated as having been done and carrying with it in equity the attendant rights.

---

[23] (1965) N.M.L.R. 479.

[24] (1882) 21 Ch.D 9.

[25] Earlier judicial decisions affirming this rule include Savage Sarrough (1937) 13 NLR 141, Chidiak v. Coker (1954) 14 WACA 506

[26] (2006) All FWLR pt.336 p. 240 and (2006) 15 NWLR. pt. 1002, 342.

1.4.2 From the above, it is evident that equitable interests arise through the act of part performance by one of the parties involved. This makes it unjust for the party who benefited from the part performance to withdraw from the contract solely because the transaction did not meet legal formalities. Creation of new rights in property

Equitable interests have brought about the creation of certain rights in property which have no legal equivalents. Such rights include estate contract, equitable mortgage, and mortgagor's equity of redemption, as further discussed herein below.

a. Estate Contract

An estate contract arises when there is a valid agreement to transfer a plot of land. The purchaser is then considered to have an equitable interest in the property. It does not matter if the completion date, when the purchaser can pay the price and take possession, has not yet arrived. Equity, recognizing that what has been done should be enforced, will decree specific performance to enforce the contract's terms.[27]

A contract for sale of land or an interest in land is a standard agreement that includes not only the basic elements such as the parties, property, price, and interest to be granted but also detailed terms of the parties' agreement. These terms cover aspects like the capacity in which the parties are contracting, deposit payment, payment of the remaining purchase price, interest on the balance, and the date and place of completion. Additionally, it may include provisions for property insurance and other mutually agreed-upon terms..[28] It has been held that a contract of sale of land creates an equitable interest in the land.[29] In *Kachala v. Banki,*[30] the appellant had purchased a house in Maiduguri Borno State, but for some reasons, he was frustrated from registering the property. Judgment was later obtained against the appellant in a matter unrelated to the purchase of the house and the house was attached and sold to satisfy the judgment debt which the respondents

[27] See Fabunmi, J. O., op.cit. p. 219. at note 18.

[28] See Dadem, Y. Y., Property Law Practice in Nigeria, Jos University Press Ltd., Jos. (2009) p. 187.

[29] See Kachala v Banki (2006) All FWLR pt.308 at p. 1420.

[30] Ibid

bought. The Court of Appeal held that the equitable interest in the property still resided with the appellant, and the subsequent sale of the property had not divested him of this equitable interest.

b. Equitable mortgage

An equitable mortgage is an agreement to create a legal mortgage. It is a contract which operates as security and is enforceable under the equitable jurisdiction of the courts. It is treated in equity as an express or implied agreement to create a legal mortgage, which is supported by valuable consideration and for which specific performance may be decreed. This is in accordance with the maxim that "equity regards as done that which ought to be done", for it is treated as a present, immediately existing security in equity.[31] An equitable mortgage is express when created by an agreement, usually a written memorandum, in which the mortgagor undertakes to execute a legal mortgage whenever called upon to do so by the mortgagee. It is implied, when it is constituted by a deposit of tile deeds with the intention to create a security (whether accompanied by a written memorandum). In this case, equity implies an agreement to give and the right of the mortgagee to call for a legal mortgage.[32] It can be safely concluded that the act of depositing the mortgagor's title deeds constitute an act of part performance of an agreement which remove the transaction from the provision of the statute of fraud.[33]

c. Equity of redemption

The legal estate in the mortgaged property always remains in the mortgagor during the subsistence of the mortgage. Under the common law, the mortgagor's right to redeem the mortgaged property is lost once he is unable to pay on the contractual date for payment.[34] However, equity gives a right of redemption even after the contractual date for payment has

---

[31] Coote, S.E. Notes on Mortgages, 9ª Edition, Sweet and Maxwell, London, (1989), p. 80-87.

[32] Ibid.

[33] Yaro v. Arewa Construction Ltd (2008) All FWLR pt.400 p.634,

[34] Megarry R. and Wade, H. W. R., op cit., pp. 890-892 at note 4.

passed. This equity of redemption arises as soon as the date to redeem the mortgage has passed. Equity of redemption has been defined as:

> *the right of the mortgagor to recover the security by discharging his obligations under the mortgage although the time fixed by the contract for the performance of that obligation has passed, and even though under the express terms of his agreement, the security may be stated to be the absolute property of the mortgagee.*[35]

This right to redeem is so inseparable an incident of mortgage that it cannot be taken away by an express agreement of the parties that the mortgage is not to be redeemable or that the right is to be confined to a particular time or a particular description of people. Ogundare JSC in *Ejikeme v. Okonkwo*[36] stated that: "this right continues unless and until the mortgagor's title is extinguished or his interest is destroyed by the sale either under the process of court or of power in the security".[37] The equity of redemption is also transferable.

1.4.3 Transfer of interests in land under native law and custom

Equitable interests have been invoked about alienation of land, purchasers of legal estate, and customary pledge in transfer of interests under customary law, as further expounded herein below.

a. Alienation of land

Unlike under the English Law, where it is required that transactions relating to transfer of interest in land must be evidenced in writing this is not so under Native Law and Custom, the requirement of writing is unknown to customary transactions in land. In *Alake v. Awawu*[38], the plaintiff claimed an account of rent and mesne profit in respect of certain properties. The defendant claimed that one of the properties had been given to him by the mother of both plaintiff and the defendant. The plaintiff's argument that any such gift was invalid under

---

[35] Waldock, A.R. Law and Practice of Mortgages, 2nd Ed. Sweet and Maxwell, London, (1988) p.171.

[36] (1994) NWLR (pt. 362), 266 p. 278.

[37] Ibid

[38] (1932) II NLR p.39

section 4 of the Statute of Fraud which provided that any transaction in land should be supported by a note or memorandum in writing failed before the Supreme Court, the parties to the transaction being natives were bound by customary law.

Also, the Court of Appeal in Sowoniku v. Orotiosakin & Ors [39] held that "there is no law thatrequirese the Head of the family under Native Law and Custom to join in' meaning execute a conveyance of family land as neither a 'receipt' nor a 'conveyance' as such is known to native law and custom".

A sale of land under customary law is validly concluded when payment of purchase price coupled with actual delivery of the land has been made, there is concurrence of the vendor, and the land is handed over in the presence of witnesses and usually accompanied with a ceremony. The purchaser must take physical possession and remain in continuous possession thereof. A person who is first in time under native law and custom but fails to prove evidence of continuous occupation may lose priority to a subsequent buyer of the same land who was let into possession immediately after the purchase and who continued to remain in occupation.

b. Equitable interests and purchasers of legal estate

In order to make equitable interests effective, equity aimed at eliminating the purchaser of a legal estate without notice which has been a menace to its existence. The fact that a purchaser had the legal estate conveyed to him is not sufficient to make his interest superior to the already existing equitable interest. Once an equitable interest is created in property and the equitable owner continues to be in possession of the property, the equitable interest cannot be defeated by subsequent legal interest even if obtained without notice of the equitable interest. The courts in Nigeria have applied these same principles to transfer of interests in land under native law and custom. The courts have held that if land is sold to a party, under native law and custom without the execution of a formal deed of conveyance, his interest was an equitable interest, but if it is coupled with possession, it cannot be overridden by a legal estate. In the case of Etajata v. Ologbo[40] the respondents, as plaintiff in the old Bendel State High Court,

[39] (1964) NMLR p.59

[40] (2007) AII FWLR (pt.386) p.584

filed the present suit against the defendants/appellant claiming in the main, orders of declaration that the sale of portions of family land at Ugbusi, Ughelli be set aside as the land was the family land of the plaintiffs, orders for account of proceeds of the land and injunction restraining further sales of the lands. PW 5 bought a piece of land measuring 200ft x 200ft from the defendants at the cost of N400.00. The document evidencing the transaction was tendered as receipt and admitted as Exhibit "D". The plaintiff succeeded with most of their claims. The High Court specifically ordered: "That the land in dispute called Ugbusi land as shown in Exhibit D is the property of the entire Omovwiare". The defendants then appealed to the Court of Appeal.

The appellate court, while dismissing the appeal, varied the above order of the trial court to wit: "It is hereby declared that the plaintiffs are entitled to a customary right of occupancy in respect of the land called Ugbusi land and shown on Exhibit C (respondents' plan) less the area sold to PW 5." On further appeal to the Supreme Court, the Court held that supposing that Exhibit "D" was admitted as receipt, it would only establish an acknowledgment of the payment of money in respect of the land by the plaintiffs but not in proof of title to the land as the nature of the title relied upon by the plaintiffs was that of sale under customary law and not by virtue of conveyance. That the general practice under native law is that the making and giving of receipts of purchase is unknown to native law and custom. In the present case, in order to show that Exhibit "D" was not admitted as receipt, the trial court admitted it as a document *simpliciter* because a written agreement of sale of land, even though under native law and custom, is not the same, with a purchase receipt as the two of them serve different purposes in such a transaction. The Court held further:

> *that if a party received title to land under native law and customs and there is proof or evidence that money was paid for the land coupled with an entry into possession, it will be sufficient even to defeat the title of a subsequent purchaser of the legal estate if the possession is continuously maintained. In other words, if land is sold to a party without the execution of a formal deed of conveyance, his interest was no more than equitable. Even if it was an equitable interest, but it is coupled with possession, it cannot be overridden by a legal estate.*

In essence, the decision in the case of Etajiata v. Ologbo [41] enhanced the status of a person who has paid purchase price or rent and has remained in continuous possession in a transaction under native law and custom.

In view of the above decisions of the courts, one thing is clear, that under native law and custom an agreement for transfer of interest in land though not made in writing is enforceable once there is evidence of payment of purchase price, the purchaser has been let into possession and there is continuous possession which actions are equated to an act of part performance. In other words, equitable interest in land created under native law and customs is equivalent to act of part performance capable of being converted to specific performance.

c. Customary pledge

There is a tendency to equate a customary pledge to a mortgage. However, a customary pledge is not on all fours the same as a mortgage. A pledge is a form of security transaction known to customary law. According to Smith[42], a pledge is created where the owner occupier of land known as the pledgor, to secure an advance of money or money's worth, gives possession and use of the land to the creditor known as the pledge until the debt is fully discharged[43]. In other words, a pledge is a deposit of some personal property to a creditor as security for some debt or engagement or the performance of some act. The pledge only has the right to possess the property until the debt is satisfied, while in mortgage, the mortgage acquires ownership (interest is conveyed) and the borrower usually retains possession. A pledge is a possessory security as distinct from a proprietary security in mortgages, thus vesting in the pledge a right to possession of land and enjoyment of the profits, while the radical title remains with the pledgor.

The relevance of equitable interest in customary pledge is the redeemability of the pledged land however long it might have been in the possession of the pledge. In Leragun v. Funiayo[44],

---

[41] ibid

[42] Smith I.O. *Practical Approach to Law of Real Property in Nigeria, Ecowatch Publication, Lagos (1999)*

[43] ibid

[44] (1956) WNLR p.167

A pledged land which ensured for 30 years was held to be redeemable. The right of the pledgor to recover possession of the land remains with him and is never extinguished, hence, the popular saying in customary parlance; "once a pledge, always a pledge". The pledgor's right to redemption cannot be clogged either by demanding any amount more than the sum for which the land was originally pledged or by planting heavy economic trees on the pledged land or using any other means to postpone or defeat the pledgor's right to redecin. In essence, equity of redemption, which is a creation of equitable interest is also available to redeem customary pledges just like in mortgages even after the contractual date of repayment had passed.

1.4.4 Requirement of consent to alienate under the Nigerian Land Use Act

Another area where equitable interest has come handy to play a significant role in whittling down the hardship of the provision of the law regarding transfer of interest in land in Nigeria is the provision requiring Governor's consent to alienate. By the provision of section 1 of the Land Use Act (hereby referred to as the Act), all land comprised in the territory of each state of Nigeria is vested in the Governor of the state. Section 5 of the Act gives the Governor the power to grant statutory right of occupancy and Section 6 of the Act gives similar power to the Local Government in respect of customary right of occupancy over land not in urban areas of the state.

The requirement of, Governor's consent (or Local Government as the case may be) to alienation of rights of occupancy (whether statutory or customary) is the subject matter of sections 21, 22 and 23 of the Act. The provision of these sections of the Act stipulates that it is unlawful to alienate any right of occupancy either by way of assignment, mortgage and transfer without the consent of the Governor. There is no doubt that the requirement of Governor's consent is central to most commercial transactions over land in Nigeria. Most financial institutions normally require collateral before a loan facility is disbursed and, in most cases, prefer securitization in land or landed property. Before the enactment of the Act, it was quite convenient to obtain loans from banks and other financial institutions for business and other developmental purposes by depositing title deeds on the understanding that the financier could dispose of the bare land or developed land in the event of the borrower's inability to pay up the loans. Such transactions are virtually or practically difficult since the inception of the Act

because of the consent requirement. The implication of the provision for consent is that every subsequent transaction on right of occupancy either by way of transfer, mortgage, assignment or lease without the requisite consent is void and illegal. The initial inclination of the court was to apply the literal words of the provision of the Act regarding Governor's consent. Among such cases, the one that was prominent and got to the Supreme Court is Savannah Bank v. Ajilo[45] where Mr. Ammel Ajilo had mortgaged his property in favour of Savannah Bank to secure a loan. On default in repayment of the loan, the bank sought to exercise its statutory power of sale. Mr. Ajilo sought a declaratory order of the court that a deed of mortgage was null and void and of no legal effect, the consent of the Governor not having been first sought and obtained in accordance with section 22 of the Land Use Act. He relied on section 26 of the Act to submit that the mortgage transaction and the mortgaged deed were void. The trial court granted the said relief, and this was subsequently upheld by the Court of Appeal. On further appeal to the Supreme Court, the Apex court unanimously affirmed the decision of the appellate court and accordingly held that the mortgage transaction was invalid for want of Governor's consent as required under Section 22 and 26 of the Act.

That was the position of the Supreme Court believing its hands to be tied by the provisions of the Act notwithstanding the injustice the strict application of the provision of the Act might have caused particularly in stifling commercial transactions. It is worrisome that the Supreme Court became powerless against the provision of the Act. One would have expected that the court would follow its own reasoning in *Oil Field Supply Centre Ltd v. Joseph Lloyd John*[46] where Eso, JSC observed as follows: -

> *it is the appellant who should have applied for a permit for him and failed to, before he helped them find the company that now intends to meet him with illegality perpetuated by same company Certainly equity will not allow the company to benefit from their own illegality*[47].

---

[45] (1989) 1 NWLR (pt. 97) p.305

[46] (1992) 2 NWLR (pt. 221) 1 S.C

[47] ibid

This was the rationale the Court of Appeal applied in the case of *Adedeji v. National Bank of Nig. Ltd*[48], a case like that of Ajilo. But here, the Court of Appeal coming to a different conclusion, reasoned that it was the defendant who defaulted on his obligation to obtain consent. The position of the court became clearer in the case of Okunneye v. FBN Plc[49]. In that case the issue was the applicability of sections 22 and 26 of the Land Use Act to a transaction that involved the deposit of title deeds with the bank (equitable mortgage) to obtain overdraft. Uwaifo, J.C.A. (as he then was) held:

> *Under the Land Use Act, the best a holder can have is a right of occupancy. To alienate that right under section 22, it must be done either by assignment, mortgage, or transfer of possession, sublease, or otherwise... It has been held that where a statute requires the consent of a specified authority before property can be alienated by way of sale, sublease, assignment, mortgage or otherwise, this does not include an agreement to sell or lease, which therefore does not need such consent.*[50]

However, the Supreme Court soon realized the magnitude of injustice that its decision in *Savannah Bank v. Ajilo* [51]could perpetrate and at the earliest opportunity redeemed its position. In *Awojugbagbe Light Ind. Ltd. v. Chinukwe* [52]where Onu J.S.C. affirmed the decision on *Okunneye v. FBN Plc* [53] and held inter-alia although section 22 of the 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 preparation for the purpose of effecting such alienation".

Flowing from the above authorities, it is clear that an agreement for sale of land subject to Governor's consent will not be an illegal transaction. It is therefore submitted that the Court of Appeal and the Supreme Court in the cases just cited above have realized the significant role of

---

[48] (1989) 1 NWLR (pt.96) 212

[49] (1999) 6 NWLR (pt. 457) 749

[50] ibid

[51] supra

[52] (1995) 4 NWLR (pt. 390) 379

[53] supra

equitable interest in property transactions and thus hold that the absence of Governor's consent may not invalidate an agreement for sale of land which is an equitable interest. It is the benefit of equitable interest in agreement for sale of land as demonstrated in the decisions in *Okunneye v. FBN Plcs*[54] *and Awojugbagbe Light Ind. Ltd. v. Chinukwe* [55,] which now enable people dealing in land to freely transfer their interest in land through the instrument of an agreement subject to Governor's consent without contravening the provisions of section 22 and 23 of the Land Use Act.

1.5 Equitable transactions in land under Ethiopian Law

Unlike in Nigeria, equitable transactions in land under Ethiopian law are largely governed by principles of fairness, justice, and equality in the administration of land rights[56]. Land in Ethiopia is owned collectively by the state and the people, as articulated in the 1995 Ethiopian Constitution. Article 40 of the Constitution[57] establishes land as a public resource that must be administered equitably, reflecting its socio-economic importance in Ethiopian society. Unlike in many countries where land ownership is primarily a policy issue, Ethiopia's Constitution enshrines the principle of public ownership, making the issue of land rights a settled subject.

The Federal Democratic Republic of Ethiopia (FDRE) Constitution explicitly addresses land rights under Article 40, which provides clarity on the ownership and use of land in Ethiopia. Article 40(3) declares that:

> *the ownership of rural and urban land, as well as all natural resources, is vested exclusively in the state and the peoples of Ethiopia. Land is deemed a common property*

[54] supra

[55] supra

[56] D.W. Ambaye, Land Rights in Ethiopia: Ownership, equity, and liberty in land use rights. FIG Working Week 2012 p.17

[57] The Federal Democratic Republic of Ethiopia Constitution (1995)

of the Nations, Nationalities, and Peoples of Ethiopia and is not subject to sale or exchange. [58]

Sub-article 4 grants Ethiopian peasants the right to obtain land without payment and protects them from eviction, while sub-article 5 guarantees pastoralists access to free grazing and cultivation land, along with protection against displacement.

Although private ownership of land is prohibited, peasants and pastoralists are afforded significant rights to the land they use. Under Article 40(7), [59]these rights include full ownership of any immovable property they build or permanent improvements they make on the land. Such rights encompass the ability to alienate, transfer, or claim compensation for their property. Furthermore, Article 40(8) ensures that landholders are protected from arbitrary eviction, stipulating that expropriation for public purposes must be accompanied by advance payment of commensurate compensation.

Ethiopia's land redistribution policies emphasize fairness, particularly for vulnerable groups such as women, pastoralists, and ethnic minorities. Rural landholders are entitled to equitable access under laws.[60] In this context, equitable rights often refer to informal, non-registered claims or interests based on fairness, custom, or long-standing practice. Examples include customary land use rights, informal agreements or occupancy, and claims arising from familial arrangements, such as spousal contributions to land use.

1.5.1 Value of equitable rights in Ethiopian Land Law

Equitable rights, while not always formally recognized, hold significant value in the Ethiopian legal framework. They are often considered in dispute resolution forums, including customary tribunals, administrative bodies, and courts, particularly when supported by evidence of fairness or customary acknowledgment. Although secondary to legal rights, equitable interests

[58] ibid

[59] ibid

[60] Rural Land Administration and Use Proclamation No. 456/2005

play a critical role in ensuring social justice and fairness in land administration, especially in rural and communal settings where customary law prevails.

In cases of expropriation, both legal and equitable interests may be considered for compensation[61]. However, equitable interests typically require additional advocacy or proof to be acknowledged. The practical implications of equitable rights differ between urban and rural contexts. Legal rights tend to dominate in urban areas and formal land markets, whereas equitable interests carry more weight in rural or communal settings.

1.5.2 Case-specific applications of legal and equitable interests Under Ethiopia Land Law

(a) Rural landholding rights

Legal rights are exemplified by a farmer possessing a landholding certificate issued under Proclamation No. 456/2005[62], guaranteeing enforceable usufruct rights to cultivate the land and pass it to heirs. In contrast, equitable interests might arise where a neighboring farmer has informally cultivated a portion of the same land for years based on a verbal agreement. While the latter's claim lacks formal recognition, it could be argued as an equitable interest rooted in long-term use and fairness.

(b) Urban leasehold transactions

Legal rights include formal lease agreements under Proclamation No. 721/2011[63], granting urban land use rights for specified periods. Equitable interests might arise when a sublease is created informally without proper documentation. Courts may consider the sublessee's investments or improvements to the land when resolving disputes, even in the absence of a legal right.

---

[61] Article 3 & 7 of the Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No. 455/2005

[62] ibid

[63] Urban Lands Lease Holding Proclamation No. 721/2011

(c) Customary land use

Pastoralist groups with communal landholding certificates enjoy legal rights to specified grazing lands. Equitable interests might arise for groups sharing grazing areas traditionally but without formal certification. Historical usage could be considered in resolving disputes, reflecting the role of customary practices in land administration.[64]

(d) Spousal land rights

When spouses jointly acquire a rural landholding certificate, both have legal rights to the land. However, where the certificate lists only one spouse, equitable interests might arise if the other spouse contributed to labor or finances. Courts often recognize such contributions under equity principles and the Revised Family Code[65].

(e) Expropriation and compensation

A landholder with a certified usufruct right is entitled to compensation for improvements when land is expropriated for public use under Proclamation No. 455/2005[66]. In contrast, tenants farming land under informal agreements might lack legal entitlement to compensation but could argue for equitable interests, such as reimbursement for crops or investments.

(f) Informal settlements

Urban households with valid leasehold certificates possess legal rights to their properties. Residents in informal settlements, despite lacking formal leases, may claim equitable interests based on decades of occupation. Governments often consider such interests during resettlement or compensation processes in urban redevelopment projects.

---

[64] D.W. Ambaye (supra). Ethiopia's legal framework recognizes the role of customary law in the land administration, particularly in rural and pastoralist areas. Provision under regional laws (e.g. Oromia or Amhara rural land laws) acknowledge traditional land use rights and their role in resolving disputes. Customary tribunals may prioritize equitable principles over formal registration, ensuring fairness in resources allocation.

[65] Article 50 & 86 of the Revised Family Code (2000)

[66] supra

From the above analysis, it will be seen that equitable interests in Ethiopian land law, though lacking the full security of legal rights, are recognized and protected in various contexts to ensure fairness and social justice. Customary practices, long-standing use, and contributions to land improvements often form the basis for equitable claims. The Ethiopian legal framework, supported by customary and statutory mechanisms, plays a pivotal role in balancing formal rights with equitable considerations, particularly for vulnerable groups. This dual approach fosters inclusivity and sustainable land management in Ethiopia's unique land tenure system.

1.6 Conclusion and recommendation

The interplay between legal rights and equitable interests in land transactions demonstrates the evolving nature of property law in both Nigeria and Ethiopia. In Nigeria, equitable interests have gained prominence as a means of addressing the rigidity of legal frameworks, particularly under the Land Use Act. These interests are vital in validating transactions with incomplete formalities and navigating customary practices. Similarly, Ethiopia's approach to equitable interests underlines the importance of fairness, social justice, and inclusivity in land administration. The recognition of customary land use, spousal contributions, and informal settlements reinforces Ethiopia's commitment to equitable land governance. Together, these examples highlight the transformative potential of equitable principles in land management systems, ensuring that legal frameworks are complemented by fairness and social considerations.

In Nigeria, the Land Use Act should be reformed to integrate provisions explicitly protecting equitable interests, particularly in cases involving spousal contributions, informal agreements, and customary transactions. Judicial mechanisms must be strengthened to ensure consistent recognition and enforcement of equitable interests in land disputes. Additionally, public awareness campaigns should be implemented to educate citizens on the benefits and limitations of equitable interests, empowering vulnerable populations to assert their rights. In Ethiopia, there should be enhanced efforts to document and formally recognize equitable interests, including long-standing informal agreements and communal land use, to provide better legal protection. Dispute resolution mechanisms blending customary and statutory principles must be expanded to guarantee equitable outcomes for all stakeholders. Furthermore, investments in

education and capacity building for vulnerable groups, such as women and pastoralists, are essential to strengthen their participation in equitable land governance. Both countries can benefit from adopting hybrid systems that respect customary practices while formalizing equitable rights for greater security and enforceability. Regional collaboration on land governance policies would also foster the development of best practices for balancing legal and equitable interests across Africa.

References

Adegbite, I., & Oluwasegun, A. J. (2020). Sustainable land use in Nigeria: Has the Land Use Act 1978 outlived its usefulness? *Journal of Commercial and Property Law, 7*(1).

Derri, D. K., & Egemonu, J. N. (n.d.). Impact of the Land Use Act on land tenural system in Nigeria. *American Journal of Law*. https://doi.org/10.47672/ajl.1226

Imoisi, S. E., & Okongwu, C.-J. (2022). The relevance of the Land Use Act 1978 in 21st century Nigeria. *International Journal of Comparative Law and Legal Philosophy, 4*(1).

Nwabueze, R. N. (2010). Equitable bases of the Nigerian Land Use Act. *Journal of African Law, 54*(1), 119–142.

Nwocha, M. E. (2016). Impact of the Nigerian Land Use Act on economic development in the country. *Acta Universitatis Danubius. Administratio, 8*(2).

Ambaye, D. W. (2012). *Land rights in Ethiopia: Ownership, equity, and liberty in land use rights*. FIG Working Week.

Ambaye, D. W. (2013). *Land rights and expropriation in Ethiopia*. Mizan Law Review, 7(2), 283–308.

Crewett, W., & Korf, B. (2008). Ethiopia: Reforming land tenure. *Review of African Political Economy, 35*(116), 203–220. https://doi.org/10.1080/03056240802193911

Crewett, W. (2008). *Land tenure in Ethiopia: Changing tenure regimes in Ethiopia's recent history*.

Epple, S., et al. (2020). *Legal pluralism in Ethiopia: Actors, challenges and solutions*.

Hebo, M. (2022). Land tenure reforms and women's land rights in plural legal settings. *Ethiopian Journal of Development Research*.

Kasimbazi, E. (2017). *Land tenure and rights for improved land management and sustainable development*.

Zhao, A. (2021). *Legal pluralism and Ethiopia's legal framework*.

Babalola, K., et al. (2022). Assessing land administration systems and their legal implications in Africa.

Ambaye, D. W. (2012). Land rights in Ethiopia: Ownership, equity, and liberty in land use rights. In AAU Press (Ed.), *Determining the scope of access right to rural land in light of FDRE Constitution*.

Resource Equity. (n.d.). *Land rights in Ethiopia*.

Muluneh, W., & Amsalu, T. (2022). Financing urban infrastructure through land leasing: Evidence from Bahir Dar City, Ethiopia.

Ogundare, O., & Njualem, L. (2024). A computational model for gender asset gap management with focus on land tenure security.

Senda, T. S. (2020). Pastoral land tenure insecurity and land certification challenges. *Land Use Policy*.

Doss, C. (2020). Land tenure security for women: A conceptual framework. *Land Use Policy*.