

# USE OF LANDED PROPERTIES AS COLLATERAL: CHALLENGES AND SOLUTIONS

## 1. INTRODUCTORY

Permit me to state that from the onset the topic you have chosen (which is the problem of title perfection and registration) is crucial in the following respect:

- (i) Virtual absence of liberal access to land and land title has been identified as a fundamental factor responsible for mass poverty especially in the 3<sup>rd</sup> world Nigeria inclusive.
- (ii) The Land Use Act of 1978 which should have been instrument of resolving land ownership and title in Nigeria has turned out to be a cog in the wheel of developmental progress.
- (iii) In year 2008 alone, Lagos Land Bureau generated about 17.5billion from Land Administration alone which is much more than the normal budget of some countries in the world, and shedding light on the significance of land matter.

## 2. LAND OWNERSHIP TITLE & REGISTRATION – HISTORICAL PERSPECTIVE

The only enactment which guides land tenure system in the whole Nigeria today is the Land Use Act of 1978 which vests all land in each state of the country in the state Governor for and on behalf of the citizenry. Prior to that enactment, land ownership and title was governed by two (2) separate land tenure systems, one in the Northern Nigeria and second in the Southern Nigeria.

It should also be further noted that prior to the land tenure law in these two regions, land ownership was held in the family system as freehold in perpetuity especially in the Southern part of the country, while the rulers/emirs handled land ownership and administration in the North.

## 3) INSIGHT INTO THE PROCESS OF TITLE TRANSFER AND REGISTRATION IN LAGOS STATE

Arising from the promulgation of Land Use Act of 1978, Lagos State Government set up a Department called **Land Bureau** under the **Governor's Office** with the following mission and vision statements:

\*The organogram of this Department/Agency is as contained in **Appendix I** which shed light in the level of bureaucracy involved.

The key responsibility of the Land Bureau which has direct import on title matters can be summarized below:

- (i) Administration of Land Use and Allocation in the State
- (ii) Formulation and Implementation of policies on Land matters
- (iii) Issuance and Revocation of Certificate of Occupancy
- (iv) Administration of subsequent transaction (assignment, mortgages, lease and power of attorney)
- (v) Registration of Land Titles/Documents and Storages of such records through a computerized system (Electronic Document Management Systems), and
- (vi) Ensuring proper titling/records of Lands adjoining the State's waterfront through Lagos State Waterfront and Tourism Development Corporation

Furthermore to be able to understand probably the process of title transfer and registration, two issues must be fully understood namely: the documents required for Governor's Consent as listed below:

- (i) Dated letter of Application addressed to the Director of Land Services with Address and Telephone Number of applicant.
- (ii) Completed Form IC
- (iii) Certified True Copy of Grantor's Title Document
- (iv) Grantor's Evidence of payment of Income Tax and Development Levy Receipts
- (v) Grantee's Evidence of payment of Income Tax and Development Levy Receipts
- (vi) Four Duly executed Deeds of Subleases, Assignments, Mortgage or Power of Attorney.
- (vii) Chartable Survey Plans
- (viii) Evidence of payment of Charting, Endorsement and Form 1c (N10,500.00)
- (ix) Evidence of payment of Ground Rent/Land Use Charge with Demand Notice
- (x) Original Letter of Confirmation of payment of Capital Contribution from NTDA in respect of Lekki Peninsula Scheme.
- (xi) Building Plan and Photograph of the property, and
- (xii) Identification Card of the applicant or its agent.

Also, the general assessment guide for subleases, assignment and power of attorney and mortgage as detailed below:

- (i) Multiply Land Area by applicable rate to arrive at the Assessment.

- (ii) The charges payable are as follows:
 

- Consent Fee	-	8% of Assessment
- Capital Gains Tax	-	2% of Assessment
- Stamp Duty	-	2% of Assessment
- Registration Fee	-	3% of Assessment
Total	-	<b>15%</b>
- (iii) Mortgages attract 0.02% of the Loan

4) **THE PROBLEM OF TITLE TRANSFER AND REGISTRATION IN LAGOS**

Whatever problems that have been experienced with title transfer and registration in Lagos State can be traced to the imperfection in the underlining enactment, that is, Land Use Act of 1978.

It is unfortunate that up until now despite the public and professional clamour for either abrogation or overhauling of the Act, the National Assembly is yet to consider the document for expedite action either way.

Regarding the aspects of title transfer, the following identifiable guidelines will require decisive action:

- (i) **Excessive Bureaucracy**  
Looking at the processes and procedures for giving legal backing to the land transaction notably, leases, mortgages and transfer of properties between two parties, the entire system is definitely cumbersome and bureaucratic.
- (ii) Arising from bureaucracy the time required to accomplish everything in this regard is a minimum of three (3) months. However, the common slogan at the Land Bureau is to the effect that Governor's Consent can be accomplished within twenty (24) days.
- (iii) The cost of transferring property and perfecting title is put at 15% of the cost of value of the property compared to other countries.

5) **SOLUTION**

It must be stated that the present Lagos State Government has done a lot in making the process of land title and registration less cumbersome, faster and less expensive. However, in order to remove all the problems associated with this vehicle of modern development, the following steps must be taken:

- (i) The Land Use Act of 1978 must be reviewed or overhauled in the interest of accelerated development.

- (ii) The Land Bureau should be decentralised so that transaction in land can be handled at regional level instead of everything being concentrated in Ikeja.
- (iii) Even though one must recognise the central role which Land Administration plays in the overall internal revenue generation (IGR) mechanism in the state, the total cost of transfer cost and registration should not exceed 5% of the overall property value.

Finally, the importance of this round-table discussion is better appreciated by referring us to the submission of Dr. Hernando DeSoto in his paper “**The Mystery of Capital – why capitalization succeeds in the west and fails elsewhere**” and I quote “Every parcel of land, every building, every piece of equipment or store of inventories is represented in a property document that is the visible sign of a vast hidden process that connect all these assets to the rest of the economy.”

“Thanks to this representational process, assets can lead an invisible, parallel life alongside their material existence. They can be used as collateral for credit. The single most important source of funds in the United States is a mortgage on the entrepreneur’s house. By this process the West injects life into assets and makes them generate capital”

“Third World and former communist nations do not have this representational process. As a result, most of them are undercapitalized, in the same way that a firm is undercapitalized when it issues fewer securities than its income and assets would justify. The enterprises of the poor are very much like corporations that cannot issue shares or bonds to obtain new investment and finance. Without representations, their assets are **DEAD CAPITAL**”

“The poor inhabitants of these nations – the overwhelming majority – do have things, but they lack the process to represent their property and create capital. They have houses but not titles, crops but not deeds, businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work. This is the mystery of capital. Solving it requires an understanding of why Westerners, by representing assets (notably land) with titles, are able to see and draw out capital from them”

Thank you for listening.

**Bode Adediji**  
**National President – NIESV**

1. **INTRODUCTORY**

I wish to thank you for the opportunity of brain-storming with members of business environment round-table of the Lagos Chamber of Commerce and Industry which is the premier Chamber of Commerce in Nigeria.

Permit me to state from the on-set that the topic you have chosen which is the problem of title to property is jamine to understanding a crucial process in Nigeria's journey in retrogression and economic decay.

It has been established beyond reasonable doubt that crushing national poverty is directly related to the problem of access to land and the process of title registration.

2. **LAND OWNERSHIP TITLE & REGISTRATION –  
HISTORICAL PERSPECTIVE**

The only enactment which guides land tenure system in the whole Nigeria today is the Land Use Act of 1978 which vest all land in the

country in the state Government for and on behalf of the citizenry. Prior to that enactment, land ownership and title was governed by two (2) separate land tenure systems, one in the Northern Nigeria and second in the Southern Nigeria.

It should also be noted that prior to the land tenure law in these two regions, land ownership is held in the family system as freehold in perpetuity especially in the Southern part of the country, while the rulers/emirs handled land ownership and administration in the North.

### 3. **LAND USE ACT 1978 AND THE PROBLEM OF TITLE PERFECTION**

By the provisions of the Act, only the Governor of the state can issue a certificate of occupancy as an evidence and titular in the land for duration of 99 years.

Also, the owner of such certificate of occupancy must seek and obtain the consent of the state Governor in matters of alienation, mortgage, sublease etc etc. However, the major problems associated with this position can be summarized as follows:

(i) **Time Wastage**

It takes a minimum of three (3) months for anyone to get a certificate of occupancy in any land transaction.

(ii) The process is expensive and in most cases takes as much as 15 – 20% of the cost of land to get the transfer and title process.

(iii) **Endemic Corruption**

It has been a ----- despite all the checks and balances put in place from time to time to forestall Governor's consent fraud practices.

### 4. **SOLUTION**

It is generally agreed that even though they might have good intention behind the promulgation of the Land Use Act of 1978 by the then Military regime of Gen. Olusegun Obasanjo, the enactment has turned out to be a cork in the wheel of development, leading to a consensus regarding its overhauling.

First and foremost, it is unnecessary to have to obtain Governor's Consent for mortgage transaction.

Governor's Consent for transfer of title should not last more than 1% of the value or cost of the subject property.

The processing time for title registration and Governor's Consent should not be more than 15 days.

The practice of demanding for numerous supporting documents such tax clearance, development levy, tenement rates etc should be entirely removed as a requirement for the processing of title transfer.

The bureaucracy that has been a major bane of title processing should be dismantled through the process of complete decentralization.

Also, Government should deploy more human, financial and technical resources to man the processing offices so as to curtail bureaucracy and reduce the level of corruption associated with it.

Finally, it is important that all stakeholders understand and recognise the role which title registration can play in the economic emancipation of the nation; nothing confirms this position than the submission of Dr. Hernando De soto in his paper "The Mystery of Capital – why capitalization succeeds in the west and fails elsewhere" and I quote "Every parcel of land, every building, every piece of equipment or store of inventories is represented in a property document that is the visible sign of a vast hidden process that connect all these assets to the rest of the economy.

Thanks to this representational process, assets can lead an invisible, parallel life alongside their material existence. They can be used as collateral for credit. The single most important source of funds in the United States is a mortgage on the entrepreneur's house. By this process the West injects life into assets and makes them generate capital.

Third World and former communist nations do not have this representational process. As a result, most of them are undercapitalized, in the same way that a firm is undercapitalized when it issues fewer securities than its income and assets would justify. The enterprises of the poor are very much like corporations that cannot issue shares or bonds to obtain new investment and finance. Without representations, their assets are dead capital.

The poor inhabitants of these nations – the overwhelming majority – do have things, but they lack the process to represent their property and create capital. They have houses but not titles, crops but not deeds, businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other

Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work. This is the mystery of capital. Solving it requires an understanding of why Westerners, by representing assets (notably land) with titles, are able to see and draw out capital from them.

Obviously, therefore, the lack of registrable titles coupled with other issues associated with the implementation of the Land Use Decree has effectively contributed to the level of poverty in the country both at the individual and state levels.

At individual levels, people are unable to create wealth from their land assets, while at state levels, revenue that should accrue from ground rent receipts is lost due to the fact that the bulk of the land is not covered by registered title and is therefore “unknown” to the state.

The corollary to this is that though the Decree vests all land in a state on the Governor of such state, it is doubtful if any state knows for certain the exact extent and ownership structure of its landmass. It is only with such knowledge that an effective land management principle, which is very paramount for our economic development can be put in place.

At present, only 3% of the land in Nigeria is registered with appropriate records of the use and the users. It means that 97% of the land constitutes “dead capital” as the owners cannot easily convert such properties to capital.

This low level of land rights infrastructure is a major contributor to the high level of poverty due to the unharnessed potentials in land. As it stands, we have only been trying to develop a capitalist state but without capital which can be created through the establishment of a formal property system.

Thank you for listening.

**Bode Adediji**  
**National President – NIESV**