



Key Legal Considerations When Purchasing Family Or Communal Land

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Introduction

Purchasing land in Nigeria involves various legal layers, especially family-owned or communally-owned land under customary tenure. This form of ownership although governed primarily by the Land Use Act, is subject to some preliminary customary processes.

This article provides some guidance on key considerations when dealing with family or communal property.

Definition: Family Vs. Communal Land

Family land is property that belongs to a specific lineage or nuclear/extended family. It is usually inherited from progenitors and held in trust by the family head(s) for the benefit of all family members. The family head manages the land on behalf of the family but does not possess absolute ownership, hence, it cannot be validly sold or transferred without the consent of key family members. In *Adejumo & Ors v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417*, it was held that the purported sale and conveyance of a piece of land in Ibadan forming part of the family land known as Ayanwemi Omosowon family land, originally belonging to Ayanwemi Omosowon (Deceased) was null and of no effect as the said sale was improperly and wrongfully made without the knowledge and/or consent of the claimant and other principal members of the Ayanwemi Omosowon Family. Also, in the recent case of *Bello v. Idris (2022)* the Supreme Court reiterated that any disposition of family land by a non-head without the head's consent is void ab initio, while reinforcing that a principal member's consent is equally fundamental in the sale of family land.

Communal land is property held collectively by an entire community, typically under the authority of a traditional ruler or council of elders. Usage rights are allocated by the community, and any sale or lease must be approved by the appropriate customary or community institutions. In *Amodu Tijani v. Secretary, Southern Nigeria (1921) AC 399*, the Privy Council affirmed that land under customary tenure is communal, with the chief holding it in trust for the community. Individuals have usufructuary rights, but no power to alienate the land. Also, in *Oluwo v. NUC (2001) 3 NWLR (Pt. 69) 90*, the Supreme Court held that existing customary land rights are not extinguished simply by the grant of a statutory right of occupancy, as such, rights continue to subsist unless expressly revoked. It is important to note that although there are a few disparities in their meanings as shown above, the same practice and legal principles apply to both family and communal land, hence, they may be used interchangeably in this article.

Due Diligence Considerations

i) Verification of Ownership: Engaging with local authorities, community leaders, and family members to confirm the legitimate owners or custodians of the land is the first step towards purchase. Additionally, consulting the relevant land registry or gazette office in the state where the land is situated for confirmation of the legitimate owner(s) of the land will provide further information on the ownership.

ii) Land History Investigation: Research must be carried out into any existing disputes, claims, or encumbrances on the land to avoid future legal complications. This can be done at the land bureau and high court of the state where the land is located.

iii) Physical Inspection: Visiting the land to verify its boundaries, current use, and to ensure there are no physical encroachments or disputes is a must. During visitation to the land, the topography, soil quality, accessibility to the property, land boundary and drainage patterns which can significantly affect construction and land use, can also be discovered.

iv) Engage Professionals: It is important to conduct any physical inspection of land with the involvement of professionals such as lawyers, surveyors, engineers, and others, since some defects or encumbrances may not be visible to the untrained eye and require expert assessment. Beyond the inspection, these professionals play a vital role in guiding the entire transaction process, ensuring compliance with legal, technical, and regulatory requirements, and ultimately making the acquisition smoother and more secure.

Consent Requirements

i) Collective Consent: For any sale of family or communal land, obtaining consent from both the family head and principal family members or council of elders, as the case may be, is essential. Transactions lacking this collective agreement are considered void.

In *Fadipe & Ors v. Nwaka & Ors* (Unreported; Court of Appeal, delivered in 2022), the court held that the sale of Family land without the consent of the family head is void ab initio, meaning it has no legal effect. Also, in the case of *Offodile v. Offodile & Ors* (2019) 16 NWLR (Part 1698) 189 (SC), it was held that if the family head acts like the land is his personal property and sells it without principal family members' consent, the sale is void.

This ultimately means that the consent of the family/community head and principal members of the family/community must be evidenced in your purchase and submission for the governor's consent.

It is therefore important to confirm that the individuals who provide consent for the sale of the property are the persons duly appointed by the family to act on its behalf as family or communal land cannot be validly transferred by a single member of a family.

ii) Consideration of all Family Members: Ensure that the rights of all family members, including women and minors, are considered and protected in the transaction. In *Esan v. Faro (1947) 12 WACA 135*, the West African Court of Appeal held that a junior member of a family has the legal standing to challenge an improper sale of family land, especially where the head failed to secure adequate consultation and consent. The case affirms that every member has a beneficial interest in family land.

In *Mojekwu v. Mojekwu (1997) 7 NWLR (Pt. 512) 283*, the Court of Appeal held that the "Oli-ekpe" custom that excluded female children from inheriting their father's property was repugnant to natural justice, equity, and good conscience. The court nullified the custom as unconstitutional and discriminatory. In this case, requesting historical information on the inheritance of the land will be useful to identify if any marginalisation, particularly of women or other vulnerable family members had occurred.

In *Nezianya v. Okagbue (1963) 1 All NLR 352*, the court upheld the right of a widow (as a lawful occupant of her deceased husband's property) to continue occupying family land after his death, especially where she remained unmarried and maintained her late husband's lineage. The decision affirmed that customary law recognises a widow's possessory interest, which should not be arbitrarily interfered with. This is not ownership in the strict sense, but a recognised possessory or occupational right which must not be disturbed by alienation.

In *Onyibor Anekwe & Anor v. Mrs. Maria Nweke (2014) 9 NWLR (Pt. 1412) 393*, Mrs. Maria Nweke, a widow, was denied inheritance by her late husband's brother and father on the grounds that she had no male issue, invoking male-primogeniture customs of the Awka people. However, the Supreme Court affirmed that the widow, Mrs. Nweke, even without a male child, had the right to inherit under Awka customary law, and that customs denying her inheritance were repugnant to natural justice, equity and good conscience.

Therefore, purchasing land with the above complexities may expose you to future disputes, and any resulting litigation could be decided against you if due diligence is not properly conducted.

iii) Governor's Consent: Under the Land Use Act of 1978, the Governor's consent is mandatory for the transfer, sale, or lease of land. Section 22 particularly provides that the Governor's consent is mandatory for the transfer, sale, mortgage, or sub-lease of any interest in land that is subject to a statutory right of occupancy. Without this consent, such transactions are not merely defective, they are unlawful and rendered null and void in the eyes of the law. Under Section 22(2), the Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease. In *Savannah Bank v. Ajilo* (1989) 1 NWLR (Pt. 97) 305, the Supreme Court held that failure to obtain the Governor's consent under Section 22 of the Land Use Act renders the transaction void and unenforceable, even if between willing parties. It has also been held by the Supreme Court in *Awojugbagbe Light Industries Ltd. V. Chinukwe* [1995] 5 NWLR (Pt. 390) 409 that until parties comply with the performance of an act specified by law, an instrument is not a deed; it is a mere escrow.

Compliance With Customary Practices

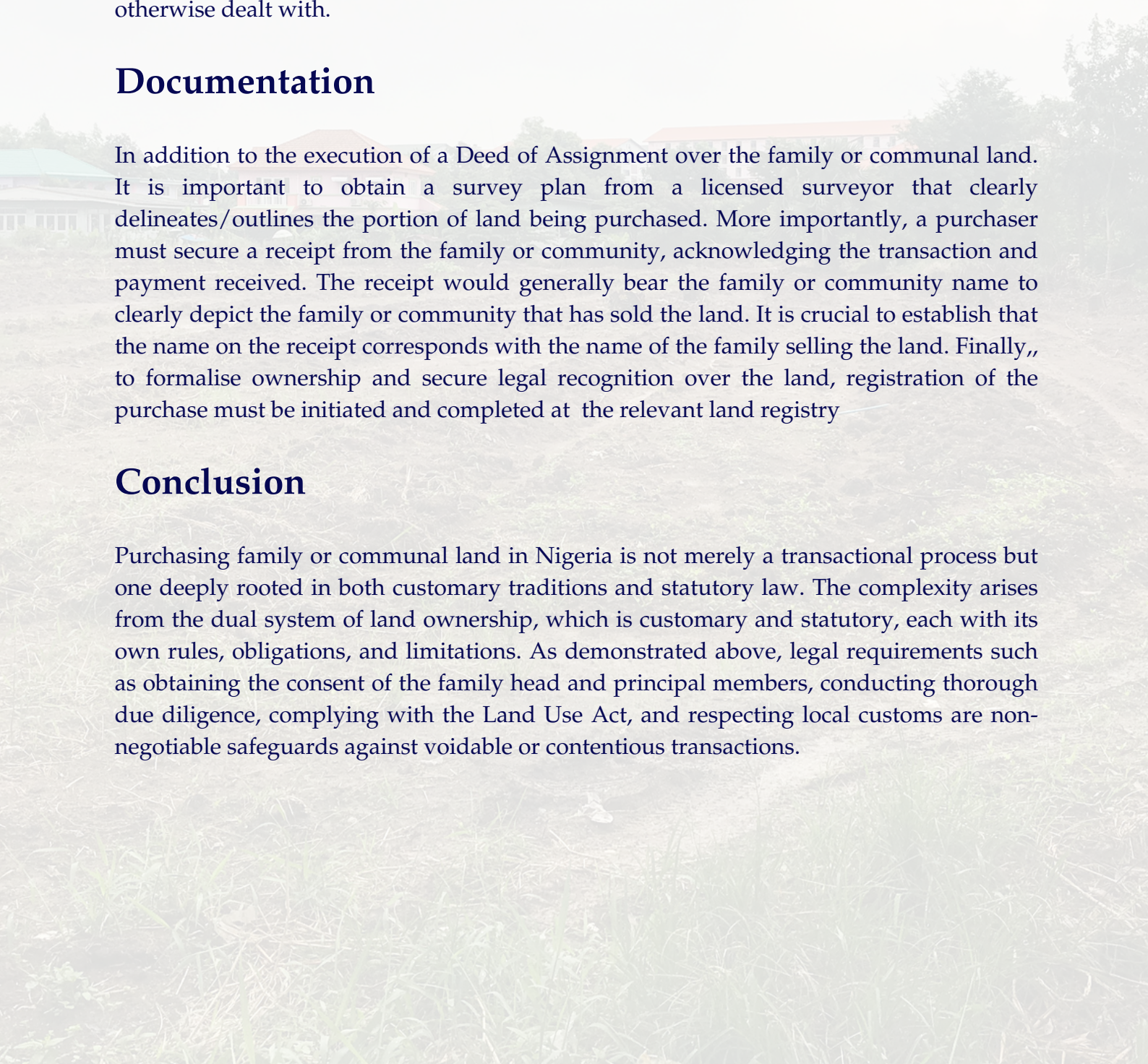
i) Adherence to Traditions: Where applicable, it is important to follow local customs associated with land transactions, which may include symbolic payments or rituals. In *Obi v. Akpabio* (1974) 2 NMLR 158, the court upheld that those symbolic payments, often made to family/community heads or elders, are crucial for validating land transactions under customary law. However, where such rituals are repugnant to natural justice, equity, and good conscience a defence may be established.

ii) Witnesses: Ensure the presence of relevant community witnesses during the transaction to validate its authenticity and acceptance. In *Ogunbambi v. Abowaba* (1951) 13 WACA 222, The West African Court of Appeal held that in land transactions under customary law, the presence of principal members of the family or community is crucial to establish validity. Where such transactions are carried out without key witnesses or representatives, the purported alienation is liable to be set aside. This case affirms that customary land sales must be done openly and in the presence of those whose consent matters, and that witness testimony is key evidence of proper procedure.



In *Makanju Akinyele & Ors v. Reverend Johnson Adebayo* (Court of Appeal, 3 February 2015; CA/AK/114/2012) the court reiterated that the sale, transfer, grant or gift of land under native customary law is constituted by the handing over of the land so transferred in the presence of witnesses. The presence of witnesses is not only merely of evidential value, but also a necessary part of the transaction. This requirement is not limited to lands held under customary law; it applies to all lands in Nigeria, regardless of tenure, particularly where a right of occupancy has been granted and is being transferred or otherwise dealt with.

Documentation



In addition to the execution of a Deed of Assignment over the family or communal land. It is important to obtain a survey plan from a licensed surveyor that clearly delineates/outlines the portion of land being purchased. More importantly, a purchaser must secure a receipt from the family or community, acknowledging the transaction and payment received. The receipt would generally bear the family or community name to clearly depict the family or community that has sold the land. It is crucial to establish that the name on the receipt corresponds with the name of the family selling the land. Finally,, to formalise ownership and secure legal recognition over the land, registration of the purchase must be initiated and completed at the relevant land registry

Conclusion

Purchasing family or communal land in Nigeria is not merely a transactional process but one deeply rooted in both customary traditions and statutory law. The complexity arises from the dual system of land ownership, which is customary and statutory, each with its own rules, obligations, and limitations. As demonstrated above, legal requirements such as obtaining the consent of the family head and principal members, conducting thorough due diligence, complying with the Land Use Act, and respecting local customs are non-negotiable safeguards against voidable or contentious transactions.



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