

Efficacy of Leases and Tenancies in Nigeria

Mike Takim Otu

Private and Property Law,
University of Calabar, Nigeria.
Email: michealtakim@unical.edu.ng

Joseph Edet

Emmanuel Bassey Asuquo

ABSTRACT

The objective of this study is to examine the effectiveness of leases and tenancies in Nigeria while analysing the associated challenges and potential avenues for enhancing the lessor-lessee and landlord-tenant relationships. Both leases and tenancies are forms of land ownership. While the phrases “leases” and “tenancies” are often used interchangeably, it is important to note that they do not strictly adhere to the same definition. Leases typically include a greater level of interest, while tenancies tend to have a shorter length. The legal meaning of a lease agreement is that the lessor maintains ownership, while in an assignment, the seller only conveys possession or occupancy. It is important to note that the Land Use Act did not eliminate the notion of leases and tenancies. Despite the presence of the Land Use Act (LUA), tenancy agreements continue to be regularly established in Nigeria since the legislation does not prohibit the conveyance of land or its subsequent development. It is important to underscore that, in addition to the Western and Midwestern states, which were the first adopters of the Landlord and Tenant Laws, primarily influenced by the English Landlord and Tenant Act of 1927, other states in Nigeria have since passed their own Landlord and Tenant Laws. This study posits that the performance and operation of leases and tenancies in Nigeria are suboptimal. The changes outlined in this paper have the potential to significantly mitigate these difficulties and provide opportunities for more efficient, effective, and enhanced leasing and tenancy practices in Nigeria. This article posits the need to enhance the institutional and legal frameworks governing leases and tenancies in Nigeria in order to provide adequate protection for both lessors and lessees.

Keywords: Landlord; Property manage; Property management; Rent; Tenant; Tenancy agreement.

INTRODUCTION

The concept of leases and tenancies derive from the English Land law doctrine of Estate. Under English Land law or law of real property Estate could be classified into estate of freehold which could be owned in perpetuity and estate less than freehold. Leaseholds and tenancies are characterized by certainty of duration, and so, they fall under the second category of English doctrine of estate (Kaganova & Nayyar-Stone, 2000). Leases and tenancies were imported into Nigerian land law through common law principles, doctrines of equity and statutes of General Application.

It is pertinent to point out from the onset that the Land Use Act did not abolish the concept of Leases and Tenancies. In spite of the existence of the Land

Use Act (LUA), tenancy agreements are executed on a daily basis in Nigeria as the statute does not prevent transfer of land or development thereon. It is also necessary to emphasize that apart from the Western and Mid states which first enacted the Landlord and Tenant Laws which were mainly based on the English Landlord and Tenant Act 1927, other states in Nigeria have now enacted their own Landlord and Tenant Laws (Frier, 2014).

Both leases and tenancies constitute land interest. Although both terms could be used interchangeably, they are not *stricto sensu*, the same leases have more during interest while tenancies have short duration. Leases and tenancies are not the same with other land interests such as assignment, licences, etc. For instance, in *Nwakpa V. Nwogu*, it was held by the court that a sale of land transaction or lease of land dealing arises “*ex contractu*”. The legal implication is that in a lease, the lessor retains title in himself, while in assignment, the seller merely transfers possession or occupation.

The aim of this seminar paper is to interrogate the efficacy of leases and tenancies in Nigeria and x-ray the issues involved and prospects of improvement in the relationship between lessor and lessee on the one hand or Landlord and tenant on the other hand.

CONCEPTUAL CLARIFICATION

Concepts are clarified hereinunder for easy comprehension of this paper.

Lease: This is defined as a document creating an interest in land for a fixed period of certain duration, usually but not necessarily in consideration of the payment of rent (Adams, 1994). In other words, it is a demise of land by the lessor to the lessee for an interest less than freehold and less than that of grantor; the interest which remains in the grantor being called a reversion. The interest created by a lease is called a leasehold interest. It need be stressed that a lease is both a contract because it creates exclusive possession for a determinable duration, and also, in most cases, an estate. Two parties are involved in a lease, namely, the lessor who owns the property and the lessee who takes the property.

Tenancy: Tenancy is almost like a lease because both of them arise when the owner of an estate in land grants, by means of a contract between the parties, the right to the exclusive possession of his land or part of it to another person to hold under the grantor for a term of years (Sullivan, 2006). Such a grant is called a lease, demise or tenancy. The grantor is known as the landlord or lessor while the grantee is called the tenant or lessee.

Assignment: This is the conveyance of the entire interest of the property owner in the property to the purchaser (Storke & Sears, 1952). The case of *Nwakpa V. Nwogu* graphically distinguished the difference between lease and assignment.

License: This is a permission to do on another person's land what would otherwise be a trespass. A license does not convey exclusive possession to the licensee and does not create proprietary rights or interest in respect of the land.

The tests for distinguishing lease from a license:

- (I) Payment of rent is not a prerequisite for a valid lease.
- (II) A lessee acquires the right to exclusive possession to the exclusion of the lessor. It was held in *Lynes V. Snaith* and *Radiach V. Smith* that exclusive possession by the lessee is the cardinal distinguishing feature of the lease from license (Jackson, 1969). However, the judicial attitude of English courts changed towards payment of rent and exclusive possession as tests for distinguishing license from lease in *Macrae V. Smith*. A tenant who inherited her parents' tenancy as monthly tenant was held to be a license, even though she had exclusive possession of the property rented and she was paying monthly rent to the landlord.
- (III) The third test is intention of the parties. The test was formulated by Lord Green M. R. in *Booker V. Palmer* and upheld by Lord Denning in *Facchin V. Bryson*.

Possession: Possession in relation to property rights and transaction connotes physical control that a person exercises in relation to land. Nnaemeka-Agu, JSC classified the elements of possession in *Buraimoh V. Bamgbose* into *corpus possidendi* and *animus possidendi*, to wit: the physical possession of a thing or land and the intention to possess the thing or land (Singer, 2022). There is therefore, as a result of this classification *de facto* and *de jure* possession. *De facto* possession may be exercised by two or more adverse claimants and may be shared. *De jure* possession is legal possession coupled with *animus possidendi*, singular or exclusive.

Possession can be classified into actual or immediate possession, constructive possession, adverse possession, concurrent possession, corporeal and incorporeal possession, hostile possession and notorious possession. The burden of proving possession of land is usually on the claimant (Olong, 2012). This is explicitly explained by the Latin maxim, *egui affirmare non egui negat incubit negation*, that is the burden of proof is on he who alleges not on him who denies.

Ownership: This is the totality of rights and powers that are capable of being exercised over a thing. It is the right to make physical use of a thing, the right to the income from it in money, in kind or in services and the power of management including alienation. Olu in citing Sitkoff & Dukeminier (2017) has identified five incidents of ownership as the power of enjoyment, right of possession, power to

alienate inter vivos to charge as security, power to beneath the res by will and power of residue. Ownership exists in different types, namely, co-ownership, sole ownership, absolute ownership, limited ownership, trust and beneficial ownership and legal and equitable ownership.

RESEARCH METHOD

The research method used in this paper is doctrinal, and analytical; comparative, primary and secondary sources of materials are used.

CHARACTERISTIC FEATURES OF LEASES AND TENANCIES

A valid lease or tenancy must contain the following characteristic elements, viz; certainty of parties, certainty of property certainty of term, certainty of terms and exclusive possession. A valid lease must not contain any vitiating elements.

Certainty of parties: There must be a lessor who is capable of creating a lease and a lessee capable of taking the demise parties must also be juristic persons such as natural persons; a registered company corporation or body created by statute or registered trustees of an association.

Certainty of property: The demised property must be ascertainable and described with precision. The demised property must be in existence at the date of commencement, otherwise nothing is demised and the agreement will be void.

Certainty of term: A valid lease must have definite or fixed duration with fixed or ascertainable date of commencement; it cannot ensure in perpetuity. In short, it must contain commencement date and date of term in duration. It could be weekly, monthly, quarterly or yearly or else it will be void. In relation to the commencement date, the lease must take effect from a specified date or upon the happening or occurrence of an ascertainable future, for instance, a lease can take effect when the house or flat becomes vacant or else it is void.

Certainty of terms: The words used in lease covenants must be expressed and not implied. Examples could be covenant to pay rent or covenant not to assign or sublet the premises. It is necessary to point out that some states rent control laws such as Rivers and Kaduna states stipulate specific application of some covenants or generally as the circumstances of different leases may admit.

Exclusive possession: In a valid lease, the lessee, must acquire exclusive possession or else no valid lease is created. The exclusivity in possession means exclusive occupation or physical control of the demised property either personally or through the lessee's agent, proxy or servant. Exclusive possession refers to the

lessee's exclusive power of using the right attached to the lease of land, to retain same and entitled to undisputable enjoyment of it against the whole world except persons who establish a better title. It is pertinent to emphasize that a person claiming to be a lessee must establish a right of exclusive possession in the property, otherwise, he would be deemed to be a licensee.

LEGAL CAPACITY TO CREATE OR TAKE A LEASE OR TENANCY IN NIGERIA

Legal capacity to create or take a lease is governed by common law principles and local legislations which include:

Holder of right of occupancy: Deemed Landlords under the Land Use Act who are basically the holders of the right of occupancy can create leases and tenancies under the Act. These original or deemed landlords are empowered by LUA 1978 to create tenancies for fixed terms which are subject to any conditions and covenants they think fit and the provisions of LUA 1978 and any other statute (Buerthey, et al., 2013). Tenancies created by deemed or original landlords are regarded as subleases because their statutory interest is leasehold.

Generally, tenants except a tenant-at-will or at sufferance may create a tenancy of a lesser period in favour of third parties in the absence of an agreement to the contrary and subject to the Landlord's consent requirement. Some States' Rent Control Laws grant the powers to yearly tenants of one or more years certain or yearly tenancy by deed. The exercise of such powers is subject to any contrary agreement in his tenancy and the landlord's consent.

Holders of Power of Attorney: Holders of the Power of Attorney may create a tenancy for a term that is less than that authorized by the power of Attorney or for the full authorized period (Boxx, 2001). Any tenancy shall, if it would otherwise be valid, be valid for the authorized period and void as to the excess period.

Infants: At common law, a lease created by an infant is voidable and may be avoided by the infant within a reasonable time after attaining the age of majority (Barnes, 2016). On the contrary, an infant may take a lease but he is entitled to repudiate it on attaining age of majority, but he cannot recover any rent paid. Repudiation of the lease by the infant on attaining majority must be done within a reasonable time, or else, he will be liable for arrears of rent and the performance of the covenants contained in the lease. In Rivers and Kaduna states, an infant cannot create a tenancy in relation to residential premises except through his parent or guardian or the High Court upon application on his behalf. The infant cannot also hold a legal interest under a deed of lease. It is important to emphasize that:

- a) where a deed of lease is executed in favour of an infant for his benefit, the deed shall operate as an agreement for valuable consideration to execute a lease in the name of one or more adults in trust for the infant and the beneficial interest of the infant in the property shall not be affected.
- b) where a lease is executed in favour of an infant jointly with an adult, the adult shall hold the lease in trust for himself and the infant, but not as to sever the joint tenancy in any beneficial interest arising from such transaction.

Persons of unsound mind: Any lease created or taken by a person of unsound mind is binding on him except the lessee or landlord (lessor) knew of his insanity at the time of creating the lease. An order made in respect of the estate of a person of unsound mind can make the lease to be granted by the receiver (Bigelow, 2014). Under the rent control laws of Rivers and Kaduna states a person of unsound mind may be granted a tenancy, except the tenancy is unnecessary for him, he cannot be sued directly or indirectly upon a tenancy or an agreement for tenancy.

Married persons: the Married Women Acts 1882 empowers married women to grant or take a lease of tenancy

Corporations: corporations may grant or take leases, but they must do so under the corporations seal. However, where the lease is not sealed by the corporation and a tenant enters the property and pays rent, he holds the tenancy on the terms of the deed of lease.

Registered companies: companies registered under Companies and Allied Matters Act 2020 may create or take lease as authorized by its Memorandum of Association. Where the Memorandum of Association does not provide for the power of the company to lease. The lease will be void, but may however form the basis for the application for injunction by third parties.

Partnership: members of a partnership may only create or take a lease which will be binding on the partnership, if they create or take a lease with the business name, such a lease will be void.

Associations: associations formed for any socio-cultural or religious purpose under part C of CAMA 2020 can create or take a lease in the names of their registered trustees. If a lease is created or taken in the name of an association as a party, it would be void.

Trustees: under the Settled Land Act 1882, trustees holding land on trust for sale can grant lease to a tenant for life, subject, however, to consent (if any) as would have been required on sale under the trust for sale.

FACTORS THAT CAN VITIATE A LEASE OR TENANCY

Vitiating factors that can render a lease or tenancy void include fraud. Unlawful lease or tenancy contrary to public policy, common mistake by both landlord and tenant, inducement and clerical errors.

Fraud: a tenancy that is procured by fraud and intended for a purpose which is unlawful or contrary to public policy is void (Friedman, 2011). Tenancy set for illegal purposes is also void and money or other payments made in connection with unlawful or illegal tenancy is not recoverable by action.

Common Mistakes: a tenancy created by common mistakes of the parties may be set aside, if it is a mistake of facts and not of law. The landlord can be mistaken of the identity of the tenant and where circumstances are such that the person of the tenant is an important factor such a tenancy shall be void (Gold, 2016). Inducement through Misinterpretation: this is where a party to a tenancy agreement through Misrepresentation is induced (either fraudulently or innocently) and not being a term of the agreement, the party is induced may rescind the agreement.

Where terms in a written tenancy differ materially from the term intended by the parties: this could result from mutual mistake of fact of both the landlord and tenant or clerical error. Such a mutual mistake or clerical error may be corrected to effectuate the intention of the parties, and oral evidence of such intention shall be admissible by the court.

Methods of Creating Leases: Leases/Tenancies, could be created by parol or orally, in writing and by deed.

Parol or Oral Lease: Under the Statute of Frauds 1877, leases can be created by parol or orally. These conditions must be present to make such leases valid: giving of possession to the lessee, the lease must reserve the best rent and its duration must not exceed 3 years.

Written Leases: This is an agreement in writing.

Its legal effect is almost the same with parol lease except that the terms of a written lease are more easily enforceable through specific performance and part performance. Besides, express terms can be implied in a lease by writing

Lease by Deed: This is a lease under seal. Leases which have a duration of 3 years and above must be executed by a deed. Section 3 of Statute of Frauds and section 77 of the Property and Conveyance Law of Western Nigeria 1959, stipulate that a lease which is created for the purpose of conveying or creating a legal estate must be executed by deed, else it will be void (Bokani, 2023). If there is a default in a

lease that was supposed to be created, the entire transaction would not be cancelled, it could be interpreted in equity as an agreement to create a lease and specific performance would lie.

Contents of a lease of Tenancy: A typical lease or tenancy would contain the following parts: commencement and date, parties, recitals, testatum, Habendum, Reddendum, covenants, Testimonium, Schedule, execution clause and Attestation clause.

Commencement and Date: A lease that is executed through deed usually starts with the words, “THIS LEASE”, But tenured tenancies and others that are not expected to be executed by deed may start with the words “THIS AGREEMENT”. Next to be written is the date that the lease or tenancy is made, which is normally written as follows: THIS LEASE/TENANCY is made this 14th day of May, 2023.

Parties: This consist of the names, titles and or description of the parties, their addresses which are usually written after the “BETWEEN”. The legal requirements are that parties must have the capacity to contract and must be juristic persons.

Recitals: These may not be necessary in leases but in sublease since the lessee cannot grant it without the consent of the lessor. The recital must contain the lessors consent, and also introduce the lease/tenancy agreement with the word, “WHEREAS.”

Testatum: This carries the operative words and the parcel clause in a lease/tenancy agreement. Operative words are words that portray what the lessor and lessee have agreed , for instance, “WHEREBY the lessor agrees to demise unto the lessee”.

Parcel clause is the SUBJECT MATTER of the demise and it is written as follows: ALL THAT, next to the parcel clause is the description of the properties. The ordinary meaning of “ALL THAT” refers to everything that is comprised in the demised property.

Habendum: This refers to the quantity and quality, duration and commencement of the term. Duration cannotes the number of years, for example, 20 years or 5years or periodic term such as yearly quarterly, monthly, or weekly (Boggs, 2008). Duration is couched in these words, “FOR A PERIOD OF.” “or” on a weekly, monthly/yearly tenancy. The lease tenancy must contain an effective commencement which is stated as follows: “commencing from “or” with effect from”, which is followed by the date agreed by lessor and lessee. A commencement term may be in the past, present or future date. A term that is stated to take effect from the past date or from the date the lease is executed is known as “a lease in possession”. A term that is written to take effect in the future known is a

reversionary lease or a lease in reversion, while a term “to run concurrently with an existing lease” is called a lease of reversion, Smith opines that: A lease in reversion does not create an estate in the land but gives the issue a mere right in possession called an “inter essetermini” A lessee of an inter essetermini, unlike, lessee of reversion who is neither entitled to the benefit nor subject to liability of covenants running with the reversion. He is however, entitled to sue in trespass to protect his right to possession.

It need be stressed that the taking of actual possession of a demised property in order to create estate is no longer a requisite condition in the Western States that are regulated by Property and Conveyancing Law, as well as Rivers and Kaduna States that have rent control laws.

Reddendum: it states the amount of the lease/tenancy payable, and is expressed by the WORDS YIELDING AND PAYING, therefore, the sum of 1million, being rent for the... term to run. The person the rent is paid to and mode of payment of rent in arrears OR ADVANCE (if necessary). Future review of rent clause must be inserted, or else this will render future review of rent impossible. The insertion of rent review clause must be subject to the provisions of the existing rent control legislation, because it has overriding effect.

Covenants: These must be agreed by the parties. Covenants could be express, implied by operation of law and usual

(a) Express Covenants: These are positive terms expressed in the lease agreement and agreed upon by the parties as binding on them. The lessee’s/tenants express covenants are;

1. To pay rent
2. To pay rates and outgoings. Rates may include all taxes, levies, charges in respect of the demised property.
3. Covenant which describes the use to which the demised property can be put to such as residence, trading, garage sawmill, machinery. A breach of the user covenant can attract injunction, right of re-entry and claim of damages by the lessor/landlord,
4. To repair – usually expressed as follows, “tenant is to keep, maintain and deliver up the demised premises in no less condition than it was at the beginning of the lease”. When the landlord is in default, the tenant can claim specific performance and or damages but cannot resort to self-help by deducting the cost of repairs from the rent or vacating the premises before the tenancy expires.
5. Covenant against assignment, underletting or parting with possession. Where the lease is silent on assignment, the tenant can assign. The landlord, remedies on assignment include damages, forfeiture and ultimate determination of the tenancy. Where a demised property is underlet and the landlord collects the rent from the

sublease, it is implied that he has waived his right. This covenant can be absolute or qualified. An absolute covenant not to assign etc. reads thus, “not to assign, sublet or otherwise part with the possession of the demised property”. A qualified covenant has two limbs: it requires “The landlord’s” consent and landlord’s consent should not unreasonably be withheld. Both are to protect the interests of the landlord and tenant. Grounds upon which the landlord may refuse consent are: personality of the potential sub lessee and to which the property will be put to use. It is, however, unlawful to refuse consent on the grounds of tribe, race, health.

6. Not to make alteration or improvements. Alteration and improvements may or may not be granted by the landlord because the covenant is an absolute bar or restriction. Landlord’s remedies are forfeiture and damages or cost reinstatement.

7. Covenant to insure – this may be taken by either the landlord or tenant to protect the former’s reversionary interest. An insurance clause may include the party to insure, risk of insurance, amount of cover and application of insurance money.

viii. Covenant/Option to renew: The landlord has the right to give the tenant an option to renew his tenancy for another term. Such a clause of option to renew tenancy usually contains.

- “The time within which the tenant is to exercise the right of option to renew tenancy”.
- The manner of exercising the option
- Conditions precedent to be fulfilled
- Terms of the new lease – the courts usually construe this condition precedent strictly against the tenant.
-

Covenant/option to purchase reversion: This covenant consists of proviso for forfeiture and re-entry for non-payment of rent and re-entry and forfeiture for breach of other covenants. The first proviso requires formal demand for rent by the landlord and continuous default by the tenant. The second clause is inserted to allow the landlord terminate the tenancy for breach of any of the covenants after serving the tenant the statutory notice to quit the demised property.

(b) Implied covenants for both landlord and tenant

(i) Landlord – His implied covenants are to grant quiet enjoyment (possession) and not to derogate from the grant to the tenant.

(ii) Tenants implied covenants include to pay rents, not to commit waste, to keep and deliver up premises in tenantable condition and where the landlord covenants, to repair, allow a right to view.

(c) Usual covenants – These are covenants that are usual beyond question and by the custom of the locality in which the demised premises are situate or by the usage of trade for the purpose of which they are let, or by other circumstances.

(i) The Landlord’s usual covenants include quiet enjoyment, freedom of the tenant from the Landlord’s disturbances and his proxies (this includes both physical

interference) and exercise of adverse right over the property, and not to derogate from the grant.

(ii) The tenant's covenants include to pay rents, rates, taxes, levies etc. to keep and deliver up the premises in good state of repairs, to allow the landlord view the state of repair, if he wants to repair the property, re-entry for non-payment of rent but not for breach of other covenants.

Testimonium Clause – This links the parties with the terms of the lease, and is usually expressed as “IN WITNESS” for a deed and “AS WITNESS” for agreement underhand, “whereof the parties hereto have hereunto set their hands/seals on the date and year abovementioned”. It also includes the schedule which contains the details of facts on the demised property and other vital terms in the agreement (López Arroyo & Pérez, 2019).

Execution Clause – Execution is effected by signing of the deed or agreement by the parties, as well as making a mark or sealing. A deed becomes operative only from that time it is delivered, while agreement is operative from the date of execution.

Attestation – This is effected by witnesses of full age and mental capacity.

Stamping: This is a lease duty on the rent that is usually charged ad valorem.

Registration – A lease for a term of 3 years and above must be registered as required by the Registration of Titles Act. A lease of less than 3 years is not registrable. An unregistered lease is not void but it is inadmissible in evidence and has no priority as against a subsequent registered lease. It is pertinent to point out that the types of tenancy include fixed term tenancy, periodic tenancy, tenancy at will, tenancy at sufferance and statutory tenancy.

EFFICACY OF LEASES AND TENANCIES IN NIGERIA: ISSUES AND PROSPECTS

The operation of leases and tenancies as land interests in Nigeria is foreign to Nigerians who are from childhood, socialized into communalism. The English roots of leases and tenancies are entrenched in the concept of individualism, which is alien to Africa. Nigerian customary land law, however, recognizes some limited forms of tenancies such as customary kola tenancies that grants interest purely on vacant parcels of land in hell of the payment of rents by the grantee to the grantor (Hayford, 1971). English leases and tenancies that were imported into Nigerian Land Law from English Land Law are caught with so many challenges and issues. A study carried out by Olabisi has chronicled multifarious challenges facing these

land interests in Nigeria. The challenges are discussed hereinunder as follows:
Olabisi, B. B., Landlord – Tenant Relationship in Residential Property Management. A Case Study of Selected Housing Estates in Ikeja, A B.Sc Project Submitted to Covenant University, Otta, Ogun State, Nigeria.

Non-Payment of Rents: Some tenants move into the demised premises and impress the landlord by paying their rents as and when due. After some years they accumulate arrears of rents. This may be due to economic reasons or intentional. Owing arrears of rent affects the relationship between the landlord and tenant and leads to the determination of the tenancy.

Many landlords whose relationship with their tenants has gone sour at times resort to the unstatutory approach of ejectment of such tenants (Morris, 2011). They obtain fake quit notices from Magistrate's Court Clerks, eject and throw out the personal effects of their tenants without court proceedings. This self-help approach is very common in Calabar Magisterial Division.

Maintenance and repairs may at times be the bone of contention between the landlord and tenant particularly if a tenant is living in a demised property that is owned by a landlord who is a "shylock". Even though a tenant may obtain consent from his landlord before effecting external maintenance and repairs of the demised property, the landlord may neglect, fail or refuse to reimburse him or convert the maintenance and repairs costs to rents.

Payment of levies, taxes, charges, utilities and outgoings may at times result in disagreement between the landlord and his tenant.

From the study carried out by Olabisi, a major ground for landlord-tenant disputes is the personal differences between them. This usually leads to the breakdown in communication between them. Limited involvement of the landlord and tenant in the preparation of leases agreement by the lawyer has been adjudged to be the major cause of lack of trust between them. This approach shuts out the tenant from participatory decision-making process in the lease agreement.

Third parties such as estate valuers, managers and surveyors who act as middlemen between the landlord and tenant usually create gaps between them that leads to disputes. These disputes can easily be settled, if such third parties arrange general meeting between landlord and tenant to settle the disputes. This is called in-house resolution of disputes mechanism. During the said study by Olabisi, some respondents suggested litigation, arbitration and mediation as alternative mechanisms for settlement of disputes between the landlord and tenant.

By the stipulation of the Land Use Act 1978 only Estate Surveyors and Valuers have the right and powers to act as agents in property management in Nigeria. The Land Use Act 1978 empowers them with the functions of valuation of properties, estate agency property marketing property development appraisal and environmental management (Joachim, et al., 2015). It is only the real estate agency that is the only tool exercised by estate surveyors and valuers that can appropriately build a bridge between the lessor and lessee and, or landlord and tenant. The real estate agents reputation is the most important thing that affects quality delivering globally. It quite disheartening that the real estate agency market in Nigeria has recently been invaded by other professionals and even people without formal training in any related discipline intruding into real estate and real estate related services. It is quite unfortunate that most landlords engage the services of these intruders rather than qualified estate surveyors and valuers. The invasion of these grades breeds serious problems in the Nigerian rental housing sector.

Some tenants are difficult and bad in character. Most prospective tenants in Nigeria who were usually eager to meet the terms, conditions and requirements stipulated in the tenancy agreement often become recalcitrant no sooner than they had taken possession of the demised property. The estate surveyor is, in this circumstance, faced with the problem of managing the bad tenant and the landlords pressures of ejecting the tenant. The costs of ejection through litigation may at times, be borne by the estate surveyor.

Many tenants are ignorant of the existence and provisions of states Rent Control and Recovery of Residential Premises and Tenancy Laws, hence they suffer untold hardships in the hands of their landlords who may be unscrupulous. For instance, unscrupulous landlords increase rents arbitrarily which is inconsistent with the provisions of the said laws which stipulate as unlawful increments in rents within 3 years interval after the last increment. Tenants have the right to reject such arbitrary increase and seek judicial remedy from a court of competent jurisdiction or tribunal, and as well, cannot be ejected by the landlord even after 3 months of default. Some landlords at times forcefully eject their tenants who, statutorily, have the right to maintain both civil action in damages and criminal action. On conviction, the landlord would be liable to pay fine or serve some years of imprisonment or both. Many rental agreements in Nigeria are informally executed by landlords and tenants, hence they are not regulated by the Rent Control and Recovery of Residential Premises and Tenancy Laws. Such agreements cannot be registered under the Registration of Titles Laws. Litigations to enforce such agreements are impossible, hence it becomes extremely difficult to resolve conflicts between such parties. Four major problems with leases and tenancies have been identified by UN-HABITAT, namely

(a) housing policies are often biasedly evolved in favour of landlords/lessors and fail to take care of the needs of tenants. Absence of policies that protect the rights of tenants can increase the risk of their exploitation by unscrupulous landlords/lessors.

(b) Poor rental conditions which are due to complex factors such as poor housing conditions and poverty.

(c) Informality and invisibility of many lease/tenancy agreements which make them impossible to be regulated by government rules and regulations.

(d) Housing policies exclude terms and conditions acceptable to lease/tenancy agreements which results in disputes between landlords/lessors and tenants/lessees when they are breached.

The only valid grounds for ejectment of a tenant, which the landlord/lessor must adduce in court or tribunal during litigation as stipulated by Rent Control and Recovery of Residential Premises and Tenancy Laws include:

(a) That the rent is due and is arrears for 3 months after it fell due.

(b) That the tenant has breached some express covenant(s) and the tenancy agreement;

(c) That the tenant is given notice to quit the demised premises because the landlord/lessor wants to sell the property.

(d) That the demised property is required for some purpose(s) that is in the public interest.

(e) That the tenant and, or, sub-tenant or those living with the tenant are guilty of nuisance or annoyance to adjoining occupiers.

(f) Overcrowding in the demised premises which makes it injurious and dangerous to other tenants.

(g) That the premises have become a subject of abatement notice issued by public authority which poses imminent danger to the inhabitants.

(h) That the demised property requires substantial repairs which makes it necessary for the tenant to vacate possession, exception is where the ejection will cause hardship to the tenant,

(i) That the demised property is required by the landlord for his occupation or occupation of his children who are 18 years and above or his parents. All these grounds must be proved by balance of probability during litigation. Evidence has shown that some unscrupulous landlord/lessors feign these grounds while filing processes for ejectment of their tenants in court, only to admit fresh tenants into their property after ejecting former tenants.

Endemic corruption which permeates all strata of Nigerian society including the judiciary affects tenancy litigations in Nigeria.

CONCLUSION

Leases and tenancies are pivotal in socio-economic development of a country. They perform the following important functions:

- (a) They act as a financial device: Rents paid by lessors/tenants act as opportunity cost for their investments. Leases and tenancies also provide protection for lessors/landlords in the event of default by tenants/lessees, through forfeiture, ejection, specific performance, etc.
- (b) Leases/tenancies can be used to manage risks by both lessors/Landlords and lessees/tenants. Through leases residual rights in possession are transferred to the lessees/tenants by the lessors/Landlords, thereby reducing the risks to be borne by the latter.
- (c) Leases/tenancies can be used to reduce transaction costs in the sense that while the lessee/tenant holds the right of possession, the lessor/landlord holds reversionary rights and the right to rents. The lessor/landlord has both present and future rights in his demised property.

Based on the challenges adumbrated in section 9 of this paper, leases and tenancies do not perform and operate optimally in Nigeria. The reforms proposed in this paper may go a long way to reducing these challenges and enthrone prospects of efficient, effective and improved practice of leases and tenancies in Nigeria.

PROPOSALS FOR REFORM

- (a) there is the need to strengthen institutional and regulatory frameworks that govern leases and tenancies in Nigeria to give protection to both lessors and lessees.
- (b) The estate surveyors and valuers regulatory authority should carry out intensive and extensive public enlightenment and awareness to educate existing and potential lessors/landlords and tenants/lessees on their respective rights and obligations in relation to lease/tenancy agreements and their covenants.
- (c) The estate surveyors and valuers who act as real estate agents and middlemen between lessors/landlords and tenants/lessees should manage their relationship efficiently and properly to reduce disputes and litigations between them.
- (d) Government(s) should update its (their) housing policies that would set minimum standards for the management and maintenance of demised properties in Nigeria.
- (e) Government(s) should evolve efficient and effective land administration as an avenue to encourage existing and potential lessors/landlords and make land easily available for rental properties.
- (f) Government(s) should provide adequate access to affordable housing finance and loans from mortgage institutions to low-income earners in Nigeria to enable them build and own their own homes.
- (g) Government(s) should develop the political will to fight corruption, so that prosecution of litigations in Nigeria would become more effective and easier for the aggrieved lesses/tenants.

REFERENCES

Adams, D. (1994). *Urban planning and the development process*. Psychology Press.

- Barnes, W. R. (2016). Arrested development: Rethinking the contract age of majority for the twenty-first century adolescent. *Md. L. Rev.*, 76, 405.
- Bigelow, H. A. (1914). The Content of Covenants in Leases. *Michigan Law Review*, 12(8), 639-659.
- Boggs, A. L. (2008). Anadarko Petroleum Corp. v. Thompson: Interpretation of Oil and Gas Lease Habendum Clauses in Texas and Why Oklahoma Should Maintain Its Divergent Approach to Keep Leases Alive. *Okla. L. Rev.*, 61, 341.
- Bokani, A. M. (2023). THE DUTIES OF TRUSTEES IN THE MANAGEMENT OF REAL PROPERTY IN NIGERIA: CAN TRUSTEES IN NIGERIA BE TRUSTED?. *Unizik Law Journal*, 19(1).
- Boxx, K. E. (2001). The Durable Power of Attorney's Place in the Family of Fiduciary Relationships. *Ga. L. Rev.*, 36, 1.
- Buertey, J. I. T., Abeere-Inga, E., & Adjei, T. (2013). Project cost risk and uncertainties: towards a conceptual cost contingency estimation model. In *WEST AFRICA BUILT ENVIRONMENT RESEARCH (WABER) CONFERENCE*, 9(11).
- Friedman, D. A. (2011). Bringing Order to Contracts Against Public Policy. *Fla. St. UL Rev.*, 39, 563.
- Frier, B. W. (2014). *Landlords and tenants in imperial Rome* (Vol. 115). Princeton University Press.
- Gold, A. E. (2016). No home for justice: How eviction perpetuates health inequity among low-income and minority tenants. *Geo. J. on Poverty L. & Pol'y*, 24, 59.
- Hayford, J. E. C. (1971). *The truth about the West African land question* (No. 15). Psychology Press.
- Jackson, D. (1969). The Legal Effects of the Passing of Time. *Melb. UL Rev.*, 7, 407.
- Joachim, O. I., Kamarudin, N., & Aliagha, G. U. (2015). Application of the powers of governors??? to charge ground rent under nigeria land use act of 1978. *Jurnal Teknologi*, 3(2).
- Kaganova, O., & Nayyar-Stone, R. (2000). Municipal real property asset management: An overview of world experience, trends and financial implications. *Journal of Real estate portfolio management*, 6(4), 307-326.
- López Arroyo, B., & Pérez, L. M. (2019). Lexical chunks in English and Spanish sales contracts: A corpus-based study. *Terminology*, 25(1), 32-59.
- Morris, J. (2011). *Fifty Years in Politics and the Law*. University of Wales Press.
- Olong, M. D. (2012). *Land Law in Nigeria*. African Books Collective.
- Singer, J. W. (2022). *Property*. Aspen Publishing.
- Sitkoff, R. H., & Dukeminier, J. (2017). *Wills, trusts, and estates*. Aspen Publishing.

Storke, F. P., & Sears, D. W. (1952). Transfer of Mortgaged Property. *Cornell LQ*, 38, 185.

Sullivan, C. W. (2006). Forgotten lessons from the common law, the Uniform Residential Landlord and Tenant Act, and the holdover tenant. *Wash. UL Rev.*, 84, 1287.