



Real Property & Land Ownership

Beyond the Certificate of Occupancy: The Legal Due Diligence Every Land Buyer Must Conduct in Nigeria

BEYOND THE CERTIFICATE OF OCCUPANCY: THE LEGAL DUE DILIGENCE EVERY LAND BUYER MUST CONDUCT IN NIGERIA¹

1. Introduction

A Certificate of Occupancy is evidence of a right of occupancy granted by the government, but it is not unimpeachable or conclusive proof of ownership. It can be challenged where it was obtained through fraud, mistake, misrepresentation, or where another person establishes a better title to the land, and may, in appropriate circumstances, be revoked in accordance with the law. Consequently, every prudent purchaser must undertake comprehensive legal due diligence before completing any land transaction.

Land remains one of the most valuable assets in Nigeria, serving as a source of wealth, investment, commercial development, and security. Thus, the Nigerian real estate sector has witnessed increased activity in recent years, accompanied by an increasing demand for residential, commercial, industrial, and agricultural land. However, this growth has also been accompanied by a proliferation of fraudulent land transactions, multiple sales of the same property, defective titles, government acquisitions, boundary disputes, and protracted litigation. These challenges continue to expose unsuspecting purchasers to substantial financial losses despite the apparent authenticity of the documents presented by vendors.

A recurring misconception among prospective land buyers is the belief that the existence of a Certificate of Occupancy (commonly referred to as a "C of O") automatically guarantees a valid and indefeasible title to land. In practice, many purchasers conclude transactions solely on the strength of a Certificate of Occupancy without undertaking any further investigation into the property's legal status or the vendor's title. This assumption has proven costly, as Nigerian courts have consistently maintained that a Certificate of Occupancy is not conclusive proof of ownership and may be successfully challenged where another person establishes a better title or where the certificate was procured through fraud, mistake, misrepresentation, or otherwise in contravention of the law.

The legal foundation for the issuance of Certificates of Occupancy is found in sections 5, 9, and 34 of the *Land Use Act*,² which empowers the Governor of a State to grant statutory rights of occupancy over land within the state. Section 5 (1)(a)³ empowers

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² See, the *Land Use Act* 1978.

³ *Ibid.*

the Governor of a state in respect of land whether or not in an urban Area to grant statutory right of occupancy to any person for all purposes. Section 9(1)(a)⁴ empowers the Governor to issue a Certificate of Occupancy when granting a statutory right of occupancy under section 5(1). In practice, the grant of statutory right of occupancy is only done through a letter of allocation which contains the names and address of the allottee, the location of the land, the size of the land including the survey or dimensions for easy location and identification, as well as an explicit explanation of the ground rent to be paid thereof. The certificate is never issued until the ground rent and other expenses are paid by the allottee to the Government. Upon the fulfilment of all the conditions precedent, a certificate of occupancy is issued, which in itself will contain all the above, and other conditions to the grant and signed by the Governor of the State (or any other person who the Governor delegates the power to, to sign on his behalf).⁵ The Certificate of Occupancy is registered in the Land Registry and the registration number volume and year of registration is also stated on the Certificate of Occupancy.

Section 14 of the *Land Use Act*⁶ confers on the holder of a statutory right of occupancy the right to exclusive possession of the land against all persons other than the Governor, subject to the provisions of the Act. Section 24⁷ further recognizes the alienable nature of a right of occupancy, subject to the statutory restrictions and consent requirements imposed by the Act. Section 34⁸ provides that where the land in an urban area was vested in a person before the commencement of the Act, the land should continue to be held by him as if he was a holder of a statutory right of occupancy issued by the Governor under the Act. While the certificate serves as *prima facie* evidence that a statutory right of occupancy has been granted, it neither validates a defective title nor extinguishes pre-existing proprietary interests. As earlier stated, a Certificate of Occupancy raises a presumption of exclusive possession which may be defeated by proof of superior prior title. Accordingly, the mere production of a Certificate of Occupancy does not dispense with the purchaser's obligation to investigate the vendor's title and the legal status of the property before completion of the transaction.

The doctrine of *caveat emptor*, meaning "let the buyer beware" continues to play a significant role in Nigerian conveyancing practice. Although vendors owe certain duties of disclosure, the law imposes a corresponding obligation on purchasers to exercise

⁴ *Ibid.*

⁵ Section 45(1) of the *Land Use Act* 1978.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

reasonable diligence before acquiring an interest in land. Such diligence extends beyond the examination of title documents to include searches at the appropriate Land Registry, verification of the root of title, investigation of pending litigation, confirmation of survey authenticity, assessment of government acquisition status, and identification of any encumbrances or third-party interests affecting the property.

This article postulates that a Certificate of Occupancy should be regarded as only one component of a comprehensive due diligence process rather than the ultimate determinant of a valid title. It examines the legal limitations of a Certificate of Occupancy, analyses the various investigations that every prudent purchaser ought to undertake before purchasing land in Nigeria, and highlights the indispensable role of legal practitioners in safeguarding clients against avoidable property disputes. Ultimately, the article seeks to demonstrate that effective legal due diligence is not merely a matter of professional prudence but an essential safeguard for securing a valid and enforceable interest in land.

2. Understanding the Certificate of Occupancy: What It Proves and Does Not Prove

The *Land Use Act*⁹ restructured land tenure in Nigeria by vesting all land within a state in the Governor, who holds it in trust for the people. Individuals no longer "own" land in the traditional sense; instead, they hold a right of occupancy, which the Governor verifies by issuing a Certificate of Occupancy under section 9.¹⁰ In *Adole v. Gwar*¹¹ the Supreme Court affirmed that the *Land Use Act* was not intended to extinguish pre-existing interests in land and held that a Certificate of Occupancy is not conclusive evidence of title. Rather, it constitutes *prima facie* evidence of the right, interest or title stated therein and may, in appropriate circumstances, be challenged and declared invalid.

In the case of *Idundun v. Okumagba*,¹² the Supreme Court held that title to land in Nigeria may be established in five distinct and independent ways, and that a claimant need only succeed under one of them to sustain a declaration of title:

- i. By traditional evidence/history;
- ii. By production of duly authenticated documents of title;
- iii. By acts of ownership — numerous and positive enough, over a sufficient length of time, to raise an inference of exclusive ownership;

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ (2008) 1 ALL N.L.R. 88.

¹² (1976) LPELR – 1431 (SC).

- iv. By acts of long possession and enjoyment, which raise a rebuttable presumption of ownership under the *Evidence Act*; and
- v. By proof of possession of adjacent or connected land, in circumstances making it probable that the claimant also owns the land in dispute.

Crucially, a Certificate of Occupancy is not conclusive proof of title, it is only *prima facie* evidence of it. This principle has been affirmed repeatedly by the apex court, including in *Ogunleye v. Oni*¹³ where the Supreme Court held that a Certificate of Occupancy does not by itself, create a title where the person to whom it was issued had no title or better right to the land in the first place. In this case, the appellant argued that the Certificate of Occupancy issued in 1983 strengthened his title. However, the Supreme Court explained the legal effect of a Certificate of Occupancy, emphasizing that it does not, by itself, confer an indefeasible title where the grantee had no valid title or better right to the land.

A Certificate of Occupancy may carry a significant evidential weight but it does not automatically defeat a prior and superior title or right of occupancy. If another person can establish a better preexisting right, the court may inquire into the foundation upon which the Certificate of Occupancy was issued. As the courts have held, a Certificate of Occupancy may, in appropriate cases, be effectively challenged and rendered invalid, null and void where fraud, error, or a pre-existing claim is established.

3. The Pillars of Proper Legal Due Diligence

Sound due diligence in Nigerian land transactions rests on several interlocking pillars. No single pillar is sufficient in isolation; the strength of a legal opinion on title comes from the cumulative weight of all of them.

The role of a lawyer to carry out these pillars cannot be overemphasized. The value a lawyer brings to a Nigerian land transaction is not merely procedural, involving the collection of documents and filing of searches, but also strategic. This means advising clients candidly on the level of risk a particular acquisition carries, rather than simply certifying that "the documents are in order." It means structuring transactions defensively: negotiating warranties and indemnities from the vendor regarding title, considering escrow arrangements that release funds only upon confirmed perfection of title, and, where family or communal interests are involved, insisting on documented, witnessed consents rather than informal assurances. As land fraud schemes in Nigeria grow more sophisticated, forged Certificate of Occupancy, recycled survey plans, and

¹³ (1990) 2 NWLR (Pt. 135) 745.

impersonation of family heads are increasingly reported features of land disputes. The standard of care expected of legal practitioners rises correspondingly. A cursory review of documents no longer meets that standard, if it ever did.

The following are pillars of legal due diligence in land transactions:

- i. **Root of Title Investigation:** The lawyer must trace the chain of title backward from the current vendor through every prior assignment, grant, or inheritance to establish how the land was acquired and subsequently transferred into the hands of the current vendor and whether each transfer in the chain was itself valid. A break anywhere in that chain, such as unconsented alienation or a defective family conveyance, can compromise everything built on top of it.
- ii. **Search at the Land Registry:** A formal search at the relevant State Lands Registry and also, where applicable, searches with the Land Use and Allocation Committee or Geographic Information Service is indispensable. This reveals whether the title has been registered, whether there are competing registered instruments, and whether encumbrances mortgages, liens, cautions, or pending assignments exist against the property.
- iii. **Physical Inspection and Survey Verification:** Documents alone can mislead. The lawyer, ideally with a licensed surveyor, should confirm that the beacon coordinates on the survey plan match the property in fact, and should verify whether the land falls within a government acquisition, a setback, a right-of-way, or a designated area, all of which may materially affect the value, use or enforceability of the interest purportedly conveyed.
- iv. **Family and Community Land Considerations:** Where the land derives from family or communal ownership, Nigerian customary law imposes its own consent architecture, distinct from the *Land Use Act*. The courts have long held that the head of family must join in any conveyance of family land, with the concurrence of the principal members, failing which the transaction may become void or voidable as established in the cases of *Ekpendu v. Erika*¹⁴ and *Adejumo v. Ayantegbe*.¹⁵ More recently, in *Offodile v. Offodile*¹⁶ the apex court reaffirmed that a family head who deals with family land as though it were his personal property, without the principal members' consent, cannot pass good title. Verifying that all requisite family consents were obtained and were

¹⁴ (1959) SCNLR 186.

¹⁵ (1989) 3 NWLR (Pt. 110) 417.

¹⁶ (2019) 16 NWLR (Pt. 1698) 189 (SC).

properly documented is therefore not a customary formality; it is a legal necessity.

- v. **Litigation Search:** A search of relevant court registries, such as the relevant High Court with jurisdiction over the area in which the land is situated, and where applicable, the Land Use and Allocation Committee records to check for pending suits, judgments, or caveats affecting the land protects the buyer from stepping into an active dispute unknowingly.

4. **Governor's Consent as Fundamental Requirement in Land Transactions**

A further complication lies in the interaction between the Certificate of Occupancy and the Governor's consent requirement under sections 21, 22, and 26 of the *Land Use Act*.¹⁷ A Certificate of Occupancy alone says nothing about whether subsequent dealings in the land were themselves valid.

Sections 21 and 22 of the *Land Use Act* address consent requirements relating to dealings with customary and statutory rights of occupancy respectively.¹⁸ In relation to statutory rights of occupancy, section 22¹⁹ generally requires the consent of the Governor before the holder may alienate the right by assignment, mortgage, transfer of possession, sublease or otherwise. Section 26²⁰ provides for the consequences of transactions or instruments made in contravention of the Act.

The *locus classicus* on this point remains *Savannah Bank (Nigeria) Ltd. v. Ajilo*,²¹ in which the Supreme Court held that the consent requirement applies to all holders of statutory rights of occupancy, including those who acquired their interest before the *Land Use Act* came into force and were deemed holders under section 34²² of the *Land Use Act*. A mortgage executed without the Governor's prior consent was held void, notwithstanding that the transaction had otherwise proceeded to completion.

The Supreme Court in later decisions, particularly *Awojugbagbe Light Industries Ltd. v. Chinukwe*,²³ recognized that an agreement relating to land may be structured as being subject to the grant of the requisite consent, in which case the parties' rights and obligations must be considered in light of the terms of the agreement and the applicable provisions of the *Land Use Act*.

¹⁷ See, the *Land Use Act* 1978.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ (1989) 1 NWLR (Pt. 97) 305.

²² *Ibid.*

²³ (1995) 4 NWLR (Pt. 390) 379.

For legal practitioners, the underlying message remains that where Governor's consent is legally required, it should not be treated as a mere bureaucratic afterthought to be pursued after money changes hands. The requirement should be properly identified and addressed as part of the transaction and the purchaser's due diligence process.

5. What Every Lawyer Should Watch out for When Dealing with Land Matters

In dealing with Land matters in Nigeria, it is advisable for every buyer to engage the services of a Legal Practitioner to investigate the title and advise on the transaction before substantial commitments are made. In particular, the Legal Practitioner should look out for the following matters to ensure that the buyer is properly guided throughout the transaction:

- i. Discrepancies between the name on the title document and the identity of the person purporting to sell;
- ii. Survey plans whose beacon coordinates do not align with site inspection or with the registered plan;
- iii. An assignment or mortgage executed without evidence that the Governor's consent was sought, let alone obtained;
- iv. Land situated within an area subject to government acquisition, revocation, or a road or drainage setback;
- v. Family land sold by a single member, or even by the family head alone, without the documented concurrence of principal members;
- vi. Multiple, inconsistent instruments purporting to convey the same parcel of land, a hallmark of the fraudulent "double allocation" schemes common in fast-growing urban corridors.

Any one of these issues should cause the transaction to be paused until the concern is satisfactorily resolved. Where more than one issue exists, the purchaser should be advised frankly on the possibility of declining the transaction altogether.

6. Consequences of Inadequate Due Diligence

The cases discussed throughout this article are not abstract illustrations of legal principles; each represents a party who paid real money, and often lost it, because a transaction was not properly investigated before completion. The consequences of inadequate due diligence in Nigerian land transactions fall into several recurring categories.

- i. **Total loss of the transaction, with no corresponding title:** Where a buyer relies on a Certificate of Occupancy alone and a rival claimant later establishes a better, pre-existing title as illustrated by the principles considered in *Ogunleye v. Oni*,²⁴ where the purchaser may discover that the document relied upon does not confer the protection he or she assumed it did. As shown above, documentary evidence is not the only way to prove title to land. Another claimant could show, through traditional history or prolonged ownership of adjacent lands, that he has a superior and better claim to the land.²⁵ Thus the buyer may not automatically recover the purchase price paid and litigation to establish or defend title can run for years.
- ii. **Void transactions with no protection for the innocent party:** Where the law requires the Governor's consent for a transaction and the requisite consent is not obtained, the transaction may be exposed to serious legal consequences, depending on the nature of the transaction and the applicable law. *Savannah Bank v. Ajilo*²⁶ illustrates the serious consequences that may arise where the requisite consent has not been obtained. However, *Awojugbagbe Light Industries Ltd. v. Chinukwe*²⁷ demonstrates that the legal position may be more nuanced where the parties have entered into an agreement expressed to be subject to the requisite consent.
- iii. **Loss occasioned by defective family or communal consent:** Where land is sold by a family head or a subset of principal members without the concurrence the law requires, the transaction may be challenged years after completion, as illustrated by the principles applicable in *Offodile v. Offodile*,²⁸ often after the buyer has developed the land, incurring costs that cannot be recovered from a defect that proper diligence could have identified before any money changed hands.
- iv. **Exposure to revocation without adequate warning:** A buyer who fails to verify whether land falls within an area of actual or intended government acquisition may find a seemingly secure right of occupancy extinguished under section 28 of the *Land Use Act*²⁹, sometimes with compensation that falls well short of current market value, and occasionally where the statutory procedure

²⁴ *Supra.*

²⁵ See, *Idundun v Okumagba* (Supra n12).

²⁶ *Supra.*

²⁷ *Supra.*

²⁸ *Supra.*

²⁹ *Ibid.*

itself was not followed with a right to challenge the revocation that the buyer never knew existed and never pursued in time.

- v. **Protracted and costly litigation:** Nearly every reported case cited in this article reached the Supreme Court only after years of litigation through the lower courts, a cost in terms of time, legal fees, and uncertainty that dwarfs the modest expense of proper due diligence at the outset. For a commercial buyer, this can also mean tied-up capital, stalled development timelines, and reputational damage with financiers or joint venture partners.
- vi. **Professional exposure for the lawyer:** Where a legal practitioner certifies title as sound without conducting the searches and verifications the standard of care requires, and a client subsequently suffers loss, the lawyer risks a claim in professional negligence, quite apart from the client's own loss on the transaction. Diligence, in this sense, protects the practitioner as much as the client.

7. **Recommendations**

- i. **For legal practitioners:** Due diligence protocols should be treated as living documents, updated as new categories of fraud and new registry practices emerge, rather than a static checklist inherited from precedent files. Where a state offers an electronic search or e-certificate of occupancy platform, practitioners should treat its results as a starting point to be cross-checked against the manual registry and, where relevant, a physical inspection not as a final answer.
- ii. **For clients and buyers:** Buyers should be advised in plain terms, that cost-cutting on due diligence is a false economy; the legal fees associated with a proper title investigation are modest set against the losses typical of a failed land transaction. Where the transaction value justifies it, buyers should also be encouraged to consider title insurance as a supplementary not an alternative layer of protection.
- iii. **For policy and institutional reform:** The persistent gap between the promise of digitization and its practice suggests that technology alone will not resolve Nigeria's land administration challenges without accompanying legal and institutional reform including statutory recognition of digital instruments, harmonization of the Governor's consent process with electronic platforms, and consistent, published fee structures across registries. Until such reform is

comprehensive, the profession's own due diligence discipline remains the buyer's most reliable safeguard.

8. **Conclusion**

A Certificate of Occupancy is an important piece of evidence, but Nigerian courts have been unambiguous for decades that it is *prima facie*, (meaning 'at first sight' or 'on first appearance') valid title rather than conclusive, evidence of title. Real security in a land transaction is not found in any single certificate; it is built through the patient, layered work of tracing root of title, verifying registry records, inspecting the land physically, confirming family and governmental consent, and searching for pending litigation.

For the legal practitioner, this is more than a checklist, it is a professional discipline requiring careful investigation, sound judgment and candid advice. Clients who are told, plainly, that the Certificate of Occupancy is a starting point rather than a finish line are clients who are genuinely protected. In Nigerian land law, thorough due diligence is not merely advisable, it is, in every meaningful sense, its own form of title.



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