



Customary Tenancy Under The Nigerian Legal System

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ABSTRACT

The nature of customary tenancy under the native law and custom in Nigeria has remained umpire and enduring inspite of the growing state of distrust which often results in the tenant behaving in such a way as to leads to the dead of the title of the overlord. Ironically most cases those who had land and let out to customary tenant were always relatively poor in terms of material wealth, having only large expanses of land to show while the customary tenants were relatively wealthier. This most times gives the opportunity to the customary tenant to attempt to deny the title of the overlord by looking down upon them and daring them to demur and face legal action which they would always believe the overlord would not be able to rise up to its challenge. The customary tenant is in this assisted by the indefinite tenure of his possessory interest which is perpetual as it were and would always give the false or misguided impression of ownership. Where however it is well applied, both the tenant and the overlord enjoy good and mutually beneficial relationship. The attempt by the customary tenant to assume the ownership of land held by them under customary tenancy taking leverage under the Land Use Act as in the case of **Abioye v Yakubu** and their failure at the Supreme Court to give a clear signal greedy customary tenants who might wish to challenge the title of their overlord that nothing had changed in the nature, tenure and characteristic of customary tenancy. It therefore needs to be firmly emphasized that in whichever way the law is that the standard to be applied to change the game over the nature and incidences of customary tenancy, the customary tenant remains a customary tenant even though the nature of his interest is described by the Supreme Court as emphythesis and he will never become the owner of the land unless the reversionary interest of the overlord is alienated to him and he thereby ceases to be a tenant.

Keywords: Customary Tenancy, Overlord, Alienation, Forfeiture and Bad Behaviour

INTRODUCTION

A customary tenancy arises where a customary landowner grants to another person at customary law the right of occupation and use of the land in return for the grantee's recognition of the title of the grantor and the payment of tribute. **Aghenghen & ors v Chief Maduku Waghorehor & ors**¹ Elias CJN (as he then was) described the legal nature of the interest of a customary tenant on the land granted him in the following manner;

In customary land law parlance, the customary tenants are not gifted the land, they are not borrowers or lessees, they are grantees of land under customary tenure and hold as such, a determinable interest in the land which may be enjoyed in perpetuity subject to good behavior.

¹ (1974) 1 SC 1 @ 6.

See also **Akinlagun v Oshoboja**², **Salami v Lawal**³.

In **Abioye v Yakubu**⁴ the Supreme Court put it the following way,

The legal nature of a holding under customary tenancy is that the holding of the customary tenant is not a gift or a loan nor is the land given for a definite term (which differentiates him from a lessee). Customary tenancy is a grant upon terms and conditions agreed with the owners and provided that he keeps to the conditions of the grant and payment of tribute, the customary tenant can keep and enjoy possession of his holding from years to year in perpetuity but no matter how long he is on the land he does not and cannot acquire ownership. He is liable to incur forfeiture and lose his tenancy on breach of the terms and conditions particularly alienation without consent and a challenge of the overlord's title. This is because a customary tenant is a tenant from year to year liable under customary law to pay rents or tributes to the Landlord for the use of the land and barred from alienating the land or disputing the title of the Landlord without consent. He cannot be in possession if his Landlord is out of possession as the possession he enjoys is that given by the Landlord.

See also **Abadulasisi v Oladapo Tubi**⁵

- **Akinloye v Eyiyo**⁶
- **Bello Isiba v J.T. Hansan**⁷
- **Dashi v Satlong**⁸
- **Nyavwaro v Ogedege**⁹
- **Dokubo v Bob-Manuel**¹⁰

The Supreme Court also pointed out in **Abioye v Yakubu**¹¹ that although within the terms of the customary grant, the customary tenant had the appearance of an owner he could only use the land on the terms and conditions he agreed with his customary Landlord. Not only was his interest defeasible by his behavior but also his possession, no matter how long, can never ripen to ownership, **Akinloye v Eyiyo**¹². It is thus all too obvious that customary tenancy is not synonymous with absolute gift of land. Unlike a gift of land which amounts to an absolute transfer of title in land, customary tenancy creates a determinable interest on land which though events which may never happen.

Customary tenancy is different from the borrowing of land in that unlike borrowing of land which is characterized by temporary grant for a short duration of time, customary tenancy enures in perpetuity subject to good behavior. Customary tenancy has no place in or similarity with the English lease holding system for not only does it lack the certainty of duration which characterizes the English lease, the incident of the tenure is the payment of tribute but not rent by the customary tenant to the overlord.

The interest of a customary tenant on the land granted enures in perpetuity. Thus, a grant of land under customary law is a grant in perpetuity subject to good behavior and the consent payment of tributes and can only be revoked upon an attempted alienation or the challenge of the overlord's title.

Muemue v Gaji & Anor¹³

² (2006) 12 NWLR pt 993 p60 @87-88.

³ (2008) 6 SC pt II p 24.

⁴ (1991) 5 NWLR pt 190 p130 @217.

⁵ (1974) 12 SC 71 @ 753 or (1974) All NLR 923.

⁶ (1968) NMLR 92.

⁷ (1967) All NLR 8.

⁸ (2009) 1-2 SC pt II p1.

⁹ (1971) NSCC 206.

¹⁰ (1967) All NLR 122.

¹¹ Supra.

¹² Supra.

¹³ (2001) 2 NWLR pt 697 p289 @ 309.

- **Oba Felix Abidoeye & ors v Oba Jacob Alawode & ors**¹⁴
- **Owoade v Omitola**¹⁵
- **Akinkuowo v Fajimoju**¹⁶
- **Adeleke v Adewusi**¹⁷
- **Sole Bonch Overseas Nig Ltd v Ayodele**¹⁸
- **Faniyi v Alao**¹⁹

Thus a customary tenant may remain in possession so long as he does not challenge the Landlord's title.

- **Mbavehembe Boogom v Pervergan Awam**²⁰
- **Salami v Oke**²¹

The interest of the customary tenant is regarded by the courts in practice as practically indefeasible especially after permanent buildings or other forms of improvement like extensive commercial farming and or occupation have been established thereon by the grantees. Thus a mere misbehavior which is such that may not undermine the overlord's reversionary interest cannot extinguish the right of a customary tenant who may more appropriately be punished by a fine or condemned in damages.

The customary tenant has exclusive possession hence; he has the right to exclude everybody else from the land including the overlord.

- **Ayoola v Ogunjimi**²²
- **Ugbodume & ors v Abiegbe & ors**²³

Unless the tenancy itself has been lawfully determined, the grantor has no right whatsoever to enter the land without the permission of the customary tenant. This right to exclusive possession also avails the tenant against a purchaser of the grantor's reversion and all other persons claiming through him and or even strangers. **Etim v Eke**²⁴

In **Abdu Lasisi v Oladapo Tubi**²⁵ some members of the Oloto Chieftaincy family had sold land to one Odutola through whom the respondents claimed title to the land. At the time of the sale, the appellants were already settled on the land as customary tenants of the Oloto Chieftaincy family. One of the questions for determination by the court was whether a purchaser of the radical title of the overlord such as the respondents could successfully eject the overlord's customary tenants who had settled on the land before the sale. The Supreme Court held that the purchaser of the overlord's radical title was without power to eject the overlord's customary tenants who had settled on the land before the purchase, and that at best such a purchaser would simply step into the shoes of the overlord.

While pointing out the position of such purchaser, **Ibekwe JSC** held as follows;

The rule is nemo dat quod non habet. No one gives what he does not have. In other words, a purchaser can never get what the vendor himself did not possess just as the overlords; the Oloto Chieftaincy family is without power to dispossess the customary tenants in the present case so also their successor-in-title (the respondents) are completely devoid of any such right, the respondents in the present case bought the disputed land subject to the unextinguished possessory title of the appellants-the customary tenants.

¹⁴ (1994) 6 NWLR pt 349 p242 @ 251.

¹⁵ (1988) 2 NWLR pt 77 p413.

¹⁶ (1965) NMLR 349.

¹⁷ (1961) SCNLR 59.

¹⁸ (1989) 1 NWLR pt 99.

¹⁹ (1971) 1 NMLR 389.

²⁰ (1995) 7 NWLR pt 410 p692 @ 710.

²¹ (1987) 4 NWLR pt 63 1.

²² (1964) All NLR 188.

²³ (1991) 8 NWLR pt 209.

²⁴ (1941) 16 NLR 43.

²⁵ *Supra*.

Where a customary tenant claims against a third party for trespass and consequential damages resulting therefrom, he must claim as a customary tenant and not as the owner of the land otherwise a claim for compensation would fail. Thus, in **Shell BP v Abedi & ors**²⁶, the question arose as to whether customary tenants having failed in an action for declaration of title could make a claim for compensation arising from damage caused to things on the land by a third party on the authority of the owners of the land. The Supreme Court held that a claim based on ownership of the land by customary tenants in possession would not entitle them to claim for compensation for damages done to things on the land and that the evidence of possession became irrelevant. Conversely in **Josiah Aghenghen v Chief Maduku Waghoreghor & ors**²⁷ where the customary tenants claimed for compensation in their own rights as customary tenants, they were held by this Supreme Court to be entitled to 2/3 of the compensation money while the radical owners of the land were entitled to the remaining one third. Elias CJN took the opportunity of the case to state the nature of the interest of a customary tenant thus;

Customary tenants are grantees of land under customary tenure and hold as such, determinable interest in the land which may be enjoyed in perpetuity subject to good behavior. This interest has in practice now been regarded by the Court as practically indefeasible, once permanent buildings or other forms of improvements like extensive commercial farming and/or occupation have been established thereon by the grantees. Any proved misbehavior is usually now punished by a fine. They enjoy something akin to emphyteusis, a perpetual right in the land of another. A very important factor is that the grantor of the land once it has been given to the grantees as customary tenants, cannot thereafter grant it or any other part of it to a third party without the consent or approval of the customary tenants. The grantor is not allowed to derogate from his grant.

See also **Chief Sam Essi Warri v Itsekiei Communal Land Trustees & ors**²⁸.

Where a stranger and his descendants have been permitted to reside on customary land for many years, the customary owner of the land and his descendants are estopped by their conduct from obtaining a decree of possession of the land in an action for that purpose brought against the stranger's descendants who are in occupation of the land. **Long v Ajakaiye**²⁹. While the overlord has an obligation not to derogate from his grant, the customary tenant has an obligation not to deny the overlord's title otherwise he will be liable for forfeiture and eviction **Oniah v Onyia**³⁰. In **Onishiwo v Fagbenro**³¹ where the customary grantees of family land leased it to a business concern for 50 years with an option of renewal for another 25 years at the expiration of the first lease, it was held that the execution of the lease was by itself sufficient misconduct to make the defendants liable to forfeiture.

Customary law requires that the customary tenant complies strictly with the conditions of the grant and as such, he must use the land only for the purpose for which the grant was made. Therefore where the customary tenant uses the land for a different purpose from that which the overlord agreed such that the use constitutes a permanent injury to the land, the grantor may bring an action for damages **Ochomma v Unisi**³².

Notwithstanding that the customary tenant can hold the land in perpetuity subject only to good behavior and the regular payment of tributes, yet his interest on the land is only possessory and can never ripen to ownership no matter how long he or his generation of descendants stay on and hold the land.

This is because title by prescription is completely unknown to customary law. **Odekilejun v Hassan**³³

²⁶ (1974) All NLR 1.

²⁷ (1974) All NLR 734.

²⁸ (1961) WRNLR 15 @ 21.

²⁹ (1982) NS CC Vol 2.389.

³⁰ (1989) 1 NWLR pt 99 p514.

³¹ 1954) 21 NLR 3.

³² (1965) All NLR 321.

³³ (1997) 12 NWLR pt 531 p 56.

- **Oseni v Asogba**³⁴
- **Oseni v Bajulu**³⁵
- **Musa v Awe**³⁶
- **Muemue v Gaji**³⁷
- **Ogun v Akinyelu**³⁸
- **Onwuka v Ediala**³⁹
- **Salami v Oke**⁴⁰
- **Nyagba v Mbahan**⁴¹
- **Obawole v Coker**⁴²
- **Akinloye v Eyiola**⁴³
- **Da Costa v Ikomi**⁴⁴
- **Sanya v Johnson**⁴⁵

A significant feature of customary tenancy is the payment of tribute. Under customary land law, the payment of tribute by the tenant is recognition of the title of the overlord to the property. The tenant by that act fully recognizes that the overlord to whom he pays rent or tribute is the owner of the property and that he hold the property for a definite or indefinite period at the pleasure of the owner. In ancient days, tribute was regarded as protection money as it was paid by the tenant for the sole purpose of protecting the tenancy. **Dagaci of Dere v Dagaci of Ebwa**⁴⁶

Note however, that notwithstanding the overriding importance of the payment of tribute under a customary tenancy, yet it has been acknowledged and given the Supreme Court's judicial stamp of authority that payment of tribute is not compulsory to create a customary tenancy. In **Akinlagun v Oshoboja**⁴⁷, the Supreme Court stated that while payment of tribute is a recognized condition of customary tenancy, yet it is not always so and for all time. This is because there are situations where tribute is not paid to the overlord and yet customary tenancy exists, for instance, where the tenant unequivocally recognizes the position of overlordship of the Landlord, a customary tenancy exists whether tribute is paid or not. This is because payment of tribute could be overlooked by the Landlord as a result of kindness and or charity. There are also instances where the Landlord asks the tenant to stop payment of tribute because of very long association with and good behavior of the tenant. See also **Ajao v Obele**⁴⁸

- **Adawon v Asogba**⁴⁹
- **Bamgbegbin & 24 ors v Oriare & 4 ors**⁵⁰

It should be noted that it is not every occupation of land by a person who is not the owner that can qualify as a tenancy under native law and custom. Where a person is occupying land under a pledge, he is not a customary tenant even though he holds and occupies the land of another.

For there to be a tenancy under native law and custom certain elements must be present, namely;

³⁴ (2008) 38 WRN 111.

³⁵ (2010) 4 WRN P1 @20.

³⁶ (1979) 1 FNLR 295.

³⁷ (2010) 2 NWLR Pt 697 p289.

³⁸ (2004) 18 NWLR pt 905 @382.

³⁹ (1989) 1 NWLR pt 96 p182 @ 99.

⁴⁰ (1987) 4 NWLR pt 63 p 1 @ 13-14.

⁴¹ (1996) 9 NWLR pt 471 p207 @223-27.

⁴² (1994) 5 NWLR pt 345 p 416 @ 439.

⁴³ (1968) NMLR 92 @ 93.

⁴⁴ (1968) All NLR 394.

⁴⁵ (1974) 11 SC 207.

⁴⁶ (2006) 7 NWLR pt 979 p 382 @ 459.

⁴⁷ (2006) 12 NWLR pt 993 p 60 @ 87-88.

⁴⁸ (2005) 5 NWLR pt 918 p400.

⁴⁹ (2008) WRN 111 @ 130.

⁵⁰ (2009) 5-6 SC pt 11 201.

Pre-Requisite for a Customary Tenancy

1. There must be an intention to grant a tenancy.
2. That intention must have crystallized into an agreement between the parties.
3. The tenant must be let or enter into actual possession of the land or must do something that justifies an intention to enter into the occupation of the land.
4. There must be the payment of rent or more appropriately tribute or the provision of service by the tenant to the overlord with the agreed periodicity normally on annual basis. **Dashi v Satlong**⁵¹ It has however been held that payment of a tribute or rent the provision of service is not necessarily a condition precedent to the creation or existence of a valid tenancy under customary law and as such it may be waived or agreed not to be part of the grant.
 - **Lawani v Adeniyi**⁵²
 - **Makinde v Akinwale**⁵³
 - **Abimbola v Abatan**⁵⁴
5. Except otherwise agreed by the parties there is usually no definite term to the tenancy so as to say with certainty when the tenancy will come to an end under the agreement. Where however the tenancy is granted for a particular purpose which may be completed within a specified time, the tenancy may be known by the parties to determine at the completion of the purpose for which the tenancy was granted.
6. A customary tenant holds the land to the exclusion of the overlord and can even maintain an action in trespass against his Landlord so far as he is in possession. But this is always subject to the condition that the Landlord's title to the reversionary interest is not placed in jeopardy.
 - **Abdu Lasisi v Oladapo Tubi**⁵⁵
 - **Olugbode v Sangodeyi**⁵⁶
7. A customary tenant is *eo ipso* entitled to possession of the land granted to him and although he is liable to forfeiture of such rights when he denies the title of his Landlord or commits a serious misconduct, yet his rights are not determined until the operation of forfeiture.
 - **Akinkuowo v Fatimoji**⁵⁷
 - **Atolagbe v Shorun**⁵⁸
 - **Oladipupo v Olaniyan**

Characteristic Features of Customary Tenancy

1. It is an incident of customary tenancy that the customary tenant should be in possession and that after his death and as long as there is no breach of any customary law his progeny would continue to occupy the land *ad infinitum*, the customary Landlords having no rights to determine the tenancy or their possession unless there is a breach **Bello v Kassim**⁵⁹.
2. The relationship created between an overlord and a customary tenant is not one to be determined by formal English legal terms of "lease" or "legal estate" or "equitable estate" but that of pure customary tenancy with all the incidents'.
3. The rights of a customary tenant are indefeasible once permanent buildings or other structural improvements are erected on the land.
4. Any sale by the Landlord of land occupied by a customary tenant is subject to the rights and interest of the customary tenant.

⁵¹ (2009) pt 11 P1.

⁵² (1964) NSCR v. 3 231.

⁵³ (2000) 1 NWLR pt 645 p435.

⁵⁴ (2001) 9 NWLR pt 717 p66.

⁵⁵ (1974) 12 SC 71 @ 753 or (1974) All NLR 923.

⁵⁶ (1996) 4 NWLR pt 444 p500 @509.

⁵⁷ (1965) NMLR 349.

⁵⁸ (1985) 1 NWLR pt 2 p360.

⁵⁹ (1969) NMLR 148.

5. A customary tenant has a right of possession which the law protects against a subsequent purchaser of the radical title in the land.
 6. It is equitable for a customary tenant to claim the land together with the improvements made by a trespasser on the land.
 7. The interest which a customary tenant has in land subject to customary tenancy is possessory **Ojomu v Ajao**⁶⁰.
 8. A customary tenant's status is not akin to that of customary lessee for while a customary tenant tribute and enjoys perpetuity of tenure subject to good behavior; a customary lessee is granted land for a consideration for a particular length of time. **Ejeanalonye v Omabuike**⁶¹.
 9. Denial of the overlord's title by a customary tenant is one of the gravest breaches that a customary tenant can commit. **Agbagbue v Ogu**⁶²
 10. Possession is the essence of the tenure of a customary tenancy and accordingly, the fact that a person is in possession, under customary law, does not conclusively show that he is the absolute owner of such land he possesses, unless there are other factors or acts pointing to an assertion of ownership by such customary tenant, which acts of ownership are known to the customary grantors **Isiba v Hanson**⁶³.
 11. The rights of a customary tenant are not terminated until the Landlord's order of forfeiture begins to operate. **Akinkuowo v Fatimoji**⁶⁴.
 12. Unless there is a challenge to an overlord's title, action for forfeiture cannot lie against a customary tenant. **Dabiri v Gbajumo**⁶⁵.
 13. Once a customary tenant is in possession he is always in possession for time does not run against him **Adbu Lassisi v Oladapo**⁶⁶.
 14. The possessory right of a customary tenant is perpetual until the tenancy is forfeited. **Lassisi v Tubi**⁶⁷.
 15. Customary tenants are entitled to continue in peaceable possession and the rights would not be forfeited on minor acts of misbehavior.
 16. Neither the overlord not his successor-in-title can dispossess a customary tenant except by means of forfeiture.
 17. A customary tenancy is a special tenure not comparable to English tenure.
 18. Possession is always vested in a customary tenant until forfeited and in purchaser from the overlord will simply buy what the overlord has.
 19. A customary tenancy is not a leasehold interest or a tenancy at will, and neither is it a yearly tenancy. **Abdu Lassisi v Oladapo Tubi**⁶⁸.
 20. The longevity of the possessory title of a customary tenant can never crystallize into ownership whatever the length of time involved.
- **Oseni v Bajulu & ors**⁶⁹
 - **Akinloye v Eyiyo**⁷⁰
 - **Isibe v Hanson**⁷¹
 - **Agboola v Abimbola**⁷²

⁶⁰ (1982) 2 SCNLR 156.

⁶¹ (1974) 2 SC 33.

⁶² (1976) 6 SC 63.

⁶³ (1967) All NLR 8.

⁶⁴ (1965) NMLR 349.

⁶⁵ (1961) All NLR 225.

⁶⁶ *Supra*.

⁶⁷ *Supra*.

⁶⁸ (1974) 12 SC 71.

⁶⁹ (2010) 4 WRN @ 20.

⁷⁰ (1968) NMLR 93.

⁷¹ (1967) All NLR 8.

⁷² (1969) All NLR 287.

- **Gbadamosi v Bello (Mogaji)**⁷³

Rights of a Customary Tenant

1. A customary tenant has full rights of possession conveyed to him by the grantor over the land subject matter of the tenancy whereas the only rights remaining in the grantor after the grant is a right of reversion.
2. An overlord cannot make a further grant of any right in the land to others without the consent of the tenant.
3. The overlord must also share with the tenant proceeds of rent got from strangers using the land. Note that this must strictly depend on the particular customary law under which the grant is made but cannot apply generally. **Sagay v New Independence Rubber Ltd**⁷⁴
4. A customary tenant enjoys the perpetuity of tenure subject to good behavior and payment of tribute or rendition of service where applicable **Ejeanalonye v Omabuike**⁷⁵.
5. Since a customary tenant enjoys a perpetual right to good behavior, once he improves the land either by extensive commercial farming or by erection of buildings, his rights appear indefeasible. He thus has a right of consent where the overlord intends to grant the land or any part thereof to a third party. **Aghenghen v Waghoreghor**⁷⁶
6. Where acquisition takes place in respect of a land subject to customary tenancy, the tenant takes two-thirds while the overlord takes one-third of the compensation payable depending on the applicable circumstances and particularly where the developments were affected by the tenant upon taking possession with the creation of the tenancy. **Aghenghen v Waghoreghor**⁷⁷

Determination of Customary Tenancy

It has been established from the study that a grant of land under customary law is a grant in perpetuity and can only be revoked on attempted alienation or challenge of the overlord's title. Also it is certain as has been seen that title by prescription is completely unknown under customary law. **Muemue v Gaji**⁷⁸ It therefore presupposes that all things being equal the customary tenant can continue with his holding in perpetuity, but that there are instances or occasions which may result in the determination of the tenancy. Thus, customary tenancy may be determined in any of the following ways;

1. **By the Accomplishment of the Purpose of the Tenancy**
The purpose agreed upon by the overlord and the tenant at the commencement of the tenancy constitutes a determinable event the accomplishment of which automatically determines the tenancy under customary law.
2. **By Express Surrender or Release.** Where the customary tenant freely and expressly yields up and surrenders the tenancy to the overlord, the tenancy is effectively brought to an end.
3. **By Abandonment.** Where the customary tenant abandons the land with no definite intention of returning to it, the tenancy determines. This is however not the case where the land is left to fallow for the purpose of recuperation of the soil. Where a tenant is using the land for purposes other than that for which the land had been granted, he is deemed to have abandoned the land and the Landlord is entitled to recover the possession of the land from him. In **Ochomma v Unosi**⁷⁹ the appellant granted land to the respondent for the establishment of an oil pressing machine thereon on the condition that if the machine was removed and the pressing of oil discontinued, the land would revert to the appellant. The oil pressing business was discontinued sometime in 1954 and in 1956, the respondent entered the land again without the consent of the appellant and

⁷³ (1985) 1 NWLR pt 2 211 @ 216.

⁷⁴ (1977) 5 SC 143.

⁷⁵ (1974) 2 SC 33.

⁷⁶ (1974) 1 SC 1.

⁷⁷ Supra.

⁷⁸ Supra.

⁷⁹ Supra.

deposited cement thereon with the intension of erecting a building. Upon an action for a declaration of title, damages for trespass and injunction the Supreme Court found for the appellant who had lost at the High Court when the High Court based its judgment on kola tenancy which was not pleaded. The Supreme Court held that the respondent had abandoned the land since he had ceased and stopped the business of oil pressing and exhibit the intention to erect a building thereon which was not part of the original conception for the grant of the tenancy.

In **Ukwa & ors v Awka Local Government Council & ors**⁸⁰ the appellants granted certain parcel of land to the 1st respondent for the construction of a market. The market was constructed by the 1st respondent but was later abandoned by the respondent who moved it to another site. Subsequently, the 1st respondent commenced the allocation of the parcel of land on which the market had been erected to people to build upon. The appellants sued the 1st respondent and the people who built on the land for declaration of title, recovery of possession and injunction. The lower Court refused the claim but on Appeal, the Supreme Court allowed the appeal and granted the reliefs sought by the appellants on the ground that the land had been abandoned by the discountenance of the purpose for which the land was previously granted.

By the conveyance of the Reversion by the overlord to the tenant: Where the customary overlord, by willful agreement not affected by any vice, conveys or alienates his reversionary interest in the land subject of the customary tenancy the customary tenancy is brought to an end since that has the effect of uniting the reversionary interest and the customary tenancy interest in the customary tenant who has also become the owner of the reversion consequent upon the conveyance or sale.

By Forfeiture: Forfeiture is the usual mode by which the overlord of a customary tenant determines the customary tenancy. In the words of the Court of Appeal Ibadan Judicial Division, forfeiture is the usual mode for determining a customary tenancy or any tenancy, when the tenant denies the title of the overlord. It is a serious act of misconduct which attracts the penalty of forfeiture. The phenomenon is recognized universally. Before there can be the question of forfeiture, there must be a subsiding tenancy for forfeiture is an incident arising from tenancy. **Sir Olateru Olagberu v Oba Ogunoye II (Olowo of Owo)**⁸¹ Where the customary tenant engages in acts constituting misbehavior which undermines either the interest of the overlord as a reversionary or otherwise amounts to a challenge of the overlord's title to the land in question the tenancy may be determined by forfeiture. **Erimle v Adelaja & ors**⁸² Whether or not the acts of a tenant amount to misbehavior is a matter of fact as distinct from the question whether such misbehavior entails forfeiture which is a matter of law. The list of such acts which constitute misbehavior and for which an order for forfeiture could be made include the following;

The alienation of part of the land under a claim of ownership **Asani Taiwo v Adamo Akinwunmi**⁸³

- **Suleman v Johnson**⁸⁴
- **Isiba v Hanson**⁸⁵
- **Erinle v Adeleja**⁸⁶
- **Oloto v Dawodu**⁸⁷

Refusal to provide the customary stipulated **Akinlagun v Oshoboja**⁸⁸

Refusal to pay tribute due and payable

- **Abioye v Yakubu**⁸⁹
- **Akinlagun v Oshoboja**⁹⁰

⁸⁰ (1966) NMLR p 41.

⁸¹ (1996) 5 NWLR pt 448 p332.

⁸² (1964) NSCC vol. 6. 212.

⁸³ (1975) All NLR 202.

⁸⁴ 13 WACA 213.

⁸⁵ (1968) NMLR 76.

⁸⁶ (1969) 1 NMLR 132.

⁸⁷ (1911) 1 NLR 57.

⁸⁸ (2006) 12 NWLR pt 993 p 60 @ 89, 93-94.

⁸⁹ (1991) 5 NWLR pt 190 p130.

⁹⁰ (2006) 12 NWLR pt 993 p60 @ 89,93-94.

Use of the land for quite a different purpose **Akinlagun v Oshoboja**⁹¹

The direct denial of the overlord's title by setting up a rival title in the customary tenant himself **Oniah v Onyia**⁹²

- **Abioye v Yakubu**⁹³
- **Esiaba v Ojiegbe**⁹⁴
- **Akpagbue v Ogu**⁹⁵
- **Akinlagun v Oshoboja**⁹⁶

Although the non-payment of rent or tribute is not necessarily inconsistent with the ownership of the land by the overlord, the circumstances and the reason for the refusal to pay tribute may determine whether there is a denial of the tribute to the overlord.

- **Abioye v Yakubu**⁹⁷
- **Abimbola v Abatan**⁹⁸
- **Lawani v Adeniji**⁹⁹
- **Akinlagun v Oshoboja**¹⁰⁰
- **Makinde v Akinwale**¹⁰¹

Also, for the denial of the overlord's title to incur forfeiture it must have been so manifested and exhibited over a long period of time as to constitute a determination to claim and maintain the land as his own. In **Erinle v Adelaja & ors**¹⁰² the Supreme Court held that consistent conduct of the customary tenant exhibited over a period extending from 1935 to 1960 manifested a demonstrable determination to claim and maintain the land as his own and must therefore incur forfeiture. Also, in **Asani Taiwo v Adamo Akinwunmi** the Supreme Court in granting forfeiture took into consideration the fact that for three quarters of a century the tenants in question had in one from or other disputed the title of the overlord.

Forfeiture is not automatic and as such the overlord must take the necessary steps to enforce his right of forfeiture in Court by pleading same specifically in the statement of claim. It has been held that the misbehavior of the customary tenant of the type recognized by law merely makes the interest of the customary tenant liable to forfeiture at the election of the overlord and neither determines *per se* the tenancy nor forfeits the interest of the tenant automatically.

- **Uwani v Akom**¹⁰³
- **Inasa v Oshodi**¹⁰⁴
- **Omiiah v Onyia**¹⁰⁵

In **Abioye v Yakubu**¹⁰⁶ **Nnaemeka Agu JSC** explained the position of the law this;

It cannot therefore, be right to say that the cases show that once the customary tenant committed an act which amounted to misbehavior, he forfeited his tenancy even though the overlord had not sought an order of court therefore. The overlord was entitled to overlook or wave the act of misbehavior. If he did so, the relationship of the parties continued. In this respect the decision in

⁹¹ supra @ 89,93-94.

⁹² (1989) 1 NWLR pt 99 p514.

⁹³ Supra.

⁹⁴ (1999) 10 NWLR pt 623 p 463.

⁹⁵ (1976) 6 SC 63.

⁹⁶ (2006) 12 NWLR pt 993 @ 89 & 93-94.

⁹⁷ Supra.

⁹⁸ (2001) 9 NWLR pt 717 p66.

⁹⁹ Supra.

¹⁰⁰ Supra @ 88.

¹⁰¹ Supra.

¹⁰² (1969) NSCC Vol 6 212.

¹⁰³ (1928) 8 NLR 19.

¹⁰⁴ (1934) AC p99 or (1934) 11 NLR 10.

¹⁰⁵ Supra.

¹⁰⁶ (1991) 5 NWLR pt 190 p130.

*Ogbakumanwu v Chiabolo*¹⁰⁷ that forfeiture is automatic upon misbehavior by the customary tenant is no longer good law. I should not follow it. It could not be automatic in view of the fact that like in other cases of forfeiture a customary tenant where tenancy was threatened with forfeiture on grounds of misbehavior was always entitled to apply for relief against forfeiture which might be granted by the court even if it had to impose some conditions.

- **Odunsi v Bangbala**¹⁰⁸
- **Coker v Jinadu**¹⁰⁹
- **Lawani v Tadeyo**¹¹⁰

The overlord's remedy in forfeiture lies particularly against individuals and in exceptional cases against the community.

- **Asani Taiwo v Adamo Akinwunmi**¹¹¹
- **Oniah v Onyia**¹¹²
- **Abioye v Yakubu**¹¹³

However, the court has been very restrained, wary and cautious in granting forfeiture against an entire community where the misconduct has been caused by a few members. **Asani Taiwo v Adamo Akinwunmi**¹¹⁴

- **Oniah v Onyia**¹¹⁵
- **Uwani v Akom**¹¹⁶
- **Inasa v Oshodi**¹¹⁷

The grant of the remedy of forfeiture is not discretionary but follows upon the breach of the condition of customary tenancy.

- **Dokubo v Bob-Manuel**¹¹⁸
- **Onishiwo v Fagbenro**¹¹⁹

Bad Behavior: Another factor which may occasion a forfeiture of the rights of a customary tenant is bad behavior on the part of the tenant. Even though it is not easy to define in precise terms what may constitute bad behavior, there are types of conduct which would be regarded as so reprehensible or socially abominable as to lead to the forfeiture of the tenancy. It must however be acknowledged that the question of what constitutes bad behavior depends on the society in question as standards of social norms and behavior vary from society to society. It is almost obvious that a case of misconduct involving burglary or theft by the tenant, adultery with any wife of the household of the family of the overlord, unreasoning insolence or truculence towards the head or Chief or some other act of abomination would seem to have the effect of rendering the recalcitrant tenant liable to forfeit his right. **Ashogbon v Oduntan**¹²⁰, **Olakunlade v Samuel**¹²¹

¹⁰⁷ 19 NLR 107.

¹⁰⁸ (1995) 1 NWLR pt 374 p 641.

¹⁰⁹ (1958) LLR 77.

¹¹⁰ (10 WACA 37.

¹¹¹ Supra.

¹¹² Supra.

¹¹³ Supra.

¹¹⁴ (1975) All NLR 202.

¹¹⁵ Supra.

¹¹⁶ (1928) 8 NLR 19.

¹¹⁷ (1934) AC 99.

¹¹⁸ (1967) Supra.

¹¹⁹ (1954) 21 NLR 3.

¹²⁰ (1935) 12 NLR 7 @ 9.

¹²¹ (2011) 17 NWLR 1276 P290.

Relief from Forfeiture

The customary tenant may invoke the equitable jurisdiction of the court to grant relief against forfeiture and in granting the relief the court will take into consideration any mitigating factor including the degree of inconvenience to the tenant considering the length of time he had been in possession and the improvements already made thereon.

- **Uwani v Akom**¹²²
- **Oniah v Onyia**¹²³

The court will also take into account the protection of the overlord's reversion and the consideration that forfeiture is the only effective and adequate remedy. **Oniah v Onyia**¹²⁴

But the court will refuse to grant relief from forfeiture where misconduct has been established and the customary tenant has persisted and remained refractory and obdurate in the conduct complained of

- **Onisiwo v Fagbenro**¹²⁵
- **Oniah v Onyia**¹²⁶
- **Taiwo v Akinwunmi**¹²⁷

An important factor to note however is that unless the customary tenants who have committed a breach of their customary tenancy and therefore liable to forfeiture claim relief from forfeiture and invoke the equitable jurisdiction of the court to grant the relief, the order of forfeiture and recovery of possession cannot be denied to the customary Landlord. **Oniah v Onyia**¹²⁸

The ground of social problems which are likely to arise of the claim for forfeiture is granted is merely a ground enabling grant of relief from forfeiture where the relief has been claimed but it is not a consideration for refusing a claim for forfeiture established on the evidence. Where an overlord has brought an action for forfeiture, the customary tenant may seek relief from forfeiture by means of counter-claim but if the overlord has not yet brought an action for forfeiture, the customary tenant may seek relief from forfeiture by means of an originating summons or writ of summons. **Oniah v Onyia**(supra), **Ekpenyong v Nyong**¹²⁹, **Ogun v Akinuelu**¹³⁰

The overlord's right to forfeiture may be waived and where this is done, the relationship of the parties continues **per Nnaemeka Agu JSC in Abioye v Yakubu, see also Okpala v Okpu**¹³¹. But the overlord cannot afterwards rely on such instances of misconduct earlier waived to found a claim in forfeiture on a subsequent occasion.

Some Acts Incurring Forfeiture Further Explained

Alienation or Attempted Alienation

Any alienation or executed attempt to alienate by an individual occupier works an automatic forfeiture of his interest. In this context, alienation must be used as having an extended connotation and must be taken to include any transaction by which right in the property are transferred to a stranger as per **Butler Lloyd Ag CJ in Buraimo v Bamgboye**¹³². Such a transaction might be a sale, a mortgage, a lease, or an unauthorized dealing *inter se* by individual of a group grantee of land. Thus in **Miller Bros v Ayeni**¹³³ the other members of the family were held entitled to object to one of their number alienating his interest through its attachment for debt by his judgment creditor except with the family consent or on the partition

¹²² (1928) 8 NLR 19.

¹²³ Supra.

¹²⁴ Supra.

¹²⁵ (1954) 21 NLR 3.

¹²⁶ Supra.

¹²⁷ Supra.

¹²⁸ Supra.

¹²⁹ (1975) 2 SC 71.

¹³⁰ (2004) 18 NWLR pt 905 p362.

¹³¹ (1996) 8 NWLR pt 468 p589 @ 599-600.

¹³² (1940) 5 NLR 139 at 141.

¹³³ (1924) 5 NLR 40.

of the land. See also **Shoti v Paul & ors**¹³⁴. Also, in **Adagun v Fagbola & Anor**¹³⁵ a member of the Olorogun family who had granted a mortgage of the portion of family property allotted to him for his use and occupation was held to have thereby forfeited his holding. See also **Fagbenro v Onsiwo**¹³⁶. It was similarly held in **Akeju v Suenu & ors**¹³⁷ that a domestic or a descendant of one or a brother of the wife of a former head of the Onikoro family who mortgaged his allotment had lost or forfeited his right to continued occupation. The presiding **Judge Van Der Menlen J.** remarked as follows at page 90; “*therefore in whatever capacity Kuti joined the Onikoro family, I am convinced that he was then only given this property for him and his family to reside upon so long as they should properly conduct themselves towards the head of the Onikoro family*”. Again in **Onisiwo v Bamgboye & ors**¹³⁸ the grant to a stranger of a thirty years’ lease by an occupier to whose ancestor a portion of family land had been allotted for occupation under local law and custom without the consent of the overlord family was held by the WACA to effect a forfeiture of the occupier’s right.

On the issue of intra-mural dealings by members of a group-grantee of land, it would seem from the case of **Chief Uwani v Nwosu Akom & ors**¹³⁹ that a mortgage or sale of his farming right by one member of a group grantee of family land to another member of the same group might work a forfeiture in so far as the dealing or transaction was withheld from the overlord family as a deliberate act.

Denial of Title of Land Owing Family

Where an occupier of a family land denies the title of the land owing family, his occupational right would cease. However, what would constitute a denial of title is a question of fact in each particular case. Where a stranger occupier of land made a false claim that he had purchased the land granted to him for occupation under local law and custom, it was held not to amount to such a denial of that land owner’s title as to ground forfeiture in the case of **Owume v Inyang**¹⁴⁰. It is wondered what other type of disposition would amount to a denial of title if such a claim as in **Owume v Inyang** does not even though the facts and circumstance of the case must have led to such a conclusion. But in **Oloto v Dawuda & ors**¹⁴¹ it was held that the defendants as occupiers of part of Oloto family land forfeited their right thereto when upon being asked for rent they claimed ownership of their allotment under a deed of assurance which extrinsic evidence showed was not intended to pass any absolute property in the land to the defendants. Similarly in **Etim v Eke**¹⁴² a denial of the title of the first defendant’s father by the plaintiff was held to work a forfeiture of their rights even though only a fine of £10 was imposed on that occasion.

Refusal or Failure to Acknowledge the Grantor’s Ownership:

The main object of paying customary tributes or rendering the traditional services is the acknowledgement that the stranger occupier is not and does not claim as owner. It is an assurance for the continued acknowledgment of the title of the grantor. It follows then that a refusal or cesser of either of them would imply a challenge to the grantor’s title and might therefore work a forfeiture.

In practice however, it is always found more convenient and more in line with practical justice to impose a fine upon the occupier for such a denial or fix some sort of rent for him to pay. A fine was in such a situation imposed in **Etime v Eke**¹⁴³ but see generally the case of **Chief Uwani v Akom & ors**¹⁴⁴.

Ead Behavior to the Chief or Family Head: As has earlier been seen, what constitutes bad behavior is relative to the locality involved according to the prevailing codes of conduct in the areas. Thus, such acts

¹³⁴ (1933) 11 NLR 120.

¹³⁵ (1932) 11 NLR 110.

¹³⁶ (1952) 21 NLR 3.

¹³⁷ (1925) 6 NLR 87.

¹³⁸ (1941) 7 WACA 69.

¹³⁹ (1928) 7 NLR 19.

¹⁴⁰ (1931) 10 NLR 111.

¹⁴¹ (1904) 1 NLR 58.

¹⁴² (1941) 16 NLR 43.

¹⁴³ Supra.

¹⁴⁴ Supra.

as burglary, robbery or theft generally, adulterous conduct or relationship with any wife of the household of the grantors or unreasoning insolence or truculence towards the head or Chief would seem to have the effect of rendering the recalcitrant occupier liable to forfeit his right. **Ashogbon v Oduntan**¹⁴⁵ It is the law that if the individual's occupation of a portion of family land is against the general family interest, the same may be terminated in proper case as was stated in **Manuel v Manuel**¹⁴⁶ where **Webber J.** put the matter thus,

“There can be no question as to the legality of the occupation under native law and custom from the moment of entry and freedom from the payment of rent. There is however, a vast difference in the tenure of a member of a family occupying family land for dwelling purposes and that of a member of a family occupying land for purposes of trade. In the former case, the land is practically inalienable provided the usual native law as to conduct or abandonment are not transgressed, but as to land given for business purposes, different considerations apply and it is quite within the native rule to add a condition to the terms of the tenancy that can be determined if the family requires the land. Such a rule could not justify the head of a house in determining the tenancy on his mere ipse dixit that the family required it”.

Thus, it seems clear that family interest, rather than refusal by the occupier to pay rent for such commercial use may determine the occupancy. But the facts of the case revealed no evidence of any family interest. The only problem was that the occupier merely denied having annoyed the Chief by his extravagant boast that ten years' possession of land gave him the ownership of the land in question and so no order for forfeiture was made as it was not considered an act of such enormity as to ground forfeiture. In **Chief Braide & ors v Chief Adoki & ors**¹⁴⁷ it was held that an honest misconstruction of the terms of an agreement between the grantor and the grantee without more would not operate to forfeit the grantee's right to land though it might entail some other penalty. See also **Omete v Chief Numa**¹⁴⁸ In **Sheffi v Williams**¹⁴⁹ it was held that the conduct of a female member of a family in bringing her husband to reside in their family house without the consent of the family head amounted to such bad behavior as would ground the forfeiture of her right to occupation of her portion of the family house.

CONCLUSION

The main object of paying customary tributes or rendering the traditional services is the acknowledgement that the stranger occupier is not and does not claim as owner. It is an assurance for the continued acknowledgment of the title of the grantor. It follows then that a refusal or cesser of either of them would imply a challenge to the grantor's title and might therefore work a forfeiture.

¹⁴⁵ Supra.

¹⁴⁶ (1926) 7 NLR 101 @ 102

¹⁴⁷ (1931) 10 NLR 15.

¹⁴⁸ (1929) 9 NLR 46.

¹⁴⁹ (1884-1892) Law Reports (Colonial) Nigeria A.