An Examination and Impact Assessment of the Legal Framework for Mortgage Transactions in Nigeria

Abayomi Oluwaseun Akanle, Ph.D[1], Adebola Olumide Adeniyi, Ph.D[2]

[1]Department of Public Law, Ekiti State University, Ado-Ekiti, Ekiti State, Nigeria

[2]Department of Jurisprudence and International Law, Ekiti State University, Ado-Ekiti, Ekiti State, Nigeria

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ABSTRACT

Land is not merely a physical asset but a fundamental economic resource, and the mortgage relationship serves as an essential instrument for credit creation, investment, and capital accumulation in Nigeria. Land ownership is one of the major subject of transactional legal relationships, and where direct ownership or access is unachievable, mortgage becomes an alternative. Mortgage transaction are generally regulated by laws primarily concerned with human relations. These laws sets the form, scope and creation of mortgage relationships, also providing for its safe and sound operation. Therefore, the focal aim of this study is to examine the existing legal framework, its applicability and the impact of these laws on mortgage transactions in Nigerian. It adopts a doctrinal legal research methodology, utilizing primary and secondary sources such as statutes, case law, textbooks, journals, articles, and commentaries on property law. The study concluded that a balance must be achieved between protecting mortgagors from exploitative foreclosure practices and ensuring that mortgagees can efficiently realize their security interests. It recommended the harmonization of mortgage laws across Nigerian jurisdictions, the modernization of land registries through digital integration and also called for the amendment of the Land Use Act to reflect contemporary commercial realities and to strengthen equitable protection of mortgage transactions in Nigeria.

Keywords: Mortgage, Mortgagor, Mortgagee, Relationship, Land, Foreclosure, Redemption.

INTRODUCTION

Land is the source of all material wealth,[1] and undoubtedly one of the most valuable assets an individual or entity can possess. In Nigeria, land ownership holds deep economic, socio-political, and cultural significance, and the availability of it is key to human existence. Consequently, the legal principles governing land transactions, especially mortgages, are central to the security of tenure and the facilitation of credit and investment. A mortgage, in its legal sense, is a conveyance of an interest in land or property as security for the repayment of a loan or the performance of some other obligation, subject to redemption upon fulfillment of the secured obligation.[2] Mortgage transaction are generally regulated by laws primarily concerned with human relations. These laws sets the form, scope and creation of mortgage relationships, also providing for its safe and sound operation.[3]

The Courts in Nigeria have consistently recognized mortgages as proprietary security interests that allow land or interests in land to be used as collateral for the repayment of debts. The importance of mortgage transactions has increased significantly with the growth of Nigeria's banking and real estate sectors. Financial institutions rely heavily on mortgages as a means of minimizing lending risks, while borrowers depend on them to access

[1] A. Taiwo, *The Nigerian Land Law* (2nd Edn, Princeton & Associates Publishing Co. Ltd, 2016); A.G Barnsley, Barnsley Conveyancing Law and Practice (3rd edn, Butterworths Press, 1988)

[2] B.O Nwabueze, *Nigerian Land Law* (1st edn, Nwamife Publishers, 2020); P.A.O Oluyede, *Nigerian Conveyancing Practice, Drafting and Precedents* (Heinemann Educational Books (Nig) Plc, 1994)

[3] J.A. Akinwale, 'Legal and regulatory framework for the mortgage industry in Legal and regulatory framework for the mortgage industry in Nigeria (2005) 43 (4) *Economic and Financial Review*, 31-45

long-term capital for residential, commercial, and industrial development.[4] Therefore, mortgage financing plays a vital role in economic development by enabling the conversion of land assets into active capital. Through mortgage arrangements, individuals and businesses are able to access credit facilities that support housing development, infrastructure expansion, and commercial activities. This contributes to job creation, urban development, and economic growth. In the same vein, the Nigerian courts have acknowledged the commercial importance of mortgages in several decisions.[5]

The crux of this study is examining the legal aspect which is a product of English law. Mortgage transactions in Nigeria operates under several provisions scattered across the many statutes of the federation and states, the customary laws in addition to the inherited English statutes, the common law and doctrines of equity in England on 1 January 1900. The duplicity of these laws create challenges, particularly at the point of enforcement of parties' rights. These challenges are associated with land transactions where issues of notice, registration, consent, and equitable rights under customary law often create conflict. The increasing complexity of real estate financing and the registration of land titles have exposed the gaps and inconsistencies in mortgage practices in Nigeria.

CONCEPTUAL DISCUSSION

Mortgage is one of the most critical instruments in property transactions. As earlier stated, it refers to the conveyance of a legal or equitable interest in land or property by a debtor (the mortgagor) to a creditor (the mortgagee) as security for a debt, with the condition that the interest reverts to the [6]mortgagor upon repayment. In Nigerian, the creation of a mortgage must satisfy both statutory requirements and equitable principles. The creation of a mortgage may take several forms, depending on the nature of the mortgage, the property involved, and the applicable law. Mortgages can be created either by deed or through equitable arrangements. A legal mortgage is typically created by deed and must comply with the formalities under the Property and Conveyancing Law (PCL) or the Conveyancing Act of 1881, depending on the jurisdiction. In Lagos State and other states that have adopted the PCL, legal mortgages are created under Section 105 of the PCL, while in other areas, the Conveyancing Act 1881 still applies.[7] Under the Land Use Act (LUA), all land is vested in the Governor of a State to hold in trust for the people, and thus, creating a mortgage over such land often requires the Governor's consent, as provided under Section 22 of the LUA.[8] This position has since been followed in several decisions, indicating the centrality of governmental authority in land-based mortgage transactions.

Moreover, a mortgage may be created by demise or sub-demise (for a term of years absolute, subject to a provision for redemption upon payment of loan), by charge by deed expressed to be by way of legal mortgage, or by equitable charge, particularly where the mortgagor merely deposits title deeds or enters into an agreement to create a mortgage without completing the formal legal steps.[9] Equitable mortgages are more flexible in practice compared to a legal mortgage. They typically arise where title deeds are deposited with the mortgagee with the intent to create security, often without a formal deed.[10] Furthermore, it is important to distinguish between an agreement to mortgage (which creates an equitable interest) and an actual mortgage, which passes an interest in the land or property.[11] The courts have consistently required clear intent to create a mortgage, and where such intention is proven, equity will not allow the mortgagor to derogate from his undertaking.[12]

[4] Y.S Uthman, ' Examining the process of mortgage transaction in Nigerian Law' (2026) 2 (1) *World Journal of Law*, 1-6
[5] *Ibid.*

[6] B.M. Salawu, 'An Examination of the Legal Framework for Parties' Rights when Mortgaging Land under Nigerian Property' (2025) 5 *Turf Law Journal,* 1-18
[7] Property and Conveyancing Law, Cap. 100, Laws of Western Nigeria 1959, S. 105
[8] Cap L5 LFN, 2004.
[9] M.A Long, *Land Law in Nigeria* (Princeton Publishing Co, 2013) 245.
[10] *Ibid.*
[11] B.O Nwabueze, *The Machinery of Justice in Nigeria* (Spectrum Books, 2011) 202.
[12] *Ibid.*

From the statutory perspective, the Stamp Duties Act[13] and Land Instrument Registration Laws[14] also play significant roles in regulating the creation and enforceability of mortgages in Nigeria. Unstamped or unregistered mortgage instruments may not be admissible in evidence or enforceable in court. The Courts have illustrated the need for compliance with registration and stamping formalities, where the mortgage was declared inadmissible due to non-registration.[15] Legal scholars on the other hand have also observed that mortgage creation in Nigeria has become more intricate due to urbanization, increased land values, and regulatory complexities.[16]

Mortgagor and Mortgagee Relationship

The relationship between a mortgagor and a mortgagee is a complex legal construct rooted in both common law and statutory provisions, embodying elements of contract, trust, and property rights. Traditionally, a mortgage was viewed as a conveyance of legal estate from the mortgagor (borrower) to the mortgagee (lender), subject to a condition that the estate would revert to the mortgagor upon repayment of the loan. This notion reflects the classical view that a mortgage is a conveyance of land as security for the payment of a debt and becomes void upon payment.[17] Under Nigerian law, particularly the Land Use Act, 1978, the nature of the mortgagor-mortgagee relationship has been statutorily modified. The mortgagor retains the right of occupancy, while the mortgagee acquires a proprietary interest, usually by way of legal or equitable mortgage.[18] Thus, the mortgagee is seen not merely as a creditor but as having an interest in the land itself. In *Bank of North v. Bello*, the Supreme Court emphasized that a mortgagee is entitled to take possession or sell the property upon default without necessarily resorting to court proceedings, depending on the terms of the mortgage.[19]

It should be noted that the relationship is fiduciary in certain respects. The mortgagee owes a duty of care to the mortgagor, particularly when exercising the power of sale. This fiduciary aspect emphasizes that the mortgagee must act in good faith and take reasonable steps to obtain the best price reasonably obtainable.[20] The mortgagee must also not sell the property to himself, his agent, or an associate, as such sale would be voidable at the instance of the mortgagor.[21] Equity further intervenes in protecting the mortgagor's right of redemption. This right, often described as the equity of redemption, remains inviolable. Any provision in a mortgage agreement that purports to prevent redemption or fetters the mortgagor's ability to reclaim their property is regarded as a clog on the equity of redemption and is thus void.

Mortgagees' legal remedies in the event of default, includes foreclosure and the appointment of a receiver.[22] However, foreclosure is rarely used in Nigeria, as it results in the absolute extinguishment of the mortgagor's right, which equity seeks to prevent unless justice so requires.[23] The mortgagor, on the other hand, has a duty to repay the mortgage debt, pay interest (if any), and not to deal with the property in a way that impairs the mortgagee's security. A breach of these obligations may justify enforcement actions by the mortgagee. Nevertheless, Nigerian courts emphasize that enforcement must not amount to oppression or an unjust enrichment of the lender.[24] In essence, the relationship between mortgagor and mortgagee is dualistic, which are contractual and proprietary, legal and equitable, commercial and fiduciary. It is governed not just by the terms agreed upon by the parties, but also by statutory and judicial safeguards that balance the interests of borrowers and lenders in land transactions.

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[13] Cap S8, LFN, 2004.
[14] Land Instruments Registration Law of Lagos State 2015.
[15] *Barclays Bank v. Hassan* (1961) 1 All NLR 836
[16] A.C Diala, *The Challenge of Redemption Rights in Mortgage Transactions* (2019) 34 *University of Ibadan Law Review,* 124.
[17] *Santley v. Wilde*, (1899) 2 Ch. 474 at 479.
[18] LUA, Cap L5, LFN, 2004, s. 1 and 5.
[19] (2000) 7 NWLR (Pt. 664) 244.
[20] (*Okonkwo v. Cooperative and Commerce Bank Ltd* (2003) 8 NWLR (Pt. 822) 347.
[21] M.A Onalo, *Law and Practice of Mortgage Transactions in Nigeria* (Dee-Sage Nigeria Ltd, 2010) 132.
[22] J.A Omotola, *Foreclosure in Mortgage Transactions under Nigerian Law* (1991) 5 *Justice Journal, 47*
[23] (1985) 3 NWLR (Pt. 13) 192.
[24] A. Obilade, *The Nigerian Legal System* (Spectrum Books Ltd, 2005) 159.

Spectrums of Mortgages

Mortgages in Nigerian land law can broadly be classified into legal and equitable mortgages. The classification is not merely academic, it has serious implications for the enforceability of rights and remedies between mortgagors and mortgagees.[25] Legal Mortgages are those that comply with the formal statutory requirements under the relevant land laws and are capable of immediate registration. Under the *Land Use Act* 1978, and by extension the *Property and Conveyancing Law* (PCL) and *Conveyancing Act* 1881 (still applicable in some parts of Nigeria), legal mortgages are usually created by mortgage deed or legal charge over the interest of the mortgagor in land.[26] This form grants the mortgagee legal title, subject to redemption. Where land is under the *Registration of Titles Law* (such as in Lagos), legal mortgages must be by way of a charge, not by conveyance, as provided under the *Land Instruments Registration Law*.[27] Equitable Mortgages, on the other hand, arise where there is a mere agreement to mortgage**,** or deposit of title deeds without formal documentation. In such cases, the mortgagor retains legal title while the mortgagee has only an equitable interest.[28] This form often occurs where the parties have not complied with statutory requirements for creating legal mortgages.[29] The deposit of title deeds, accompanied by an intention to create security, suffices to constitute an equitable mortgage.

Another classification recognizes first and second mortgages. A first mortgage takes precedence in the event of default, while a second or subsequent mortgagee only exercises rights subject to the first mortgagee's priority. For the purpose of enforcement, the hierarchy of enforcement between successive mortgagees, holding that the first mortgagee must be satisfied before the second can enforce its rights. It is also relevant to distinguish between fixed and floating mortgages.[30] A fixed mortgage attaches to specific, identified property (e.g., a parcel of land), while a floating mortgage covers over a class of assets (such as business stock) and crystallizes upon a triggering event like insolvency.[31] The *Banks and Other Financial Institutions Act* (BOFIA) 2020 (as amended) recognizes these mortgage types in banking transactions, requiring financial institutions to register interests in movable and immovable property with the National Collateral Registry.[32] Moreover, there is increasing use of all-monies mortgages, where the mortgage covers not just a specific debt but all present and future debts owed by the mortgagor. The differences among these types of mortgages determine not only the parties' remedies but also priority in insolvency, the necessity of consent under Section 22 of the Land Use Act, and enforceability against third parties. Therefore, parties must ensure proper form, registration, and documentation of the mortgage interest they intend to create.

Redemption of Mortgage

Redemption in mortgage law refers to the legal right of a mortgagor to reclaim full ownership of their property upon full repayment of the mortgage debt, including interest and costs, even after the due date for repayment has passed. This equitable right to redeem is one of the foundational doctrines developed by courts of equity to protect borrowers from the harsh consequences of default under strict common law rules. The right of redemption is exercisable up to the moment of foreclosure or sale of the mortgaged property. Nigerian courts have consistently upheld this right, emphasizing that any clause or conduct that restricts redemption is void.[33]This position is supported by Property and Conveyancing Law (PCL)[34] of Western Nigeria, which guarantees the mortgagor's right to redeem even after default, and provides mechanisms for relief from forfeiture. Similarly, under section 18 of the Conveyancing Act 1881, applicable in parts of Nigeria by virtue of

[25] A.O Olawoyin, *Nigerian Land Law* (Evans Brothers, 2010) 134.
[26] M.A Onotu, *Law of Real Property in Nigeria* (Spectrum Books, 2019) 267.
[27] Land Instruments Registration Law, Cap L58, Laws of Lagos State 2015, S. 100.
[28] A.O Obilade, *Principles of Equity and Trusts in Nigeria* (Ibadan: University Press, 2020) 181.
[29]*Barclays Bank D.C.O. v. Ashiru* (1978) 6-7 SC 99
[30] *Ogundiani v. Araba* (1978) 6-7 SC 55
[31] G.E Dalley, Security over Movable Assets in Nigeria (2020) *Nigerian Bar Journal*, 45(3) pp.87.
[32] Banks and other Financial Institutions Act 2020 S. 20-24, (As amended)
[33] ***Olowu v. Miller Bros. Ltd.*** (1964) 1 All NLR 421 at 428.
[34] Property and Conveyancing Law, Cap.100, Laws of Western Nigeria 1959, S. 125.

received English law, any provision that seeks to prevent, impede, or fetter redemption is considered a clog on the equity of redemption and thus void.[35]

In equity, the right to redeem persists even after the contractual date for repayment has passed. This equitable doctrine evolved from the courts' disapproval of the unfair forfeiture of mortgaged property due to slight delay in repayment.[36] Consequently, redemption is often subject to the payment of all sums due, including interest, legal costs, and enforcement expenses. Where parties attempt to impose terms that transform the mortgage into an outright sale, such attempts are deemed invalid.[37] The Courts have consistently struck down provisions in mortgage agreements that amount to clogs or fetters on the equity of redemption. Thus, a mortgagor cannot be denied the right to redeem simply because of a delay in repayment, so long as the property has not yet been foreclosed or sold.[38]

Moreover, it should be noted that the mortgagor has the right to redeem not only the legal title but also any surplus proceeds of sale in the event that the mortgagee exercises the power of sale. In *Okonkwo v. C.C.B. (Nig.) Ltd*., the Court of Appeal emphasized that where a mortgagee has sold the mortgaged property, they must account for any surplus to the mortgagor.[39] Equity, however, also provides a counterbalance in protecting the mortgagee's rights. If the mortgagor delays unduly or refuses to repay, the mortgagee may apply for foreclosure or exercise the power of sale. But even in such cases, Nigerian courts typically allow redemption so long as sale or foreclosure has not occurred.[40] The right of redemption remains a vital protection for mortgagors in Nigeria. The courts have continuously affirmed its inviolability, and legislative frameworks such as the Land Use Act 1978, and Property and Conveyancing Law buttress this equitable doctrine.

HISTORICAL EVOLUTION OF THE MORTGAGE SYSTEM IN NIGERIA

The mortgage system in Nigeria has evolved through a tripartite historical trajectory: the customary, colonial, and post-independence periods. Each phase has contributed to the legal and operational structure of mortgage transactions in the country today. Prior to colonial intervention, traditional Nigerian societies did not recognize mortgages in the formal legal sense. Instead, land transactions were governed by customary laws, which emphasized communal ownership and ancestral ties. Alienation of land was subject to the consent of family heads or community leaders, and security for debt was often created through pledges or symbolic handovers rather than legal instruments.[41] Such transactions were usually oral and rooted in trust, with limited enforceability in formal courts. For example, among the Yoruba, land was held by families, and any pledge of land required collective approval.[42]

With British colonization came the introduction of English property and mortgage laws through the reception clause in colonial legislation, particularly the *Supreme Court Ordinance* of 1876, which introduced English law into the Lagos Colony.[43] This ushered in a shift from customary tenures to individualized landholding systems. English mortgage concepts such as legal mortgage, equitable mortgage, foreclosure, and the power of sale became integrated into local jurisprudence. The received English law recognized different forms of mortgages, including mortgages by demise, by statutory charge, and equitable mortgages by deposit of title deeds.[44] Nigerian courts, following colonial precedent, began enforcing formal mortgage contracts as seen in *Gomes v. The Corporation of Lagos*, where the court upheld an English-style mortgage.[45] Following independence in 1960, Nigerian legal practice continued to reflect English legal traditions while also adapting to indigenous realities. However, one of the most transformative changes came with the enactment of the *Land Use Act* of

[35] Conveyancing Act 1881, S. 18
[36] A.O Olawoyin, *Nigerian Land Law* (Evans Brothers, 2010) 134.
[37] R. Mergarry and H.W.R Wade, *The Law of Real Property* (Sweet & Maxwell, 2012) 1119.
[38] ***Bank of North Nigeria v. Babatunde***, (1969) 1 NMLR 37 at 40.
[39] (2003) 8 NWLR (Pt. 822) 347 at 371.
[40] I.O Smith, *Practical Approach to Law of Real Property in Nigeria* (Revised Edition, Ecowatch Publications, 2021)
[41] B.O Nwabueze, *The Land Use Act: A Critical Analysis* (Nwamife Publishers, 1982) 45.
[42] M.I Jegede, *Principles of Nigerian Customary Law* (Shaneson C.I Ltd, 1981) 101.
[43] Supreme Court Ordinance No. 4 of 1876.
[44] P. Sparkes, *A New Land Law* (Oxford Hart Publishing, 2011) 499.
[45] (1904) 1 NLR 1.

1978, which nationalized land ownership and vested all lands in the state governors for the benefit of Nigerians.[46] This law altered the foundation of land transactions and mortgage creation. Under the Act, individuals can only obtain a right of occupancy (statutory or customary), and such rights can be mortgaged, subject to the governor's consent under Section 22.[47]

Despite criticisms for bureaucratic delays and inefficiencies, the Act remains the dominant legal instrument regulating mortgage transactions in Nigeria. The Act provides that failure to obtain the governor's consent rendered a mortgage transaction null and void.[48] This position was subsequently refined in *Awojugbagbe Light Industries Ltd v. Chinukwe*, that lack of consent did not render the mortgage void but voidable at the instance of the governor.[49] Moreover, the Nigerian legal system now recognizes the importance of equitable mortgages in commercial practice. Mortgages by deposit of title deeds, recognized under English law remain prevalent, particularly in urban areas where land titles are well-documented.[50] In recent years, digital land registries and banking reforms have further modernized mortgage transactions, improving access to housing finance.[51] The historical evolution of the mortgage system in Nigeria reflects a transition from communal, customary landholding systems to a formalized, codified legal structure influenced by English law, and finally to a hybrid framework underpinned by the Land Use Act and modern commercial practices. This evolution continues to shape the rights, duties, and enforcement mechanisms available to mortgagors and mortgagees in the country.

CHALLENGES OF MORTGAGE TRANSACTIONS IN NIGERIA

The relationship between a mortgagee and a mortgagor is deeply embedded in legal, equitable, and statutory principles. Although, mortgages are intended to serve as instruments for securing financial obligations through interest in land, numerous legal uncertainties, conflicting interpretations, and procedural irregularities have continually undermined the effective operation of mortgage transactions in Nigeria.

A fundamental problem of this transaction is the inconsistent compliance with statutory requirements for consent and registration, particularly under the Land Use Act 1978. The Act mandates that the Governor's consent should be sought and obtained before alienation of any right of occupancy.[52] Several judicial precedence have been laid that, the absence of such consent renders a mortgage transaction null and void irrespective of the parties' intentions.[53] However, it should be noted that these statutory and case law positions have been reviewed. Is it in all cases of transfer of unexpired interest in land in mortgage transaction that the consent of the Governor is obtained? If the response is in the negative, then compliance to that statutory provision is inconsistent. In *Yakubu Ibrahim v. Simon Obaje*[54] the Supreme Court held that Section 22 of the Land Use Act does not apply to land transactions or alienations between private individuals where there is no overriding public interest or dispute. The reasonable argument may be that since the mortgage transaction is a private arrangement for a period certain (fixed period), and the mortgagor has the right of redemption on the transaction, obtaining the Governor's consent may be superfluous considering the fact that the property and the right of occupancy on it upon redemption reverts to the mortgagor.

Additionally, abuse of the mortgagee's power of foreclosure and sale continues to trigger litigation.[55] Mortgagees often sell mortgaged properties without due diligence, without ensuring reasonable prevalent market value, without proper notice to the mortgagor and without compliance to statutory procedure for the sale. Although, the mortgagee is not bound to obtain the best possible price, he must act in good faith and take

[46] Land Use Act, Cap L5, LFN, 2004.
[47] *Ibid.*
[48] *Savannah Bank v. Ajilo*, (1989) 1 NWLR (Pt. 97) 305.
[49] (1995) 4 NWLR (Pt. 390) 379.
[50] A.I.O Adigun, *The Validity of Equitable Mortgages by Deposit of Title Deeds in Nigeria* (2009) 13 (1) *Nigerian Law and Practice Journal*, 77
[51] F.O Akinola, *Real Estate Law and Practice in Nigeria,* 1st Edition (FOLAD Publishers, 2020) 312.
[52] Land Use Act, Cap. L5 LFN, 2004, s. 22
[53] *Savannah Bank v. Ajilo* (1989) 1 NWLR (Pt. 97) 305.
[54] (2018) 11 E-WRN 01 SC
[55] *Akindele v. Abe* (2021) 1 NWLR (pt.1804) 1 SC

reasonable steps to secure a fair price. Despite this caution, many mortgagees exploit ambiguous or broadly worded contractual clauses to justify unjustified dispossession of mortgagor's property.[56]

Moreover, the right of redemption which is an equitable safeguard for mortgagors is being undermined by unfair clauses embedded in mortgage deeds. Courts have consistently rejected clogs on redemption and reiterated that any term that denies the mortgagor's right to redeem is void ab initio.[57] The right to redeem a mortgaged property is so inseparable an incident of mortgage that it cannot be taken away either expressly or by implication, nor can such redemption be limited to time or particular person. The right of redemption continues until the mortgagor's title is extinguished or the interest destroyed by sale either under the process of court or by the mortgagee.[58] However, in practice, mortgagors with limited bargaining power often sign mortgage deeds drafted by lenders that violate this cardinal principle. Another issue is the multiplicity of legal regimes governing mortgage transactions in Nigeria. While some states rely on the Property and Conveyancing Law (PCL) 1959, others apply the Conveyancing Act 1881, and states like Lagos have adopted more recent legislation, such as the Mortgage and Property Law of Lagos State 2010.[59] This fragmented system leads to doctrinal and procedural disparities, leaving both mortgagors and mortgagees vulnerable to legal uncertainty.

Additionally, the problem of fraudulent or unperfected titles and incomplete documentation often complicates enforcement and foreclosure. Some mortgaged properties are discovered to lack proper title or to have encumbrances unknown at the time of mortgage creation. The situation is exacerbated by bureaucratic delays in the issuance of Governor's consent and Certificate of Occupancy, which remain critical to the validity and enforceability of mortgages under Nigerian law.[60] Furthermore, the Nigerian courts continue to grapple with balancing equitable justice with strict statutory requirements. While courts seek to protect borrowers from oppressive conduct, they are also constrained by rigid statutory frameworks, often resulting in decisions that frustrate commercial expectations.

The cumulative effect of these issues has generated widespread uncertainty in the mortgage financial market, weakened lender confidence, and discouraged the use of land as reliable security for credit. This situation ultimately undermines property rights, distorts investment incentives, and slows economic development, particularly in the real estate and financial sectors. This study will therefore address these gaps and examine the legal framework that govern mortgage transactions, to assess their impact on land transaction in Nigeria.

LEGAL FRAMEWORK FOR MORTGAGE TRANSACTIONS IN NIGERIA

The legal framework governing mortgages in Nigeria derives from a combination of statutory enactments (federal and State), common law principles, and equitable doctrines. These laws set out the rights and obligations of both the mortgagee (the lender) and the mortgagor (the borrower), ensuring a balance between securing the lender's interest and protecting the borrower's proprietary rights. At this point, the study will be considering the existing Federal and State legislation on mortgage transactions.

Federal Legislations

The Land Use Act, 1978

The Land Use Act of 1978 is a pivotal statute regulating land tenure and administration in Nigeria.[61] The Act revolutionized land ownership by vesting all land in each state (excluding land vested in the Federal Government or its agencies) in the Governor of the State. This effectively nationalized land ownership and converted existing interests in land into statutory or customary rights of occupancy. Section 1 of the Act, the Governor holds land in trust for the people and is empowered to allocate rights of occupancy for residential,

[56] *Okonkwo v. Cooperative and Commerce Bank (Nigeria) Plc* (2003) FWLR (Pt. 139) 1486
[57] *Oyebanji v. Okunlola* (2000) FWLR (Pt. 17) 1335
[58] *Ndaba Nig Ltd v. UBA* (2007) NWLR (pt. 1040) 439
[59] Mortgage and Property Law of Lagos State, 2010
[60] I.O Smith, (n39) *Op.cit,* 390.
[61] Land Use Act, Cap L5, LFN, 2004, s. 1.

agricultural, commercial, and other purposes. This provision significantly impacts the rights of mortgagors and mortgagees, as the consent of the Governor is statutorily required before any mortgage transaction involving land can be validly executed. In section 22, the Act stipulates that the holder of a statutory right of occupancy must obtain the Governor's consent before alienating or transferring their interest, including by way of mortgage. The failure to obtain such consent renders the mortgage void ab initio.[62]

Additionally, the Land Use Act introduces a dual regime of land tenure, distinguishing between customary rights of occupancy (administered by Local Governments) and statutory rights of occupancy (administered by the Governor).[63] This distinction affects the procedural and legal requirements for creating valid mortgages across different parts of the country.[64] The Act also imposes certain limitations on the rights of mortgagees. For instance, while a mortgagee may have the right of sale or foreclosure, such rights must be exercised in conformity with statutory requirements and not in contravention of the occupier's rights under customary tenure or statutory grants.[65] The courts have emphasized the need for strict compliance with these legal conditions, thereby protecting mortgagors from arbitrary dispossession.

It is worth noting that despite the regulatory intentions of the Land Use Act, its provisions especially the requirement for Governor's consent have often been criticized for creating bureaucratic hurdles that hinder economic transactions such as mortgage financing.[66] The process of obtaining consent is often slow, opaque, and expensive, discouraging both lenders and borrowers and leading to a proliferation of informal and potentially unenforceable mortgage agreements. Nonetheless, the Land Use Act remains central to the legal framework governing mortgage transactions in Nigeria. Its provisions must be read in conjunction with other laws, including the Property and Conveyancing Law, the Mortgage and Property Law of various states, and equitable doctrines of trust and redemption.[67]

Banks and Other Financial Institutions Act (BOFIA) 2020

The BOFIA**,** 2020 (as amended), plays a significant role in regulating the financial institutions that offer mortgage-related services in Nigeria. The Act establishes a legal and regulatory framework to ensure that banks and mortgage institutions operate within stipulated prudential norms, particularly concerning mortgage lending. Mortgagees, especially financial institutions, derive their lending powers from the provisions of BOFIA. Section 2 of Act, authorizes banks to carry on business activities involving granting of loans and advances secured by mortgage on immovable property. This provision protects the rights of mortgagees to enforce repayment and to secure the underlying property. It further grants powers to the Central Bank of Nigeria (CBN) to supervise and regulate mortgage portfolios held by financial institutions, ensuring accountability and legal compliance in mortgage transactions.[68] In *Diamond Bank Ltd v. P.I.C. Ltd*,[69] the Court emphasized that BOFIA provisions are binding on both mortgagees and mortgagors, particularly in assessing the validity of loan agreements secured by mortgages. Thus, BOFIA not only governs the establishment and operation of banks but also ensures the rights of mortgagees are enforceable, especially where financial institutions are involved.

Mortgage Institutions Act

The Mortgage Institutions Act,[70] was enacted to regulate the establishment and operations of Primary Mortgage Institutions (PMIs) in Nigeria. The Act sets out the legal framework under which these institutions can operate, providing guidelines for mortgage creation, funding, and recovery. The Act defines mortgage institutions and

[62] *Savannah Bank Ltd. v. Ajilo (Supra).*
[63] Land Use Act, Cap L5, LFN, 2004, s. 6
[64] O. Olomo, *Land Law and Conveyancing in Nigeria* (Ibadan: Spectrum Books, 2018) 134.
[65] B.A Yakubu, *Land Law in Nigeria* (Lagos: Malthouse Press, 2019) 190-193.
[66] M.A Ajomo, *The Governor's Consent under the Land Use Act: Legal and Practical Implications* (2020) 15 (2) Nigerian Current Law Review, 155-161.
[67] J.A Omotola, *Land Use Act and Mortgages: Challenges in Practice* in T.O Elias, (ed.) *Modern Nigerian Land Law* (Lagos: University of Lagos Press, 2021) 207.
[68] Banks and Other Financial Institutions Act (BOFIA) 2020, s. 12
[69] 2009) 18 NWLR (Pt. 1172) 67.
[70] Cap M19, Laws of the Federation of Nigeria (LFN) 2004,

empowers them to accept savings and grant loans for residential buildings.[71] In section 9, the procedure for creating legal mortgages, including requirements for registration and perfection of title, thus safeguarding the interest of both mortgagors and mortgagees was outlined. In case of breach of agreement, the Act provides remedies available to mortgagees in the event of default by the mortgagor, including the right to sell the mortgaged property after due notice.[72] In *Nigeria Deposit Insurance Corporation (NDIC) v. Okem Enterprises Ltd*, the court affirmed the role of mortgage institutions as financial intermediaries and held that failure to comply with the Act's provisions on notice invalidated a mortgage sale.[73] By providing clarity on procedural and substantive rules guiding mortgage transactions, the Act significantly enhances the legal rights of both parties to a mortgage agreement.

Land Registration Act, 1925

The Land Registration Act (now as Cap L5, LFN 2004) plays a vital role in safeguarding the legal interests of both mortgagees and mortgagors in Nigeria. Land registration is essential in giving notice to the public, securing title, and providing priority of interest in land, especially for mortgage transactions. Registration not only validates a mortgage transaction but also protects the mortgagee against unregistered or hidden encumbrances.[74] Under the Land Instrument Registration Law (LIRL) applicable to some Nigerian States, including Lagos and Oyo, all instruments affecting land including mortgages must be registered to be valid against subsequent purchasers or interests.[75] Non-registration does not invalidate the instrument between the parties, but it renders the interest void against third parties who acquire legal title without notice.[76] The registration requirement also aligns with the doctrine of "priority of interest", whereby registered mortgages take precedence over unregistered ones. Thus, failure to comply with registration requirements under the Land Use Act and applicable state registration laws can affect the enforceability of the mortgage.[77] Additionally, section 15 of the Land Instruments Registration Law of Lagos State requires that a registrable instrument, if not registered within the stipulated time (usually 60 days), may be rejected or penalized, jeopardizing the mortgagee's ability to enforce the mortgage.[78] The Act also supports the indefeasibility of title ensuring that once a mortgage interest is registered, it cannot easily be displaced except on grounds of fraud or misrepresentation.[79]

Constitution of Federal Republic of Nigeria, 1999 (as amended)

The 1999 Constitution provides the foundational legal backing for property rights and contractual enforcement within the Nigerian legal system. Although it does not specifically address mortgage law, it provides the constitutional guarantee of the right to own immovable property and the right to fair hearing, both of which are critical in mortgage-related disputes. Section 43 of the Constitution, guarantees every Nigerian the right to acquire and own immovable property anywhere in Nigeria. This forms the basis for a mortgagor's right to use property as security, and a mortgagee's right to enforce such security, subject to compliance with statutory and equitable rules. Furthermore, Section 44(1) prohibits compulsory acquisition of property without prompt compensation, which has implications in cases where government interference affects the rights of mortgagees or mortgagors. Section 36 also enshrines the right to fair hearing, which is essential in protecting the due process rights of mortgagors in cases of foreclosure or sale. Any mortgage enforcement action that violates these rights may be voided by the courts. Therefore, while the Constitution does not directly legislate on mortgages, it underpins the entire legal structure protecting proprietary interests in mortgage relationships.

[71] Mortgage Institution Act Cap M19 LFN, 2004, s. 2
[72] *Ibid,* s. 10
[73] (2004) 10 NWLR (Pt. 880) 107.
[74] M.A Ajomo, *Property Law in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2001) 141.
[75] Land Instruments Registration Law, Cap L58, Laws of Lagos State, 2015, s. 2.
[76] I.O Smith,(n39) *Op.cit*
[77] (1989) 1 NWLR (Pt. 97) 305.
[78] Land Instruments Registration Law, Cap L58, Laws of Lagos State, 2015, s 15.
[79] R.W James, *Nigerian Land Use and Property Law* (Ibadan: University Press, 2015) 177.

Regional Legislations

Property and Conveyancing Law (PCL) 1959

The Property and Conveyancing Law (PCL) is one of the principal statutory frameworks governing land law and mortgage transactions in Nigeria, particularly in the old Western Region (now Western States).[80] The Property and Conveyancing Law was introduced in 1959 and modeled after the English Law of Property Act, 1925, and the Conveyancing and Law of Property Act, 1881. It codified a comprehensive system of property rights, obligations, and remedies pertaining to land and mortgage transactions.[81] Under the Property and Conveyancing Law, a mortgage is defined as a conveyance of an interest in land or property intended to serve as security for the payment of a debt or the performance of some other obligation.[82] The law outlines various types of mortgages, including legal and equitable mortgages, and establishes the rights and obligations of both the mortgagor and mortgagee.

One of the salient provisions of the Property and Conveyancing Law is the right of redemption, which ensures that a mortgagor can redeem the mortgaged property upon satisfying the debt, even after the stipulated date of repayment. This right is protected in equity and cannot be contracted out by the mortgagee through any provision in the mortgage deed.[83] Equity frowns upon any clause or act that seeks to derogate from the mortgagor's right to redeem.[84] In *Bank of North v. Bello*,[85] the Court of Appeal reiterated that once a mortgage is proved to exist, the mortgagor retains the right of redemption, and any clause to the contrary is void in equity. These cases underscore the equitable principle entrenched in the Property and Conveyancing Law. The Property and Conveyancing Law also empowers the mortgagee with remedies such as foreclosure, power of sale, possession, and the appointment of a receiver. However, these remedies must be exercised in accordance with the provisions of the law and with due regard to the mortgagor's rights.[86]

Furthermore, the Property and Conveyancing Law enshrines the mortgagor's right to quiet enjoyment, mandating that the mortgagee cannot interfere with the mortgagor's possession unless and until the terms of the mortgage are breached.[87] This provides a measure of security and predictability for the mortgagor during the pendency of the mortgage. While the PCL has proven useful in standardizing mortgage law within its jurisdiction, its applicability is limited to the former Western Region, and it does not have universal reach across Nigeria.[88] Consequently, other regions still rely on received English law or customary law, leading to legal pluralism and inconsistencies in mortgage practices.[89] The Property and Conveyancing Law remains a cornerstone of mortgage law in South-West Nigeria. Its comprehensive provisions, grounded in statutory and equitable principles, offer a balanced legal framework for the regulation of mortgages, protecting the interests of both mortgagors and mortgagees.

Conveyancing and Law of Property Act, 1881

The Conveyancing and Law of Property Act, is one of the earliest pieces of English legislations received in 1900 that extensively influenced mortgage transactions in Nigeria, particularly in the western region (now Western State) where it continues to apply under received English law. This Act introduced pivotal rules and statutory rights relating to mortgages, which shaped the contractual and equitable rights of both mortgagors and mortgagees. Section 19 of the Act conferred statutory power of sale on mortgagees without requiring a court

[80] Property and Conveyancing Law Cap. 100 Laws of Western Nigeria, 1959, s 108.
[81] *Ibid.*
[82] *Ibid,* s. 105
[83] (1995) 4 NWLR (Pt. 390) 711.
[84] (1978) 6-7 SC 55 at 57.
[85] (1995) 4 NWLR (Pt. 390) 711.
[86] Property and Conveyancing Law, Cap. 100, Laws of Western Nigeria, 1959, s. 110.
[87] *Ibid,* s. 116.
[88] Y. Aboki, *Introduction to Commercial Law in Nigeria* (2nd Edn, ABU Press, 2019) 272.
[89] E.I Nwogwugwu, *Property Law in Nigeria* (Heinemann Educational Books, 2018) 94.

order, once certain conditions are met.[90] This provision helped standardize mortgage enforcement practices, especially in commercial settings, by reducing delays in realizing mortgage security upon default.

The Act further provided authority for the mortgagee to appoint a receiver to manage the mortgaged property.[91] This provision was crucial in enabling the lender to recover proceeds of rent or income generated from the mortgaged property without taking possession or invoking foreclosure proceedings. Despite its English origin, the Act has been incorporated into Nigerian land law through reception statutes, such as the Interpretation Act and regional legal instruments.[92] For example, the Conveyancing Act, 1881 applies in states like Lagos and old Western Region states, including Oyo, Ogun, and Ondo, under the classification of received English statutes of general application.[93] However, it does not apply in the northern states, where the Property and Conveyancing Law (PCL) was enacted to replace it.

The Act has played a significant role in defining mortgagees' rights to possession, foreclosure, and sale, as well as mortgagors' equitable rights to redeem, however it has faced criticism for its age and limited adaptability to modern realities. Issues such as informal lending, customary mortgages, and land tenure complexities in Nigeria often fall outside the scope of its rigid provisions.[94] Modern commentators advocate for reform or codification of Nigeria's mortgage laws to reflect the diversity of socio-legal mortgage practices within the country.[95] The Conveyancing Act, 1881 continues to influence the rights of mortgagors and mortgagees in several parts of Nigeria, its relevance is gradually waning due to more contemporary laws and regional adaptations such as the Land Use Act and the Property and Conveyancing Law. However, for legal practitioners and judges in regions where it still applies, the Act remains a key reference in resolving mortgage disputes.

Registration of Title Act

The Act was introduced to improve certainty and security of land tenure by replacing the cumbersome and often uncertain deed registration system with a system of title registration. It ensures that ownership and interests in land are not merely recorded but guaranteed by the state.[96] Under this Act, once a title is registered, it becomes conclusive evidence of ownership, and any purchaser of the land is not bound to investigate further than the register.[97] This provision simplifies conveyancing processes and greatly benefits mortgagees by assuring them of the legitimacy of the mortgagor's title. Consequently, financial institutions and individual lenders are more willing to offer credit secured on land.[98] The Act provides that once a mortgage is registered, it becomes a charge on the property, and priority is determined by the order of registration.[99] This protects mortgagees by giving their interest precedence over later claims. Thus, the registration process serves not only as notice to the public but also as a determinant of legal priority.

The Act is particularly crucial in metropolitan areas like Lagos and Abuja where the volume and frequency of land transactions necessitate a reliable and transparent system. However, challenges persist due to administrative delays, outdated records, and inconsistencies between registered and actual physical possession.[100] It is necessary for due registration of mortgage transactions, stressing that failure to do so could render the mortgage unenforceable, particularly where statutory compliance under the Land Use Act is not followed.[101] This further underscores the synergy between the Registration of Title Act and other statutory frameworks in Nigeria. Despite its benefits, the effectiveness of the Act has been undermined by the limited

[90] Conveyancing and Law of Property Act, 1881, s. 19.
[91] *Ibid,* s. 20.
[92] Interpretation Act, Cap I23, LFN, 2004, s. 45(1).
[93] A.O Obilade, (n23) Op.cit, 85.
[94] I.O Smith, (n39) *Op.cit*
[95] A.O Ayodele, *The Relevance of the Conveyancing Act in Modern Nigerian Land Law* (2020) 45 (1) *Nigerian Bar Journal*, 92-96.
[96] Registration of Title Act, Cap R4, LFN, 2004.
[97] *Ibid*, s. 16.
[98] G.A Ajayi, *Land Law in Nigeria* (3rd Edn, Ibadan: University Press, 2021) 208.
[99] (n87), s. 19.
[100] A. Otubu, *Challenges of Land Title Registration in Nigeria* (2019) 55 *Nigerian Property Law Journal*, 61-77.
[101] (1989) 1 NWLR (Pt. 97) 305.

geographical coverage and lack of awareness among landowners.[102] In reforming the system, legal scholars and practitioners have called for its integration with modern electronic registration systems, which can further enhance efficiency, reduce fraud, and support land market development.[103]

APPLICABILITY OF THE LEGAL REGIMES ON MORTGAGE TRANSACTIONS IN NIGERIA

The multiplicity of laws regulating mortgage transactions in Nigeria, as highlighted in the foregoing sections, creates a complex legal landscape that must be navigated carefully to ascertain their applicability to specific contexts. This complexity stems from the duality of legal systems statutory and customary as well as the division between federal and state legislative powers on land and property matters[104]. Under the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), land and housing are listed under the Residual Legislative List**,** thereby placing responsibility for their legislation primarily on the state governments[105]. This constitutional arrangement gives states autonomy in adopting or modifying certain land and mortgage laws such as the Property and Conveyancing Law (PCL), which is still in use in former Western Region states like Lagos, Oyo, and Ogun[106]. Meanwhile, other states like those in the Northern region may rely on the Conveyancing Act of 1881 or other local statutes[107].

The Land Use Act (LUA) 1978 has national application, and its provisions cut across every state of the federation[108]. However, it vests all land in the Governor of a state, subject to the overriding power of the Federal Government in areas such as mineral resources, national housing, and urban planning[109]. Consequently, statutory mortgages must be created with the Governor's consent as provided under Section 22 of the Act[110]. However, this provision of the Act does not apply to land transactions or alienations between private individuals where there is no overriding public interest or dispute.[111] The Property and Conveyancing Law (PCL) applies in states that have not repealed or replaced it with new legislation. It offers a codified approach to mortgage transactions, specifying formalities, covenants, and remedies[112]. However, the continued application of the Property and Conveyancing Law is now subject to review, particularly in Lagos State where newer legislations such as the Mortgage and Property Law of Lagos State, 2010 have been enacted[113].

Furthermore, the Banks and Other Financial Institutions Act (BOFIA) and the Mortgage Institutions Act apply predominantly to financial institutions operating under federal licenses[114]. These laws regulate the conduct of banking and mortgage lending operations, thereby creating a separate regime for institutional mortgage arrangements, especially those involving commercial banks and primary mortgage institutions[115]. In customary land settings, especially in rural areas, the customary law of the locality governs mortgage transactions in the form of pledges or customary mortgages, which do not always align with statutory prescriptions. The enforceability of such arrangements depends largely on recognition by the courts and compliance with established customary practices. The Registration of Titles Law and the Land Registration Act become applicable depending on the form of land title registration adopted by a given state. States like Lagos operate

[102] J.A Omotola, *Essays on the Land Use Act* (Lagos: University of Lagos Press, 2020) 192.
[103] B.O Ibhawoh, *Towards Efficient Land Administration in Nigeria: Reforms and Prospects* (2022) 44 *Journal of African Law*, 100-122
[104] A.B Kasunmu and J.O Odunsi, *Nigerian Family Law and Customary Law* (Lagos: Malthouse Press, 2019) 216.
[105] Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[106] Property and Conveyancing Law, Cap. 100, Laws of Western Nigeria, 1959.
[107] Conveyancing Act, 1881 (UK) applicable as a Statute of General Application in Northern Nigeria.
[108] Land Use ACT, Cap L5, LFN, 2004, s. 1.
[109] *Ibid,* s. 28(1); *Osho v Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157.
[110] Land Use Act, op.cit 259, s. 22.
[111] *Supra*
[112] Property and Conveyancing Law, Lagos State, ss. 108-110.
[113] Mortgage and Property of Lagos State 2010.
[114] Banks and other Financial Institutions Act, Cap B3, LFN, 2004, s. 2.
[115] Mortgage Institutions Act, Cap M19, LFN, 2004, s. 5.

the Torrens System, which requires strict compliance with registration formalities for the validity of legal interests, including mortgages[116].

Importantly, regulatory oversight bodies such as the Central Bank of Nigeria (CBN) and the Federal Mortgage Bank of Nigeria (FMBN) apply their frameworks nationally, especially in relation to housing finance and mortgage refinancing[117]. These institutions establish policy directions for affordable housing and financial sector stability, with implications on how mortgages are originated and enforced[118]. The applicability of these legal regimes depends on multiple factors such as the type of land (statutory or customary), the nature of the parties involved (individuals or institutions), and the geographical location of the land. Practitioners and stakeholders must therefore ascertain the relevant legal regime in each case to ensure enforceability, compliance, and security of interests[119].

IMPACT ASSESSMENT OF THE LEGAL FRAMEWORK ON MORTGAGE TRANSACTIONS IN NIGERIA

From the examined legal framework, it is worthy to note that majority of these laws critically outline various types of mortgages, including legal and equitable mortgages, and establishes the rights and obligations of both the mortgagor and mortgagee. These laws on mortgage transactions in Nigeria plays vital roles by providing a structured approach to transactions that balances and protect the interests of the mortgagor and mortgagee. They significantly impacts mortgage transactions by defining the rights and obligations of both parties. The rights of the mortgagor and mortgagee in land or property transaction basically depends on the type of mortgage created, whether legal or equitable. For a legal mortgage, the traditional rights or remedy include the right to foreclose,[120] take possession, sell the mortgaged property,[121] appoint a receiver, and sue on the covenant to repay, whether to recover capital or interest.

In equitable mortgage, the mortgagee has more restricted rights or remedies according to the security in the mortgage, although correspond as nearly as possible to those available to a legal mortgage.[122] These rights are balanced against the mortgagor's right to redeem,[123] which remains a strong equitable principle preventing unjust enrichment.[124] Mortgage rights have deep implications on land transactions, particularly in determining the security and credit-worthiness of land assets. When lenders exercise their rights arbitrarily or when borrowers are denied the right to redeem due to procedural technicalities, the integrity of the land market suffers. The interplay of statutory protections and equitable doctrines is critical to balancing the commercial viability of mortgages with the protection of property rights.

Legal framework on mortgage transactions embodies set of rules, not only to regulate such transactions but to provide legal foundation for the enforcement of rights and obligations of parties in such transaction. Enforceability of mortgage rights largely depends on the provisions in existing laws. The right to redemption and right to sell remains a central aspect of enforceability, and for a mortgage to be enforceable, it must first satisfy legal requirements in existing laws.[125] This principle hinges upon the equity maxim "equity regards as done that which ought to be done". The implication of this is that, for a mortgage to be enforceable, all necessary statutory provisions must have been complied with by the parties, and where parties fail to comply, the mortgage shall be void and unenforceable.

[116] Registration of Title Law, Cap R5, Laws of Lagos State 2015.
[117] Central Bank of Nigeria Act, Cap C4, LFN, 2004, Federal Mortgage Bank of Nigeria Act, Cap F16, LFN, 2004, s. 2.
[118] M.A Ajayi, *Legal and Regulatory Framework for Mortgage Financing in Nigeria* (2021) 9 (1) Nigerian Journal of Commercial Law, 88- 118
[119] O.A Akinola, *Land Law and Conveyancing in Nigeria* (Ibadan: Spectrum Books, 2020) 372.
[120] *Akindele v. Abe* (Supra)
[121] *Supra*
[122] A. Taiwo (n1) *Ibid,* 149
[123] *Amsel Ltd & Anor v.Union Bank* (2017) LPELR 42980 CA
[124] S.I Strong, *Principles of Equitable Remedies* (Cambridge University Press, 2019) 98.
[125] *Land Instruments Registration Law* Cap L58, Laws of Lagos State 2015, s 4.

Also, the Land Use Act for instance, establishes that the Governor holds land in trust for the people and his empowered to allocate rights of occupancy for residential, agricultural, commercial, and other purposes. This provision has significantly impacted mortgagee transactions in Nigeria, as the consent of the Governor is statutorily required before any mortgage transaction involving land can be validly executed. Although, plethora of case laws have affirmed the importance of the Governor's consent, reiterating the invalidity of such transactions without consent, it has been discovered that obtaining the Governor's consent in mortgage transactions in Nigeria is being frustrated by bottleneck procedures which invariably jeopardize the financial interest of parties in mortgage transaction. This provision of obtaining consent although essential, has rather impacted mortgage transactions in Nigeria in the negative than in the positive. The recent attitude of Courts towards Governor's consent have shifted from the strict approach of law.[126]

CONCLUSION AND RECOMMENDATIONS

It is evident that Nigerian mortgage system is a hybrid system derived from English common law, equity, and local statutes**,** harmonized under the Land Use Act and related property legislation. While the study establishes that although mortgage transaction is well recognized under different statutes in Nigeria, particularly the Land Use Act*,* practical applicability of these statutes remains marred by procedural bottlenecks, judicial delays, and bureaucratic inefficiencies in land registration systems. The Land Use Act*,* conflicting judicial interpretations, and lack of uniform mortgage regulation across States contribute to insecurity in land transactions. This insecurity is exacerbated by weak institutional capacity and non-digitized land registries thereby creating multiple encumbrances and fraudulent conveyancing practices in mortgage transactions in Nigeria. The effectiveness of the Nigerian mortgage system depends not only on sound legislation but also on efficient enforcement, judicial consistency, and administrative transparency. Therefore, the legal and institutional frameworks for mortgage relationship should be strengthened to protect the interest of parties, particularly protecting the mortgagors from exploitative foreclosure and sale practices, and thereby ensuring that mortgagees efficiently realize their security interests. Strengthening these aspects will enhance credit accessibility, promote land market efficiency, and contribute significantly to Nigeria's socio-economic growth.

The study recommends urgent amendment or re-enactment of the Land Use Act to simplify land registration procedures and reduce the Governor's consent bureaucracy that hampers mortgage creation. The Act and other statutes relating to mortgage transactions, like the Mortgage Institution Act are very obsolete and redundant in addressing contemporary issues in mortgage transaction in Nigeria. The study also suggest that the Central Bank of Nigeria (CBN) and the Nigerian Mortgage Refinance Company (NMRC) should collaborate to enforce ethical lending practices and ensure compliance with valuation standards. Furthermore, States should adopt the NMRC (Nigeria Mortgage Refinance Company) Model Mortgage and Foreclosure Law, which introduces non-judicial foreclosure to speed up property repossession upon default, so as to reduce lender risk. In line with international standards and recent technological innovations, it is essential for the government to establish a fully digitalized central and efficient mortgage registry in all States, like the Abuja Geographic Information Systems (AGIS), to register legal and equitable charges, ensuring transparency and priority. Implementing an electronic systems for land registration, land searches, and the "perfecting" of mortgage titles will reduce transaction costs and time. Harmonizing all electronic systems across the country would enable easy access to land information anywhere in the country without delay. This will ensure prompt registration of land title when required thus, avoiding the manual process of registration which cost a lot of money and consumes time.

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[126] *Yakubu Ibrahim v. Simon Obaje (Supra)*

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