

LAND LAWS IN SIERRA LEONE – AN URGENT NEED FOR REFORM?

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The world renowned African Jurist Dr. T. O. Elias quoting the comments from a Nigerian Chief in 1912 on the issue of land ownership states “ I conceive that land belongs to a vast family of which many are dead, few are living and countless members are unborn” . This statement made almost a century ago unfortunately in my opinion reflects the state of land ownership in Sierra Leone today. Retrogressive, discriminatory, archaic and in need of urgent reform.

Several years ago, a financial institution sent a conveyance to my office for an opinion on the legality of the document and whether a loan should be provided based on the document. A cursory look at the deed of conveyance highlighted the anomaly. The acreage was sufficient to cover the loan but the property was situated in Lungi, Port Loko District. It meant that due to our dual system of land tenure, the property was situated on the wrong side of the fence. The conveyance although it had the required citation, chain of title acknowledgments and signature was worthless! Land in Lungi was governed by customary law and the fee simple conveyance was not registrable. Consequently, the loan could not be procured and the hotel could not be built. Strangely enough, such “conveyances” are now being registered but there is a real question as to the validity of such documents if the purported title conveyed was challenged in a court of law. This is a classic example of economic needs and realities outpacing our existing statutory laws.

Although we are one country, we operate maintain and in some quarters jealously protect this out dated system of dual land ownership. The western area including the peninsula area is governed by an English system of land ownership which includes fee simple conveyances, mortgages and leases while the rest of the country is governed by customary land law. The problem with customary land law is -:

1. Identifying what the custom is
2. Ascertaining who to talk to; paramount Chief, council of chiefs or family members.
3. Securing all the consents,
4. Assessing what actually has been given to you.
5. The absence of enforceable legal documents to back up your purchase or grant.

Hernando de Soto, a Peruvian economist estimated that the value of rural land ploughed or grazed by African farmers, which they did not formally own; or owned but had no formal title was worth over \$30 billion dollars. Sierra Leone has a land mass of which 850,000 hectares is arable farmland. The land in the provinces excluding the western area makes up over 90% of that land mass. Customary or informal land ownership hurts the rural community.

Robert Guest in his book "The Shackled Continent" quoted a farmer in Malawi called Zimba who explained "I've got enough land but I can't afford enough seeds or fertilizer to make good use of it" Guest explains "secure title makes assets fungible. In a country with good property laws, almost anyone can use a house as a piece of land as collateral to raise a loan".

A son of the soil, Babashola Chinsman in his book "Uncommon Thinking" (pg 17) explains "The most crippling effect of poverty stems not from the inadequacy of incomes, but from a lack of assets" He goes on to explain on page 23 " Even the land on which most of them live or depend for their livelihood, is often not secured by proper title, leaving them without any assets". Consequently, Sierra Leone remains a shackled country because we are afraid to explore, open up and develop our primary asset, namely Land. This is why there is a mad rush to acquire land in the western area which has a formal system of land ownership! Let us consider the problem more closely.

WESTERN AREA:-

Freetown and its environs was a Crown Colony. History shows that this area was bought by the British from King Namibian in 1788 for the benefit of the free community of settlers their heirs and successors. The krios as they are now known today, settled in these area and acquired ownership and possession of the area occupied. This was a large area and it follows that the areas unoccupied and uncultivated became or remained crown land. The krios were not permitted to own land in the provinces, and this is why today, much of the land in the Western Area remains vested in krio families.

The problem today is that notwithstanding a formal system of land ownership in this area, many families inherited property without properly documenting their lineal transfer of ownership. The problem was compounded by a failure of successive governments to introduce and implement a system of land registration of title. In the case of Seymour Wilson v Musa Abess, (1979) the late Chief Justice, Livesey Luke commented about this problem which was causing a plethora of land lawsuits. He stated "**In my opinion, registration of an instrument under the Act confers priority over other instruments affecting the same land which are registered later. Registration of an instrument under the Act does not confer on the purchaser, mortgagee etc. title nor does it render the title of the purchaser indefeasible.**" Everybody has their own conveyance and the fact that it was registered did not mean you had good title. The fact that nothing has been done to move towards a system of compulsory and binding title registration within the Western Area reveals a glaring failure in our legislative priorities.

The situation today is grave with houses and pan bodies being built all over the place without recourse to the true title owners and private and public officials being killed over property disputes (e.g. the late Kenneth Moore, Ministry of Lands Housing killed in 2006) To compound the problem, land surveys are usually plotted using beacons which are unfortunately removable. In the absence of a digitally drawn G.P.S. mapping, many owners are unable to track the exact coordinates of their land once the beacons have been

removed. In some cases, neither the government nor the public are truly aware of who owns what land and neither side has the requisite title instrument to back up their claim to ownership.

Presumably, the Government relies on its assertion that existing undeveloped land in the Western Area is crown land and shifts the onus to the private individual to show that the land in question is not state land but private land. The law however is that he who claims ownership must prove it. Unfortunately, Sierra Leoneans do not have a culture of taking the government to court so many of these claims of state land ownership are not challenged. Those that have proof of title spend years in court, inordinate time and money trying to reclaim what is rightfully theirs.

This is why a digital G.P.S mapping of not only Freetown but the peninsula area must be done immediately. Properties are being bought without access roads and there is no centralized planning which will ensure the smooth introduction of utility lines, access roads, pipes, drainage etc. Along the Peninsula, there is a growing tendency for villagers to claim undeveloped land as community land. The village headmen along the peninsula have no authority to allocate land to anyone unless of course the land is theirs personally.

This practice of leasing and sale of “community land” will soon be challenged in court when the true owners of the land in some of these communities realize that a village headman has abrogated to himself the right to dispose of the owner’s land to a 3rd party. Of recent, we have seen the introduction of conveyances and leases purportedly made by village headman and village chiefs in the peninsula area to unsuspecting buyers. This is like trying to mix oil and water. Land in these areas is either owned by individual families or is crown land. Communally owned land does not exist in the Western Area and ignorance of the law is no defense.

Until there is a proper devolution of authority to the Local Council from Central Government to distribute crown land on behalf of the state, these grants and conveyances of vacant land are of no legal effect. Admittedly with a prolonged period of occupation, (12 years) land can be acquired by prescription. However, it is doubtful if prescription right can be acquired over crown land and against the government, and rights of prescription normally inure to the benefit of the individual and not an unincorporated entity.

While Sierra Leoneans can acquire fee simple title in the Western Area, non Sierra Leoneans and foreign investors can only acquire leaseholds. And we claim to be serious about attracting foreign investment! In my opinion, this restriction is retrogressive and we ought to open our lands to all investors, Sierra Leonean or otherwise subject to a residual oversight by government where large tracts of land are being bought by non-Sierra Leoneans. We must implement immediately a system of ‘Title Registration’ and put in place a mechanism, such as a Lands Tribunal or Lands Arbitration Board that will adjudicate initially the claim of competing land owners subject to a right of appeal to the courts. This title registration can be phased in over a period of

time, voluntary initially and then mandatory once the practice has become established. Once a landowner is duly registered, he is conclusively regarded as the true owner of the property.

THE PROVINCES:-

Title to land in the provinces under customary law is vested in the paramount chief as trustee for the community. In reality, there are several layers of ownership or vested interests shared between the paramount chief (s), the family and the individual. Customary land tenure is quite different from what operates in the western area. It differs from community to community and it is easier to have use of land in a particular area if you are from that area. The Mendes for example place a lot of importance on family ownership and the family headman can allocate land to members of his family. Land ownership among the Temnes is similar to that of the Mendes with the caveat that there is more fragmentation of land allotments since succession among wives is per stirpes and not per capita; (i.e. shared between the wives and not shared equally between the children) The problems with customary land already been explained before so I need not elaborate further.

What is not evident however is the debilitating impact this system of land tenure has on investors. Section 3(1) of Cap. 122 stated **“No land in the provinces shall be occupied by a non-native unless he has first obtained the consent of the tribal authority to his occupation of such land”** . Section 4 states **‘No Non-native shall acquire a greater interest in land in the provinces than a tenancy for a term of fifty years . . . for a second or further term not exceeding twenty-one years.’**

The impact of these two sections is to discourage any serious investor from investing in the provinces. Leases are inherently terminable, and an investor who has invested time, effort and money is potentially vulnerable where his investment is tied to a short term lease. Issues of litigation and enforcement of contractual provisions against Tribal Authorities are problematic as is the forum for such actions. The absence of formal documents of title also precludes loans and financing from banks.

Some Sierra Leoneans, such as the Krios, Akus and Kroos are duly classified as “Non-Natives” and are restricted with regards the type of tenure (restricted leasehold interest) that can be acquired in the Provinces as is detailed Cap 122 above. This is due to the fact that the Interpretation Act 1971 defines native as “any person who is a member of a race, tribe or community settled in Sierra Leone other than a race, tribe or community (a) which is of European or Asiatic or American origin (b) whose principal place of settlement is in the Western Area.”

It is the latter definition in subsection (b) above that impacts on Krios, Akus and Kroos given that their principal place of settlement is in the Western Area of Sierra Leone. In addition, the Laws (Adaption) Act 1972 further defines a “non-native” as “any person who is not entitled by customary law to rights in land in a Province.” It is hoped that the Law Reform Commission, Parliament

and other relevant bodies will finally tackle this issue and repeal this discriminatory statute which deprives a category of Sierra Leoneans from acquiring any customary land rights in the provinces. This discriminatory statute arose from a colonial policy of divide and rule which should not be condoned or preserved by the Sierra Leonean government.

The multiplicity of interested parties when dealing with large tracts of land in the provinces is a particularly thorny issue frequently encountered by mining companies. Even the Government is sometimes frustrated in its attempt to acquire large tracts of land for development purposes. This is compounded with the lack of proper documentation confirming ownership and possession when dealing with family owned property. Some jurists such as Dr. Marcus Jones in his book "Legal Development and Constitutional Changes in Sierra Leone" is of the opinion that you can acquire the equivalent of a fee simple from land owners in the provinces while others such as Dr. T. O. Elias are of the view that customary land is inherently inalienable.

Dr. Elias states **"there is perhaps no other principle fundamental to the indigenous land tenure system throughout Nigeria than the theory of inalienability of land"** Consequently, the investor has to choose between a lease for a fixed term of years or a questionable fee simple transfer. At a time where the world is a global village and investments can be made in other jurisdictions, many investors will say *"why bother"* and simply take their money elsewhere.

In Nigeria, the Land use Decree was passed which vested all land in the Nigerian government subject to certificate of occupancies being granted to purchasers and grantees. This Act resolved to a large extent the problem of inalienable customary land and opened up all land to title ownership and development throughout Nigeria.

There was a bill proposed by the SLPP Government dealing with the commercial use of land in the provinces designed to simplify the acquisition of land in the Provinces and permitting long term leases of up to nine-nine years. For some reason, this bill never made it to Parliament and the status quo remains. Under the APC Government, one of the Ministers of Land had proposed a unified land law system with fee simple ownership throughout Sierra Leone and not just in the Western Area. Again, this proposed reform did not see the light of day. In my opinion, with large scale unemployment faced by our youths, and the need to achieve our millennium development goals and food security objectives, we have no option but to radically transform ownership of land in the provinces to a regime akin to what occurs in the Western Area subject again to residual government oversight. In many developing countries within the West African and East African regions, there is an electronic title registration regime in place which enables an online registration of title and provides for title searches to be easily conducted and where title registration is absolute proof of ownership.

The question that was asked at the beginning of this article was “**whose land is it anyway?**” The answer is “**It is ours.**” so let us use it for the betterment of all our people and the entire country. All land be it in the Western Area or the Provinces should be available to **all** citizens for development coupled with a commercially acceptable medium to reflect ownership and transfers. That way land owners can raise loans on the value of their land and enjoy the benefit and pride of ownership of land without fear that it may be reclaimed by some paramount chief or village / family headman. Investors should be free to acquire freehold or long term leasehold interests throughout the country where substantial financial investment is contemplated. This is the land that we love and it behooves us to utilize all of it for our collective benefit and development of the Country.

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