ACQUISITION OF TITLE TO LAND BY ADVERSE POSSESSION UNDER THE NIGERIAN LAND LAW

1.0 INTRODUCTION:

The study of the acquisition of title to land by long adverse possession is a study both of case law and of statutory provisions. Adverse possession in common law jurisdictions, like Nigeria, is derived from a statutory limitation period upon actions for the recovery of land.

The effect of any statutory provision which limits the time within which an action may be brought by an owner of land to recover possession of that land is to give a certain status to a person who has had possession for the requisite period. This status is simply one of inviolability or immunity from attack, a feature common to all limitation periods. Such limitation provisions commonly require that any action must be brought within a specified period. Thus, the consequence of the statute is to bar legal and judicial remedies not asserted within the specified time. This article is predicated upon, among other things, determining what type of possession will suffice and what the results of an effective possession will be, when a squatter or trespasser successfully proves adverse possession under the Nigerian land law.

2.0 THE CONCEPT OF ADVERSE POSSESSION:

Some common law jurisdictions, in addition to limiting the period within which actions to recover land may be brought, now have statutory provisions extinguishing any title or claim to the property on the part of the dispossessed owner.¹ This occurs because the bare title of the adverse possessor has been coupled with occupation.

Adverse possession is a principle of real estate law whereby somebody who possesses the land of another for an extended period of time may be able to claim legal ownership to that land. It is, in effect, a set of rules that allow a mere trespasser to acquire a better title to land than the person who ‘legally’ owns it and to whom it was formally conveyed.

¹ The first of such provision was the Real Property Limitation Act, 3 & 4 Will. 4, C. 27 & 34 (1833)
Adverse possession can be understood as a doctrine under which a person in possession of land owned by someone else may acquire valid title to it, so long as certain common law requirements are met, and the adverse possessor is in possession for a sufficient period of time, as defined by a statute of limitation.

Our understanding of the concept of adverse possession is that adverse possession is a possession inconsistent with the title of the true owner. The owner could dislodge the adverse possessor at any time within the limitation period. The fact that he does not may result in the forfeiture of the land.

On the other hand, a squatter is a person who settles on land or occupies property without title, right or payment of rent. A squatter can include a person who settles on land under government regulation, in order to acquire title.\(^2\)

To squat means to settle on or occupy property, especially otherwise unoccupied property, without any title, right or payment of rent.

### 3.0 CLASSIFICATIONS OF ADVERSE POSSESSION:

Although there are myriad situations in which adverse possession of land may occur, there are four which happen regularly. Because of their frequency, they will be briefly highlighted hereunder as follows:

(a) Encroachment upon neighboring land may take place either intentionally or without design. Although the proposition is difficult to verify, it would appear to be the case that encroachment over a boundary is more likely to be innocent than intentional.\(^3\) Although it will always be an encroachment in the eye of the law for one party to occupy part of his neighbour’s land, there is a considerable practical difference between various types of encroachments.

(b) Adverse possession may arise from situations in which a formal relationship at one time existed between the parties. These might include circumstances where a tenant or mortgagor holds land adversely to the interests of his landlord or mortgagee.

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\(^3\) On the importance of the intention of an Occupier, see Goodman, Adverse Possession of Land in the Law of Limitation of Actions, 1967 (unpublished thesis in University of Manchester Library). See also: Chisholm V. Hall (1959) A.C 719; and Hopgood V. Brown (1955) 1 W.L.R 213.
Also, occasionally, a purchaser of land enters into possession under an incomplete agreement for sale, or the vendor does not complete a transfer of the land to the purchaser. In these cases, the holding of the purchaser, tenant or mortgagor may well be adverse. In such situations, adverse possession throughout the limitation period would entitle the occupant to claim a transfer of the title to him. In these cases, the onus will be on the claimant to demonstrate that a possession which began by being derivative has become adverse and independent.

(c) From time to time, a situation arises in which an adverse possessor occupies land in an ostensibly deliberate manner. When this happens in the case of abandoned land, it is manifestly beneficial to society since it returns otherwise unused land to productivity.

(d) Other informal arrangements may lead to an adverse possession. Such may be the case where a party with permission, for example, a licensee holds adversely to the person strictly entitled. Thus, one who was originally tolerated or encouraged to occupy land may eventually claim the land for himself. For example, where one relative farms land alone for a deceased owner although several other relatives are entitled to a share in the land. At first, the farmer may share out the proceeds and profits of farming the land. But after sometime, he may realize that he has put much effort into working the land and he has made several improvements. He may then morally regard himself as the one solely entitled. Whether he is legally entitled will often depend on the quality of his possession (i.e. whether he held adversely to the interests of the other persons entitled for the requisite period).

Adverse possessors may also be classified according to their state of mind. The state of mind may have substantial consequences on the legal nature of the possession and the ease with which it may be proved. Classification on the basis of the state of mind of the adverse possessor may be twofold:

1) **The intentional squatter:** Such a person deliberately encloses the land of another, fences it and uses it as his own. If he does so successfully, his title by adverse possession is often easily proved.

2) **The casual squatter:** This is a tentative trespasser who later alters and increases his occasional use of land. His acts of possession become more intense and deliberate. He becomes less cautious and may use the land in a permanent way or spend money on it.
It is worthy of note here that, whatever the state of mind of an adverse possessor, his possession must conform to certain minimum standards. Chief among these are the requirements concerning the length and continuity of the possession.

### 4.0 BASIC PRINCIPLES OF ADVERSE POSSESSION:

Generally, the relevant principles are not found in statute, but have been developed through case law, as we shall briefly highlight later in this article. The common law requirements have evolved over time, and the articulation of those requirements varies from jurisdiction to jurisdiction. Basically, adverse possession, in order to ripen into title, must be:

1. **Continuos**; this means *continual*.
2. **Hostile** to the interest of the true owner; this is the *adverse* part of adverse possession.
3. **Open** and notorious, so as to put the true owner on notice that a trespasser is in possession.
4. **Actual**, so that the true owner has a cause of action for trespass, on which the true owner must act within the statute of limitations.
5. **Exclusive**, in order that there be no confusion as to who acquires title once the time has run.

Under Nigerian land law, the person claiming ownership through adverse possession must show that his possession is continuous, hostile, open, actual, exclusive and uninterrupted for the statutory period.

### 5.0 THE LIMITATION PERIOD:

It is crucial to know how long a squatter may be in adverse possession before the owner is statute-barred from bringing an action against him. **Section 16 (1) and (2) (a) of the Limitation Law** provides thus:

“\(1\) Subject to the provisions of subsections (2) and (3) of this section, no action shall be brought by a State authority to recover any land after the expiration of twenty years from the date on which the right of action accrued to the State authority, or if it first accrued to some person through whom the State authority claims, to that person.”

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4 Section 16, Limitation Law, Laws of Lagos State, 2003
5 Laws of Lagos State of Nigeria, 2003
(2) The following provisions shall apply to an action by a person to recover land –

(a) Subject to paragraph (b) of this subsection, no such action shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person;”

Furthermore, Section 19 of the Limitation Law\(^6\) is to the effect that no right of action shall be deemed to accrue unless there is adverse possession. The right of action accrues, and so the limitation period starts to run, from the start of the adverse possession.

It is instructive to note that on the expiration of the period fixed by law for any person to bring an action to recover land, the title of that person to the land shall be extinguished.\(^7\)

5.1 STOPPING THE CLOCK OF LIMITATION:

A successful action for possession by the owner of the land before the expiry of the period will necessarily ‘stop the clock’ and any claim of adverse possession will have to begin afresh.

There are, in addition, other matters. The most obvious is where the squatter acknowledges the owner’s title in writing, or accepts a lease. Likewise, the payment of rent is also an acknowledgement of the owner’s title. Also, a written offer by the squatter to purchase the land from the owner is treated as an acknowledgement.\(^8\)

If the squatter remains in possession after the acknowledgement then time may start running again. But, it will not start running if the acknowledgment results in a change in the relationship between the squatter and the owner (for example, the grant of a lease or a licence) so that the possession is no longer adverse.

Once the limitation period has expired, any subsequent acknowledgment does not revive the owner’s right of action.

\(^6\) Supra
\(^7\) Section 21, Limitation Law, Laws of Lagos State, 2003
\(^8\) Edginton V. Clark (1964) 1 QB 367
6.0 THE EFFECT OF SUCCESSFUL ADVERSE POSSESSION

1. Effect on Owner: It is settled law that, once the limitation period has run its course, both the owner’s right to sue and his title are extinguished by operation of law.\(^9\)

2. Effect on Squatter: A successful plea of adverse possession does not transfer the owner’s title to the squatter. It operates negatively, to prevent the owner from suing the squatter and extinguishes the title. Moreover, because the squatter is not a purchaser, he takes the land subject to all proprietary obligations, whether registered or not.

3. Leaseholds: A successful 12 years’ adverse possession by a squatter against a tenant extinguishes only the tenant’s estate, but not the landlord’s estate. So, during the lease, the landlord can bring forfeiture proceedings against the tenant for, say, non-payment of rent, even though the squatter is in possession of the land under a successful adverse possession. The effect of such forfeiture is to terminate the lease and bring forward the landlord’s right to eject the squatter.\(^10\)

7.0 CIRCUMSTANCE WHERE ADVERSE POSSESSION WOULD BE ESTABLISHED IN NIGERIA

In Davies V. Ajibona,\(^11\) the Court of Appeal held thus:

“…adverse possession is established when the defendant interferes with the plaintiff’s land and proves some act which is inconsistent with the possession of the plaintiff or his enjoyment of it. An obvious case is where the defendant, a stranger, has occupied the land of the plaintiff and built on it without the permission or licence of the plaintiff… In my view, the difference between disposssession and the discontinuance of possession might be expressed in this way – the one is where a person comes in and drives out the others from possession; the other case is where the person in possession goes out and is followed into possession by other persons. Whichever the true view of the case,

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\(^9\) Section ___, Limitation Law, Laws of Lagos State, 2003
\(^10\) Fairweather V. St Marylebone Property Co. Ltd. (1963) A.C 510
\(^11\) (1994) 5 NWLR (Pt. 343) 234
there being an actual possession for upwards of sixty years, it appears to me the statute clearly applies.” Per Ayoola, J.C.A (As he then was) (Pp. 30 – 31, paras. D-D)

In *Idundun V. Okumagba*, where the plaintiff instituted an action in the High Court, Warri, claiming, inter alia, declaration of ownership of a piece of land and an injunction. The plaintiff’s claim was based on partly traditional evidence and partly, an act of ownership, the Court held that ownership of land may be proved in any of the following five ways:

a. By traditional evidence;
b. By production of documents of ownership, which are duly authenticated;
c. By acts of ownership extending over a sufficient length of time, which acts are numerous and positive enough to warrant the inference that they are owners;
d. By acts of long possession and enjoyment of the land in dispute;
e. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition, be the owner of the land in dispute.

Indeed, from (d) above, it is clear that an act of long possession can gravitate an ownership. A plethora of authorities support the principle established in the above-stated case. In the case of *Madumma V. Jambo*, the Court again reiterated the principle of law that an act of long possession can gravitate into ownership. This is without prejudice to the fact that he is a trespasser or squatter.

It is now an established principle of law that in a situation where an adverse possessor holds possession as a trespasser for a time longer than necessary, his act of long possession can become ownership, meaning that an act of long possession by a trespasser can statutorily herald an ownership.

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12 (1976) 9 – 10 S.C 229
14 (2001) 15 NWLR (Pt.736) Pg. 461 at 476
15 Ezedigwe V. Ndichie
Under the Limitation Law, the right to land is extinguished, in the absence of fraud, after discontinuance of possession for the period enacted in the law, although the owner so discontinuing possession was unaware that adverse possession had been taken.\textsuperscript{16}

On a cumulative reading of the entire provisions of the Limitation Law\textsuperscript{17} and in particular, Sections 16, 17, 19 and 21 thereof, knowledge on the part of the owner is not a condition precedent. The knowledge of the owner is immaterial. The words of the Limitation Law of Lagos State are clear and unambiguous and must therefore be accorded their ordinary meaning.\textsuperscript{18}

8.0 CONCLUSION:

It is our considered view that prior to the coming into force of the Limitation Law\textsuperscript{19} and the Registration of Titles Law,\textsuperscript{20} a squatter could acquire the right to be registered as proprietor of a registered estate if they had been in adverse possession of the land for a minimum of 12 years. However, the doctrine of adverse possession did not fit easily with the concept of indefeasibility of title that underlies the system of land registration introduced by the Registration of Titles Law. Nor could it be justified by the uncertainties as to ownership which can arise where land is unregistered; the legal estate is vested in the registered proprietor and they are identified in the register.

For the purpose of clarity, we shall conclude by highlighting the following principal terms on this topic, to wit:

\textbf{Adverse Possession:} Possession of the property of another that is (a) exclusive (b) open and notorious, (c) continuous and (d) hostile. It can result in the possessor acquiring title to the property if the true owner does not move to evict the possessor before the period of limitation expires.

\textbf{Statute of Limitations:} A law that sets a time limit during which a cause of action must be brought. If the action is not brought within the period of limitation, then the cause of action expires and it can never be brought.

\begin{footnotes}
\item[16] See Rains V. Buxton (1880) 14 Ch.D. 537. The question of fraudulent concealment did not arise in this case.
\item[17] Laws of Lagos State, 2003
\item[18] See Sosan & Orgs. V. Ademuyiwa & Orgs. (1986) 3 NWLR (Pt. 27) 241 at 256; Odekilekun V. Hassan (1997) 12 NWLR (Pt.531) 56
\item[19] Supra
\item[20] Laws of Lagos State, 2003
\end{footnotes}
**Open and Notorious Possession:** Possession that is held by an adverse possessor in a manner that the true owner of the property would be likely to discover in the ordinary course of events or in the ordinary course of the true owner inspecting his or her property.

**Hostile Possession:** Possession that is without the consent of the owner and the assertion of which is in conflict with the property ownership interests of the owner.

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