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RECONCILING CONFLICTING JURISPRUDENCE: A CRITICAL ANALYSIS OF THE ADMISSIBILITY OF UNREGISTERED LAND INSTRUMENTS IN NIGERIAN PROPERTY LAW

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Abstract

This study examined the admissibility of unregistered land instruments in Nigeria, emphasising the legal uncertainty arising from inconsistent judicial interpretations. While the Land Instruments Registration Law establishes registration as a prerequisite for legal recognition and evidentiary value, Supreme Court decision in Benjamin v Kalio, Anagbado v Faruk, and Abdullahi v Adetutu have introduced doctrinal contradictions, undermining predictability in property law jurisprudence. The research interrogates the hierarchical primacy of these decisions, questioning whether precedence should favour the most recent judgment or the depth of judicial reasoning underpinning each case. Adopting a doctrinal methodology grounded in historical analysis, the study identifies a shift toward purposive interpretation in judicial reasoning. The findings underscore the need for harmonised land registration laws and the establishment of clear evidentiary standards to reconcile these inconsistencies. By advocating for a flexible legal framework that integrates formal registration requirements with equitable considerations, the study contributes to property law scholarship by proposing a pathway to enhanced coherence and stability in Nigeria's legal system. Such reforms aim to safeguard justice in land disputes while reinforcing the integrity and functionality of land registration processes.

Keywords: Land instruments, Legal Uncertainty, Penumbra, Purposive interpretation, Unregistered Lands

1.0 INTRODUCTION

Land holds paramount importance in human activities, serving as the bedrock of material wealth and the foundation of various aspects of human existence.¹ From basic shelter to agricultural productivity and commercial development, the acquisition and utilization of land are intricately linked to human endeavours. However, the diverse interests and aspirations surrounding land, including the desire for unencumbered land purchases and the need for landowners to secure their property as collateral for financial transactions, necessitate a regulatory framework to govern land ownership, use, and transfer.²

To address complexities and mitigate conflicts arising from competing interests, states in Nigeria have enacted laws safeguarding land ownership systems. These laws aimed to balance the interests of the government, landowners, and third parties³ while regulating the ownership, use, development, and transfer of land and land resources. Central to this regulatory framework is the concept of land registration, which serves as a mechanism for recording and evidencing ownership, possession, and other rights in land. In order to reduce conflicts that might arise in relation to establishing these various competing interests or establishing a sequence of priority of such interests or find answers to the question as to how title to land can be secure or made indefeasible, discussions on registration of these interests in land are indispensable.⁴

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¹TS Wabelo, 'Legal and institutional frameworks regulating rural land governance in Ethiopia: Towards a comparative analysis on the best practices of other African countries.' [2020] (11) (1) *Beijing Law Review*; 64.

²Cheryl Doss and Ruth Meinzen-Dick, 'Land tenure security for women: A conceptual framework' [2020] (99)(9) *Land Use Policy*; 2.

³In land transactions and property ownership, the term 'third parties' refers to individuals or entities who are external to a specific transaction but nonetheless possess a legal stake or claim in the land or its utilization. These entities could encompass neighboring landowners, lessees, financial institutions, or any other party with a vested interest in the property that could be impacted by the transaction or subsequent actions pertaining to the land. Third parties may hold rights or interests that necessitate recognition and safeguarding in the course of land transactions and any ensuing disputes.

⁴Since property is a relationship, it is not impossible to conceive the notion that it include different forms of property interests arising from a single object. These different interests may be fragmented according to time or to the jurisdiction in which they become enforceable.

Land registration involves systems for recording matters related to ownership, possession, or other rights in land to provide evidence of title, facilitate transactions, and prevent unlawful disposal. Registrable instruments encompass documents affecting land in Nigeria that confer, transfer, limit, charge, or extinguish rights or interests in land. Registrable instruments are ‘documents affecting land in Nigeria through which a party confers, transfers, restricts, encumbers, or terminates any right or title to, or interest in land. This including but not limited to, certificates of purchase and powers of attorney facilitating the execution of various land-related transactions, but it does not include a will.’⁵ A land instrument is any document that affects land and facilitates the transfer of an interest in land from one party to another, excluding wills. This definition encapsulates a diverse array of legal documents instrumental in conveying property rights and interests, ranging from deeds of sale and leases to mortgages and easements.

According to the Land Instruments Registration Law (LIRL) these instruments must be registered as a precondition for pleading the document and admitting same in evidence.⁶ Therefore non-registration of land instrument was deemed inadmissible as a means of proving title to land and. Such document is only admissible as a purchase receipt if it is tendered to show that transaction there was a transaction between the parties, or where it is meant to establish a fact with either or both parties have pleaded.⁷

Prior to the decision in *Benjamin v Kalio*, the Nigerian courts relied on LIRL enacted by State Houses of Assembly for the procedural law guiding admissibility of documents relating to land in Nigeria. Consequently, there was a prevailing consciousness within the legal sphere that LIRL enacted by State legislative was sacrosanct, with no allowance for deviation concerning pleadings and admissibility of land documents.⁸ Since the late 1970s when the issue of evidence, which was initially a residual matter was taken to the Exclusive Legislative List of the

⁵Land Instrument (Preparation and Registration) Law, Cap 74 Laws of Rivers State 1999, s 37.

⁶*ibid.* s 20.

⁷The specific section in the LIRL that articulates the requirement for registration as a prerequisite for pleading and admission of documents as evidence in court would vary depending on the jurisdiction within Nigeria, as each state may have its own specific legislation on land registration.

⁸*Shittu v Fashawe* (2005)14 NWLR (Pt 946) 671; *Atanda v Commissioner for Land and Housing, Kwara State* (2018)1 NWLR (Pt 1599) 32.

Constitution of the Federal Republic of Nigeria, courts in Nigeria relied on states laws that required registration as a precondition for admissibility of documents. The implication was that only state legislature was competent to legislate on matters of ‘evidence’ before 1979. However, the jurisprudential landscape surrounding the admissibility of evidence underwent a profound shift following the decisions in *Benjamin v Kalio*⁹ where the Supreme Court reversed its earlier decisions that gave effect to the LIRL made by state legislatures against the Evidence Act which is the legally recognized procedural law that regulates the admissibility of evidence in Nigeria. In that case, the Supreme Court rendered a ground breaking decision that upended decades of legal interpretation regarding the admissibility of unregistered land instruments in Nigeria. The Supreme Court, sitting *en banc* with seven Justices, unanimously overruled earlier decisions that registration is not a precondition for admitting documents relating to land.

This decision was premised on the provisions of the Evidence Act, to the effect that ‘evidence’ as a subject matter can only be legislated upon by the National Assembly. Thus, State laws that tend to regulate admissibility of evidence after 1979 is not merely a legislative overreach but deemed unconstitutional.¹⁰ The judgment lies in the SC reaffirmation of the exclusive legislative authority vested in the National Assembly by the Constitution.

Thus, the decision in *Benjamin’s case* not only overturned long-standing legal precedent but also underscored the supremacy of the Constitution in delineating the legislative powers of federal and state entities. However, notwithstanding the established doctrine of *stare decisis*, a Supreme Court 16 months after, sitting in another case *Abdullahi v Adetutu*¹¹, completely overlooked the decision in *Benjamin’s case* and restated the old rule. In *Abdullahi’s case* the Court held that unregistrable instruments in the land disputes was inadmissible by virtue of the provision in section 15 of the Land Instruments Registration Law of Lagos State. The Court

⁹ (2018) 285 LRCN 215.

¹⁰ Under the revised state legislative framework, an unregistered land instrument may only find admissibility in evidence under specific circumstances. These include instances where the document is tendered not as an instrument affecting land but rather as evidence of payment of purchase, or in support of a claim for equitable interest in land, enforceable through specific performance. See *Agwunedu v Onwumere* (1994) 1 NWLR (Pt 321) 375; *Anyabunsi v Ugwuze* (1995) 6 NWLR (Pt 401) 255, 271; *Abu v Kuyabna* (2002) 4 NWLR (Pt 758) 599; *Obienu v Okeke* (2006) 16 NWLR (Pt 1005) 225; *Monkom v Odili* (2010) 2 NWLR 9(Pt 1179) 419.

¹¹ (2019) 1 NWLR (Pt.1653) 292.

delineated a clear stance on the matter, asserting that unregistrable instrument, when tendered to establish title or interest in land rather than merely acknowledging payment is considerable inadmissible as evidence.

Furthermore, in *Anagbado v Faruk*, the plaintiff relied on an unregistered mortgage deed as evidence. The Supreme Court ruled that an unregistered mortgage deed could be admitted as evidence of a mortgage agreement, subject to certain conditions.¹² The Supreme Court reverted to its decision in *Benjamin's case*. These decisions have created divergence in the literature among connoisseurs of fine lines – legal theorists and legal practitioners alike, which tend to raise the fear of a possible outcome that moves the Nigerian legal system away from the path of judicial consolidation.¹³ Central to this study is the juxtaposition of two Supreme Court judgments against an array of contrasting perspectives. This divide underscores the complexities inherent in land registration laws and evidentiary standards, highlighting the need for a comprehensive and harmonized legal framework that fosters judicial cohesion.

These decisions, rather than clarifying, have instead muddled the doctrinal clarity expected from the Supreme Court of Nigeria, an institution envisaged to epitomize the beacon of jurisprudential guidance for subordinate courts. The Supreme Court's role, as the pinnacle of judicial authority, presupposes it to illuminate legal pathfinding with definitive decisions. These differing judgments on the same subject matter from the Supreme Court within a span of seven months not only obfuscate this doctrinal clarity but also precipitate a profound jurisprudential ambiguity. Therefore, amongst these disparate decisions, which possesses primacy? Should precedent be

¹²(2019) 293 LRCN 1.

¹³Muyiwa Adigun, 'Federalism and the law of evidence in Nigeria: Does Benjamin v Kalio constitute a simplistic route to justice that overlooks a pitfall?' [2022] (51) (4) *Common Law World Review*; 233; Ifenna Okeke 'The Decision in *Benjamin v. Kalio*: An Epitome of Sound Constitutional Jurisprudence' (2023) SSRN<<https://ssrn.com/abstract=4381958> or <http://dx.doi.org/10.2139/ssrn.4381958>> accessed 2 September 2024; AO Ewere, '*Benjamin v Kalio*: Reversing the Law on Admissibility of Land Instruments in Nigeria' [2019] 45(1) *Common Law Bulletin*; 165.

accorded to the most recent judgment? On the other hand, should the determinative factor be the depth of judicial analysis and reasoning articulated within these decisions? However, where there are conflicting decisions on a point of law, the latter in time shall prevail and lower courts must abide by it notwithstanding the fact that it was reached *Per incuriam*.

Accordingly, this study examined the legal implications emanating from these discordant Supreme Court decisions on the Nigerian legal framework. It seeks not only to unpack the underlying jurisprudential principles that led to such variances but also to explore the broader implications for the doctrine of *stare decisis*, legal predictability, and the integrity of the Nigerian judicial process. This study not only aimed to elucidate the doctrinal contours shaping the admissibility of land instruments but also to contribute a nuanced critique to the ongoing academic discourse concerning the stability and predictability of judicial precedents in Nigerian jurisprudence. The introduction is the first of five parts that make up this paper. Part 2 briefly reviews the jurisprudence, history, and legal implications of the registration of land instruments in Nigeria. It examined the erstwhile rules on the admissibility of unregistered land instruments before the decision in *Benjamin v Kalio*. Part 3 analyses the principle of *stare decisis* in Nigerian jurisprudence, ensuring the binding nature of judicial precedents. In addition, it examined the role of the court as a vanguard of legal adaptability, ensuring alignment with evolving societal values and exigencies, as evidenced by its decision in *Benjamin v Kalio*, where it reversed its earlier decisions on the admissibility of unregistered land instruments. In part 4, the paper explored the application of purposive interpretation in the interpretation of the LIRLs as a pathway to resolve the differing decisions of the Supreme Court in *Benjamin v Kalio* and *Abdullahi v Adetutu*, emphasising the underlying legislative objectives of the LIRLs. It argued that the Supreme Court should align its judgements with the intent of the legislature. The purpose of registration of land instruments was to prevent fraud, and this entails the mandatory registration of land instruments to discourage fraudulent transactions and ensure the recognition of only legitimate dealings. Part 5 of the paper concludes by summarising the overarching argument of the study and offered feasible recommendations.

2.0 LAND INSTRUMENTS REGISTRATION LAW

The Land Instrument Registration Act of 1924, referred to herein as the ‘Act,’ was enacted as a comprehensive legislative measure applicable nationwide. Some states, within their respective jurisdictions, opted to adopt and subsequently re-enact this Act under unique titles. A notable feature of land registration under the Act is the requirement to register any instrument executed before or after the Act's commencement. To facilitate registration, the Act mandates the establishment of a land registry in each state. These registries are supervised by land registrars, tasked with registering instruments affecting land within their jurisdiction. Additionally, land registrars are responsible for maintaining registered books and files for each individual plot of land.¹⁴ The Act delineates registrable instruments as documents pertaining to land transactions, wherein a grantor confers, transfers, limits, charges, or extinguishes any right or title to the interest in land in favor of a grantee. This definition includes various legal instruments such as certificates of purchase and powers of attorney, which authorize the execution of other instruments, except wills.¹⁵

Except for a power of attorney, it is important that a registrable instrument is accompanied by a survey plan¹⁶ of the land and a *jurat*, especially in instances involving illiterate individuals.¹⁷ Once all necessary documents are submitted to the Registrar, along with the prescribed fees, the Registrar is obligated to promptly proceed with the registration of the instrument without undue delay. The failure to duly register a registrable instrument renders the said instrument *null and void*, thereby rendering it inadmissible as evidence¹⁸ and causing a loss of priority.¹⁹ The registration process does not impose temporal constraints, permitting a purchaser to register an instrument even decades after its preparation. Financial obligations are confined to stamp duties, potentially attracting penalties for delayed stamping. Section 14 of the

¹⁴Land Instrument Registration Act 1924, s3.

¹⁵*ibid*, s 2.

¹⁶*ibid*, s 10.

¹⁷ See Illiterate Protection Act Laws. See also AkintundeOtubu ‘Land Registration Law and Practice in Nigeria: Lessons from United Kingdom’ [2020] (2) (8) *IJOCLLEP*; 149.

¹⁸Land Instrument Registration Act 1924, s15.

¹⁹Emeka Chianu ‘Priorities under the Land Registration Act in Nigeria’ [1992] (36)(1) *Journal of African Law*; 67.

Act mandates the prompt registration of a power of attorney within six months, failure of which results in nullity. However, the Registrar retains discretionary power to extend the registration period based on valid reasons. Contrary to title registration affecting unregistered instrument validity, the Act aims to ensure security and thwart fraudulent activities. Registration exclusively addresses the instruments themselves, irrespective of any subsequent interests they may generate.²⁰

An apparent limitation of legislation governing instrument registration is its sole function of disclosing information related to the associated land, without rectifying any deficiencies in the grant itself. Further shortcomings in the legal framework include its manual execution, leading to human error and corrupt practices. Additionally, the abundance of paperwork and challenges in space management exacerbate system inadequacies. Timeliness management poses a significant challenge, and the transportation of paper records between locations subjects them to wear and tear, compromising precision and accessibility. The landscape of land registration law and practice in Nigeria remained largely unchanged until recent reforms in Abuja (FTC), Lagos State, and select states in western Nigeria.

Furthermore, notwithstanding the arguments that accentuate the benefits of registration within the context of giving publicity to real estate transactions as a means to counteract the actions of land speculators, it creates an ambience of uncertainty as to whether the intention of this piece of legislation has been realised over the years. If that were the case, what then can be said about the period, spanning through the decades, where LIRL was incorrectly allowed to regulate the admissibility of legal documents of land in proceedings in courts.

The intended aim of such regulation is to reduce the prevalence of land speculators. Notwithstanding the aims of the LIRL, the activities of land speculators have endured and flourished across various Nigerian communities for many decades. Furthermore, it is important to recognize that allowing a party to evade contractual responsibilities by claiming that the

²⁰See *African Pioneer Co Ltd v AG Rivers State* (1973) 3 ECSLR 936.

document evidencing the contract is inadmissible due to registration requirements mandated by legislation would compromise the administration of justice.²¹

In light of the precedent set forth in *Benjamin's case*, it is worth noting that the courts had previously erred in their application of the Land Instruments Registrations Laws, specifically pertaining to the inadmissibility of unregistered land instruments. The Supreme Court acknowledged the longstanding injustice of these provisions in the case of *Fakoya v St. Paul's Church Sagamu*. In this seminal case, the learned Justice Brett, JSC, eloquently articulated the following sentiment:

It would fall short of ideal justice between man and man if, where no third party had been prejudiced by the omission, a party to a contract could evade his obligations merely because the other party had not gone to a government office and registered the contract.²²

In analyzing the issue at hand, it becomes apparent that despite the numerous quantifiable factors and undeniable advantages associated with the registration of land instruments, this act does not significantly enhance the intrinsic value of land. Put differently, registering a land document does not address any shortcomings in title or enhance the perfection of the landowner's title to the land.²³ In the case of *Okoye v Dumez (Nig) Ltd*,²⁴ the Supreme Court underscored the principle when it rendered its decision, affirming that:

The Land Instrument Registration Law does not relate to registration of title, and does not affect the validity or otherwise of the instrument not registered; it is intended to give some measure of security and protection

²¹AO Ewere, 'Benjamin v Kalio: Reversing the Law on Admissibility of Land Instruments in Nigeria' [2019] 45(1) *Commonwealth Law Bulletin*; 185. See also AO Ewere, 'The fallibility of Supreme Court in *Abdullahi v Adetutu* on admissibility of unregistered land instruments in Nigeria' [2020] *Commonwealth Law Bulletin*; 5.

²² (1966) ANLR 68.

²³Land Instrument Registration Law, Cap 81 Laws of Bendel State 1979, s 26. This law states the effect of registration, thus: 'registration shall not cure any defect in any instrument or, subject to the provisions of this law, confer upon it any effect or validity which it would not otherwise have had.' Also, in *Omiyade v Macaulay* [2009] 7 NWLR (Pt 1141) 596 at 628, the court expounded upon the legal stance regarding the subject matter, stating that registration does not rectify any deficiencies or legitimise any irregularities in title.

²⁴*Okoye v Dumez (Nigeria) Ltd* (1985) 2 NSCC 780.

against fraud. What the registration is concerned with is the instrument and clearly not the interests thereby granted. It seems clear from the provisions of section 15 that the intention was to render an instrument requiring registration, but not registered ineffectual with respect to claims relating to the land unless and until it was registered.²⁵

The objective of the LIRL regarding land registration in Nigeria faces significant challenges due to scarcity issues and the prevailing level of literacy within the political structure. This leads to intricate situations where individuals interested in acquiring land encounter social and economic obstacles when attempting to conduct searches at the Land Registry to determine the land's status. The complexities associated with LIRL are further exacerbated by factors such as bureaucratic inefficiencies, inconsistent enforcement mechanisms, and inadequate infrastructure, which hinder the smooth implementation of the registration process.

Moreover, several studies have highlighted persistent gaps and shortcomings in the LIRL framework. For instance, studies have documented instances of fraudulent land transactions, conflicting property claims, and disputes arising from incomplete or inaccurate land records.²⁶ These challenges underscore the need for comprehensive reforms aimed at addressing systemic deficiencies and enhancing the effectiveness of land registration processes in Nigeria.²⁷

²⁵ *ibid.*

²⁶ See Maureen Esegi and Deborah Onafadeji, 'Navigating Legal Challenges in Nigeria Real Estate Transactions' [2023] <<https://trustedadvisorslaw.com/navigating-legal-challenges-in-nigeria-real-estate-transactions/?>>> accessed 2 September 2024; SIUdoka 'Effect of Land Titles Registration on Property Investment in Nigeria' [2017] (5) (2) *International Journal of Advanced Studies in Economics and Public Sector Management*; 84; Olusegun Durotolu, 'The controversy Within: Conflicting Judgements of the Supreme Court of Nigeria on Admissibility of unregistered registrable Land instruments' [2020] (3)(10) *International Journal of Social Science & Humanities Research*; 16; MA Nwanyanwu and SI Benjamin 'Electronic Land Registration and Property Transactions in Nigeria' [2023] (11) (1) *Journal of Environment & Natural Resources Law*; 119; GA Abraham, 'Land Title Perfection and Legal Issues and Challenges of Land Registration in Nigeria' [2023] *International Journal of Research and Innovation in Social Science* 899-916 <<https://rsisinternational.org/journals/ijriss/articles/land-title-perfection-and-legal-issues-and-challenges-of-land-registration-in-nigeria/>> accessed on 2 September 2024.

²⁷ Oluwafemi Adekola and Pauliina Krigsholm, 'Towards Improved Land Registration Practices in Lagos State, Nigeria: Land-Allied Professionals' Perspectives' [2020] *FIG-International Federation of Surveyors*; 11.

Additionally, the integration of blockchain technology has been proposed as a solution to enhance transparency and reduce fraud in land administration.²⁸

2.1 SIGNIFICANCE OF REGISTRATION OF REGISTRABLE INSTRUMENTS

In light of the decision in *Benjamin's case*, it becomes evident that the judicial stance, prior to this decision, regarding the provisions of the LIRL, has consistently dictated that legal instruments substantiating land ownership can only be invoked or presented as evidence if they have undergone the process of registration. This entrenched position of the courts, steeped in legal tradition,²⁹ has ensured that land instruments not registered in accordance with the provisions of the enabling laws are either excluded from admission into evidence or, if erroneously admitted by the trial court, subject to expungement from the court's records on appeal.³⁰ Furthermore, recent scholarly analyses and empirical studies have shed additional light on the ramifications of this judicial stance. These studies underscore the potential for legal uncertainties and adversities faced by parties involved in land transactions when confronted with strict registration requirements. Additionally, cases such as *Anagbado and Abdullahi* further underscore the judiciary's deference to legislative intent and the overarching principles of equity and fairness in land ownership disputes.

The enduring nature of the legal position concerning the inadmissibility of unregistered land documents in Nigeria has been evident through various constitutional amendments,

²⁸Ugochukwu Obi and Omolade Afonja, 'Transforming Land Administration in Nigeria: The Power of Blockchain Technology' [2024] <<https://perchstoneandgraey.com/publication/transforming-land-administration-in-nigeria-the-power-of-blockchain-technology/>>accessed on 2 September 2024.

²⁹ For instance, see section 20 of Land Instrument (Preparation and Registration) Law Cap 74 Laws of Rivers State 1999, and of course, other laws with similar provisions on the subject matter, including section 15 LIRL Cap 72 Laws of former Eastern Nigeria 1963 as applicable to South Eastern States; section 16 Lands Instrument Registration Law Cap 81 Laws of Bendel State 1976 as applicable in Edo State; section 15 Lands Instrument Registration Law Cap L58 Laws of Lagos State 2004.

³⁰The case of *Jammal v Saidi* (1933) 11 NLR 86, is illustrative of this point. In that case, the court held that unregistered lease agreement which was erroneously admitted in evidence by the trial court, was susceptible to be expunged from the court proceedings on appeal. See also *Lagos Timber Co Ltd v Ticombe* (1943) 17 NLR 14, where the court held that oral testimony illuminating on the contents or otherwise of a registrable instruments, not registered is admissible, so that a position held otherwise would undermine the sacrosanctity of the provisions of LIRL.

including those following the 1979 Constitution. Despite this development, numerous cases have faltered due to the complexities surrounding the admissibility of unregistered land documents.³¹ Recent scholarly inquiries have further elucidated the challenges faced by litigants in land disputes. Studies have examined the adverse consequences of strict registration requirements on access to justice and equitable resolution of land-related conflicts. For instance, research has highlighted that complex laws and procedures regulating land ownership, coupled with insufficient access to justice, have created uneven distribution of land and its resources.³² Additionally, the legal issues and challenges militating against seamless land registration in Nigeria have been documented, emphasizing the need for comprehensive reforms aimed at addressing systemic deficiencies and enhancing the effectiveness of land registration processes.³³ These challenges underscore the necessity for ongoing evaluation and reform of land registration laws to ensure they facilitate, rather than hinder, access to justice and the equitable resolution of land-related disputes.³⁴

The case of *Coker v Ogunye*³⁵ stands as a poignant illustration of the longstanding judicial practices that predate the enactment of the 1979 Constitution. In this seminal case, the court held that a document qualifies as an instrument registrable under the Ordinance and will not be pleaded or admitted as evidence if it was not registered in accordance with the Land Instruments Registration Ordinance of 1924 at the time. The interpretative application derived from the definition of ‘instrument’ within the enabling statute, which explicitly requires that such action

³¹RB Adeyinka, ‘Transparency in Land Title Registration: Strategies to Eradicate Corruption in Africa Land Sector.’ [2020] (3) (5) *African Journal of Land Policy and Geospatial Sciences*; 173.

³²See Ewere ‘*Benjamin v Kalio*: Reversing the Law on Admissibility of Land Instruments in Nigeria’ 168; Adeyinka ‘Transparency in Land Title Registration: Strategies to Eradicate Corruption in Africa Land Sector’ 179.

³³GA Ahiakwo and Amadi Jerry, ‘Legal issues and challenges militating against seamless land registration in Nigeria’ [2024] (10) (3) *International Journal of Law*; 70.

³⁴In certain instances, the courts have rendered decisions wherein the admission of unregistered land documents was declined. Notable cases in this regard include *Ogbimi v. Niger Construction Limited* [2006] 9 NWLR (Pt. 986) 474 and *Akinduro v. Alaya* [2007] 15 NWLR. (Pt 1057) 312. The cases that were decided before the adoption of the 1979 Constitution clearly shows the courts adherence to the provisions of LIRL over the years.

³⁵(1937) 15 NLR 57.

results in the transfer' of interest from the vendor to the purchaser.³⁶ The following words from Onalaja JSCA in the case of *Nnubia v Attorney-General Rivers State* is sage on this point. Thus:

After a hard look at section 2 [LIRL] the words are not ambiguous there by giving it the plain, ordinary, natural and grammatical meaning that Exhibit 3 falls within the meaning of section 2... as an instrument because it transferred to the [lessee] the control and management of the plot [and] it must be registered.

The core of this assertion is based on the principle that a land document, although it meets the registration requirements, cannot be used as evidence if it remains unregistered. As a result, the court has ruled that such an unregistered document is inadmissible, particularly when oral testimony about its contents is introduced.³⁷ It is important to recognize that the rule established by the former Supreme Court in the landmark case of *Coker v Ogune*³⁸ has been consistently upheld since Nigeria's independence.³⁹

To assess the admissibility of a document, it is essential to consider both its intended purpose and how it is used. This principle was illustrated in the case of *Oke v Ekede*,⁴⁰ where the key issue was whether a document, which purportedly granted certain individuals the status of "owners and caretakers" of ten fishing villages, qualified as a registrable instrument for the purpose of admissibility. The document submitted by the plaintiffs demonstrated their exclusive rights and authority over the disputed land. The central issue was whether this instrument could be admitted as evidence without registration. The Court of Appeal delivered its judgment,

³⁶ Emeka Chianu *Law of Sale of Land* (Abuja, Panaf Press, 2009) 219.

³⁷ *Lagos Timber Co Ltd v Ticombe* (1943) 17 NLR 14.

³⁸ *ibid.*

³⁹ See *Umoffia v Ndem*, [1973] 8 NSCC 691, where the Supreme Court allowed the defendant's appeal, which challenged the trial court's decision that the court admitted in evidence a deed of grant of freehold estate which was rendered inadmissible under section 15 of the LIRL of former Eastern Nigeria 1963 for non-registration, as applicable to South Eastern States. In light of the circumstances, the court rendered a decision wherein it determined that the plaintiff's case was destined for failure, as the repudiation of the plaintiff's unregistered land document undermined the very foundation upon which the claim was predicated. See also *Akingbade v Elemosho* [1964] 1 All NLR 154, for an earlier decision on the subject matter.

⁴⁰ [1991] 4 NWLR 569.

affirming the registrability of the instrument in question. As a result of its failure to undergo the mandatory registration procedure, the instrument in question is deemed ineligible for pleading or admission as evidence. The courts have consistently distinguished between instruments that require registration and those that do not. Therefore, a simple receipt confirming payment related to a piece of land, which has not been formally pleaded, does not qualify as a registrable instrument. It lacks the legal significance required to be considered an operative document in a land transaction.⁴¹

In cases where a document acknowledges the receipt of payment for land purchase and includes a covenant to execute a conveyance upon request, it is recognized as an instrument for establishing proprietary rights. Therefore, registration is required to support a claim to the land. Additionally, it has been argued that a deed of release or surrender, executed by an implied, constructive, or resulting trustee in favor of the beneficiary, does not qualify as a registrable instrument.⁴² In *Adeyemo v Ida*,⁴³ the judge who presided over a land dispute later acquired the land from the party who secured the judgment. In the subsequent legal action, the opposing party brought suit against the judge to invalidate the sale due to perceived impropriety. The judge, in turn, was compelled to execute a deed of release or surrender to transfer the land back to the original grantor. The Court of Appeal was tasked with determining whether this deed of release could be admitted into evidence without undergoing registration. Ultimately, the Court ruled that the deed of release did not fall under the category of registrable instruments as outlined in section 2 of the LIRL.

Legal practitioners operating within this domain of law must possess a high level of insight and creativity. It is crucial for a practitioner to exercise caution and precision when stating the purpose for which an unregistered instrument is being pleaded. If the lawyer presents their argument effectively, it is likely that the legal document will withstand the rigorous scrutiny it faces. In *Adesifayo v Makinde*,⁴⁴ the respondent engaged in the acquisition of a parcel of land

⁴¹*Elegbede v Savage* [1951] 20 N.L.R. 9, at 10.

⁴²Emeka Chianu, *Law of Sale of Land* (Abuja, Panaf Press, 2009) 220.

⁴³[1998] 4 NWLR (Pt. 546) 504.

⁴⁴[1969] 1 NMLR 213.

from the Adeboro family. Subsequent to said acquisition, the purchaser duly commissioned the services of a surveyor to conduct a survey of the aforementioned land. During the course of his employment, an individual by the name of Johnson caused a disturbance to the respondent, asserting that his branch of the familial lineage was not consulted prior to the transaction in question.

Consequently, the respondent was compelled to pay Johnson the sum of 50 pounds. The respondent encountered difficulties in obtaining the collective participation of the entire family, inclusive of Johnson, in the act of executing a newly presented document. Subsequent to the aforementioned events, Johnson expeditiously absconded. Subsequent to the passage of approximately four years, the respondent fortuitously encountered peculiar pillars situated upon the land in question. Upon conducting investigation, it was discovered that said pillars were the property of the appellant, who had lawfully acquired the aforementioned land from Johnson approximately one year subsequent to the respondent's initial purchase thereof. The respondent, in an attempt to impugn Johnson's character, sought to present the unexecuted agreement as evidence. The appellant lodged an objection on the basis that the document in question lacked both stamping and registration. The document was however, admitted into evidence, as it was held that it does not meet the criteria of an instrument as defined under the LIRL.

In *Elegbede v Babalola*⁴⁵, the Supreme Court rendered a decision regarding the admissibility of documents relating to land transactions. Four documents detailing instalment payments for a parcel of land and commitments to settle the remaining purchase price were scrutinized. Despite lacking stamping, these documents were admitted as evidence due to their classification as transaction records rather than formal instruments. The West African Court of Appeal further elucidated this principle by ruling that a document bestowing trustees with a family's real estate did not meet the criteria for registration. This determination stemmed from the absence of any explicit intention, as expressed by the involved parties, to confer, restrict, encumber, or terminate rights, titles, or interests in land in favour of another party. These

⁴⁵ [1969] 1 NMLR 311, 315.

precedents underscore the nuanced approach courts adopt when evaluating the legal character and admissibility of documents in land-related disputes.⁴⁶

Similarly, in *Ajao v Adigun*⁴⁷, a community, in accordance with its established practices, engaged in the distribution of its land resources among its members. This allocation was documented and substantiated through the use of a legal instrument. When a dispute concerning the land emerged, the trial judge determined that the instrument could not be admitted as evidence without registration. In reversing the judgement, the Supreme Court opined that the instrument in question does not purport to confer, transfer, or limit any rights, nor does it seek to extinguish any rights in favour of any individual or entity. The purpose of the action was to precisely delineate the alleged pre-existing entitlements of each familial unit within the expansive geographical region. This course of action was undertaken with the intention of pre-empting any potential conflicts arising from land disputes among the aforementioned families. The document, in its essence, refrained from any pretence of portraying the families as relinquishing or acknowledging the forfeiture of any of their rights. Instead, it meticulously delineated the existing rights possessed by each familial unit.

3.0 THE PRINCIPLE OF *STARE DECISIS* IN NIGERIAN LEGAL SYSTEM

The doctrine of *stare decisis*, originating from the Latin phrase ‘*stare decisis et non quieta movere*’ meaning ‘to stand by things decided and not disturb the undisturbed,’ embodies a fundamental principle in the realm of legal jurisprudence. At its core, *stare decisis* dictates that once a legal issue has been settled by a court, future cases presenting similar facts must be decided in accordance with the precedent established by prior decisions.⁴⁸ This doctrine serves as a cornerstone of the common law system, fostering stability, predictability, and consistency within the legal framework. Central to the doctrine's nature is the principle of binding authority, whereby decisions made by higher courts hold precedential weight over lower courts within the

⁴⁶*Gbenebichie v Awosika* (1952) 14 WACA 101, 105.

⁴⁷ [1993] 1 NSCC 321.

⁴⁸ AnnaRuf and Kenneth, *Yin Aristotle is Long Dead But His Wisdom Rules Us from the Grave: A Comparison of the Application of Logic in Legal Reasoning in Common Law and Civil Law Systems*. (1stedn, Springer 2024) 2.

same jurisdiction. This hierarchical structure ensures uniformity in the application of law and promotes respect for judicial decisions. Additionally, *stare decisis* fosters reliance interests, providing individuals and entities with a degree of certainty regarding their legal rights and obligations.⁴⁹ However, it is essential to recognize that the doctrine is not absolute. Courts possess the authority to depart from precedent under certain circumstances, such as when adherence would lead to unjust outcomes or when societal values and norms have evolved since the precedent was established. This notion of judicial flexibility acknowledges the dynamic nature of law and permits adaptation to changing circumstances. Moreover, the doctrine operates within a framework of incrementalism, wherein legal principles are refined and developed over time through the accumulation of judicial decisions. This evolutionary process ensures that the law remains responsive to societal needs and evolving understandings of justice.⁵⁰

The doctrine plays a crucial role in shaping Nigeria's legal landscape. The Nigerian legal system operates within a common law framework inherited from its colonial past, heavily influenced by English legal principles. Therefore, the doctrine is firmly entrenched in Nigeria's jurisprudence and recognized as a guiding principle in judicial decision-making.⁵¹ The application of *stare decisis* in Nigeria is evident in the hierarchy of courts established by the Constitution, with the Supreme Court serving as the highest appellate authority. Decisions of the Supreme Court are binding on all lower courts within the Nigerian judicial system, creating a system of vertical *stare decisis*. Lower courts are required to follow the precedents set by the Supreme Court, ensuring consistency and uniformity in the application of Nigerian law. Moreover, the Nigerian legal system also recognizes horizontal *stare decisis*, whereby decisions of the Court of Appeal are binding on lower courts within the same jurisdiction, further enhancing legal certainty and predictability. This principle ensures consistency and coherence in the application of Nigerian law at the appellate level, supplementing the hierarchical structure

⁴⁹HLA Hart and Leslie Green, *The Concept of Law* (Oxford University Press 2012). 13; Joshua Keton, Language, Legitimacy, and the Law: The Social Roots of Legal Obligation (1stend, Diss. City University 2024) 5.

⁵⁰Mikolaj Pietrzyk, 'Role of courts & interpretation in civil law culture' [2023] *SSRN*; 2; Nicole Spadotto, 'Applying Purposive Textualism to Quebec's Codes' [2023] (61) (5) *Alta. Law Review*; 671.

⁵¹AO Adeleye, *Introduction to Nigerian Legal Method* (1stedn, Malthouse Press 2012) 8.

established by the Constitution.⁵² By adhering to established precedents while also allowing for judicial discretion, Nigerian courts uphold the integrity of the legal system and ensure the fair and consistent administration of justice.

This hierarchical structure ensures that legal principles are applied consistently throughout the Nigerian judicial system, promoting certainty and predictability in the law. In addition to judicial decisions, statutory law also plays a significant role in shaping the application of stare decisis in Nigeria and other legal systems globally. Statutes enacted by legislative bodies may codify or modify common law principles, thereby influencing the development of legal precedent. In Nigeria, statutes such as the Evidence Act,⁵³ Criminal Code,⁵⁴ and Penal Code⁵⁵ provide statutory guidance on various legal issues, which courts are bound to apply in their decision-making. Furthermore, decided cases from Nigerian courts have contributed to the development of stare decisis both within the country and internationally. Landmark decisions such as *AG Bendel State v Aideyan*⁵⁶ and *AG Federation v. Abubakar*⁵⁷ have shaped Nigerian jurisprudence and established important precedents on constitutional law and the rule of law. Similarly, globally recognized cases such as *Brown v. Board of Education*⁵⁸ in the United States and *Donoghue v. Stevenson*⁵⁹ in the United Kingdom have had a profound impact on legal principles and judicial decision-making worldwide.

Similarly, in *Kesavananda Bharati v State of Kerala*⁶⁰, the court affirmed the doctrine of basic structure in constitutional law, has reverberated throughout the Commonwealth and beyond, shaping constitutional jurisprudence in numerous jurisdictions. These cases illustrate the universal significance of stare decisis and its role in shaping legal norms and standards across jurisdictions. However, the doctrine of stare decisis is not absolute and allows for departures

⁵² Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵³No. 18, 2011.

⁵⁴Cap. C38, Laws of the Federation of Nigeria, 2004.

⁵⁵ Cap P3, Laws of the Federation of Nigeria, 2004.

⁵⁶ (1989) 1 NWLR (Pt 98) 22.

⁵⁷ (2007) 12 NWLR (Pt 1048) 367.

⁵⁸ (1954) 347 U.S. 483.

⁵⁹[1932] AC 562.

⁶⁰(1973) 4 SCC 225.

from precedent under exceptional circumstances. Courts may depart from precedent when faced with new facts or legal developments that warrant a reconsideration of prior decisions. Such departures typically occur when confronted with novel factual scenarios, evolving legal principles, or glaring errors in precedent. This principle of judicial discretion ensures that the law remains adaptable to changing societal values and circumstances. The doctrine acknowledges the exigency for judicial discretion in extraordinary circumstances. Courts retain the prerogative to depart from precedent when confronted with novel factual paradigms or transformative legal developments. This principle of judicial discretion, epitomized by cases like *Bolaji v Osun State*⁶¹ and *Bush v Gore*⁶² underscore the courts' willingness to depart from precedent to rectify miscarriages of justice or uphold constitutional rights. In that case, the Supreme Court depart from prior decisions to address the constitutional rights of individuals, highlighting the judiciary's commitment to ensuring fairness and equity. This shows the judiciary's role as vanguard of legal adaptability, ensuring alignment with evolving societal values and exigencies.

4.0 APPLICATION OF PURPOSIVE INTERPRETATION IN THE INTERPRETATION OF STATUTES

Purposive interpretation necessitates an examination of statutory provisions that transcends their literal wording, aiming to unveil the underlying objectives, values, and intentions of the legislature.⁶³ This approach has been recognized and applied by courts in plethora of cases in Nigeria. For instance, in *Attorney General of Bendel State v Attorney General of the Federation & Ors*⁶⁴ the Supreme Court of adopted a purposive approach to statutory interpretation, reiterating the importance of understanding the legislature's intent to resolve ambiguities in the law.

⁶¹ (2004) 3 NWLR (Pt. 857) 109.

⁶² 531 U.S. 98 (2000).

⁶³ Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press 2005) 10.

⁶⁴ (1981) 10 SC 1. See also *Rabiu v. The State* (1980) 8-11 SC 130.

The inconsistencies in the Supreme Court of Nigeria's judgments regarding the admissibility of unregistered land instruments, notably in cases such as *Benjamin and Abdullahi case*, present significant challenges to lower courts tasked with adhering to precedents. These discrepancies undermine the principle of *stare decisis*, which is essential for ensuring legal certainty and uniformity in judicial pronouncements.

The Supreme Court's duty to provide clear and consistent guidance is sacrosanct. Whereas, in *Benjamin's case* the Court reversed earlier decisions on the admissibility of unregistered land instruments, creating a precedent that was later contradicted in *Abdullahi's case* without explicitly overruling the former, however, in *Anagbado's case* it restated the decision in Benjamin's case. Significantly, these decisions were made concurrently within a space of 16 months. Such lack of uniformity complicates judicial interpretation, leading to potential divergences in the application of the law by subordinate courts and creates room for selected justice. A purposive interpretation of the LIRLs offers a pathway to resolve these inconsistencies. By emphasizing the underlying legislative objectives of the LIRLs, the Supreme Court could align their judgments with the intent of the legislature. The purpose of registration of land instruments was to prevent fraud and this entails the mandatory registration of land instruments to deter fraudulent transactions and ensure the recognition of only legitimate dealings. Furthermore, it is also to place to third parties on notice, as it functions as a public record, alerting potential purchasers and interested parties to existing rights or claims, thereby mitigating disputes over land ownership. Similarly, registration protects landowners, as registered instruments provide legal recognition and enforceability of landowners' rights, ensuring their interests are safeguarded.

5.0 CONCLUSION

The Nigerian courts must adopt a purposive interpretative approach, ensuring that its decisions reflect the legislative objectives of deterring fraud, placing third parties on notice, and safeguarding landowners' rights. Although, 'evidence' have shifted from the residual matter to the exclusive legislative list, granting the federal legislature overriding authority on the subject

matter. Under the principle of "covering the field," state legislatures are precluded from legislating on matters already comprehensively addressed by federal law. However, the overarching objective of the LIRLs—to protect landowners and enhance transparency in land transactions—should remain central to judicial reasoning. These conflicting decisions on this issue undermine the ability of lower courts to apply consistent principles. In addition to judicial consistency, legislative reform or judicial clarification is necessary to harmonize conflicting decisions and reaffirm the primacy of federal law over state legislation in this area. By prioritizing uniformity and adhering to the purposive interpretation of the LIRLs, the Supreme Court can resolve existing discrepancies, strengthen Nigeria's legal framework for land transactions, and reinforce public confidence in the judiciary. This highlights the imperative for the judiciary to adopt a more flexible and context-sensitive approach that harmonizes legal principles with pragmatic realities.