

# THE CONSTITUTIONAL RIGHT TO OWN PROPERTIES - EXAMINING - EXTENT AND LIMITS

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## INTRODUCTION

Property is defined as the right to acquire, possess, use or enjoy a definitive thing on the one hand, or any determinate thing over which these bundle of rights can be exercised.<sup>1</sup> It denotes a corporeal thing, as well as the aggregate of rights which are exercisable in respect of that 'thing' – incorporeal property.<sup>2</sup> It symbolises the legal relationship which exists between the owner, the thing owned, third parties and the State.<sup>3</sup> These rights are generally protected under the Bill of Rights both in Nigeria and elsewhere.<sup>4</sup> The protection guaranteed under the various laws emphasises the socio-economic significance of property rights in any society as it forms the basis for all market exchange.<sup>5</sup> Ownership of property, whether tangible or intangible, is germane to the growth and sustenance of every society, and property laws are established to regulate human relations in respect of ownership rights, thereby providing a basis for the acquisition, use and disposal of property in Nigeria.<sup>6</sup> This essay examines the provisions contained in sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which grants every Nigerian citizen the cardinal right to acquire and own moveable and immovable property anywhere in Nigeria vis-à-vis its scope and limitations.

## TYPES OF PROPERTY

### 1. Choses in Action:

Choses in action describe the personal rights in property which can only be claimed or enforced by action and not by taking physical possession of them. They are also called 'things in action' because they are things which a person is not possessed but has to bring an action in court in order to recover them<sup>7</sup>. It can also be defined as the right to bring a claim or cause of action. They are a type of intangible property formed through the evolution of

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<sup>1</sup> Bryan A. Garner, 'Black's Law Dictionary' (9<sup>th</sup> edn, Thomson Reuters 2009) 1335 – 1336.

<sup>2</sup> *Halsbury's Laws* (5<sup>th</sup> edn, 2011) vol 87, para 1.

<sup>3</sup> S.M. Sheppard, 'The Wolters Kluwer Bourvier Law Dictionary' (Wolters Kluwer Law & Business) 878.

<sup>4</sup> Universal Declaration of Human Rights, art. 17; and The African Charter on Human and People's Rights (Ratification and Enforcement) Act, 1983, art. 14.

<sup>5</sup> Will Kenton, 'What are Property Rights and Why Do They Matter?' <[https://www.investopedia.com/terms/p/property\\_rights.asp](https://www.investopedia.com/terms/p/property_rights.asp)> accessed on 22 March 2024.

<sup>6</sup> I.O. Smith, *Practical Approach to Law of Real Property in Nigeria* (2<sup>nd</sup> edn, Ecowatch Publications Limited 2007) 3.

<sup>7</sup> *Torkington v Magee* [1902] 2 KB 427, 430.

the common law.<sup>8</sup> Choses in Action may be classified into Legal Chose in Action which pertains to recoverable rights through legal actions, and Equitable Chose in Action which is only enforceable through equitable proceedings. Examples of choses in action include debts, shares, negotiable instruments, policies of insurance, bills of lading, patents, copyrights, rights under trusts and legacies, benefit of a contract for sale of reversionary interest, rights to claim indefinite sums of money, as for compensation under Statute; damages for loss in which the assignee was the assignor's insurer, a debt or benefit arising out of an existing contract, but payable at a future time and a claim for damages in tort. They are in law permitted to be assigned by the holders (though they can neither be seen nor possessed) to third parties who would be able to enforce the rights against the debtors even though they were not parties to the original contract.

## 2. Choses in Possession:

Unlike choses in action, a chose in possession refers to an object of tangible personal property that can be physically possessed by the owner and can be transferred. It also denotes not only the right to own the property but the right to also possess it. Enforcing rights on a chose in possession is by taking physical possession. This right may be absolute or limited. It can further be divided into moveable and immovable property.

- i. **Moveable property:** They refer to personal assets that can be physically moved or transferred from one place to another. They include property like vehicles, industrial machinery and equipment and personal belongings.
- ii. **Immovable property:** They are referred to as real property and they include land and everything permanently affixed to it such as buildings, structures and fixtures.
- iii. **Corporeal Property and Incorporeal Property:** Corporeal property generally refers to immovable property, while the right vested on the owner of the property is referred to as incorporeal. Legally, where incorporeal property is accompanied by possession, such right is referred to as corporeal right, whereas, in cases where the right in the property is partial so as not to entitle the owner to exercise

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<sup>8</sup> W.S. Holdsworth, 'The History of the Treatment of Choses in Action by the Common Law' (1920) 33 HARV. L. REV. 997.

possessory rights over the property, such right will be regarded as incorporeal.<sup>9</sup>

## **SCOPE OF THE CONSTITUTIONAL RIGHT TO OWN PROPERTY IN NIGERIA**

The right to own property in Nigeria is guaranteed in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution). Section 43, provides:

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.”

A consideration of the above section establishes the right of Nigerian to own property anywhere in Nigeria. An interpretation of the above section *eo ipso*, seems to suggest that only the right to own immovable property is guaranteed by the Constitution. However, a further consideration of the above section alongside the provisions of section 44 expands the right to cover both moveable and immovable property. Section 44 provides:

“44 (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(underlining for emphasis)

It is an established principle that provisions of the Constitution are not to be read in isolation, rather, similar provisions must be read conjunctively. In its role of interpreting the Constitution in order to give meaning to and or discover the legislative intent, as well as understand the mischief which the laws seek to cure, the courts have stressed the importance of considering

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<sup>9</sup> *Halsbury's Laws* (supra) vol 87, para 1.

related sections as a whole.<sup>10</sup> The Constitution has been described as, a living document whose parts are interrelated and as such must be read and interpreted conjunctively. The Supreme Court, per Muntaka-Coomasie, J.S.C (as he then was), held in *Marwa v Nyako*,<sup>11</sup> that:

“I am of the firm view that when interpreting the provisions of our Constitution not only should the court look at this Constitution as a whole, the provisions should be construed in such a way to justify this hope and aspirations of those who made strenuous efforts to provide us with a Constitution to ensure good governance, but also to protect the rights of Nigerians who are the beneficiaries of the provisions of the Constitution, particularly to ensure a (sic) durable democratic institutions.”

From the foregoing, it is established that proprietary rights guaranteed under the Constitution relate to both corporeal and incorporeal property and covers the general rights exercisable in relation to such property on the one hand,<sup>12</sup> and in another vein, while the ‘thing’ itself may or may not be tangible, the bundle of rights and interest in that thing is intangible and both are contemplated under the provisions of the Constitution.<sup>13</sup> This also extends to choses in action which generally denote such personal proprietary rights which are intangible and can only be claimed or enforced by action such as debts, rights under a contract, shares, intellectual property etc. In *Adegbenro v Akintola*,<sup>14</sup> the court reasoned that where cost is awarded to a party in an action, it is regarded as his property for all intents and purposes, thus incorporeal rights are property within the provisions of the Constitution. Also, money, whether cash or deposited in a bank account, has been held to be property and except under valid circumstances and legal directives, an individual should not be prohibited from enjoying the use of his money.<sup>15</sup>

From the wordings of the Constitution, it is clear that Nigerian citizens are entitled to the right to own property, whether tangible or intangible, subject

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<sup>10</sup> *Attorney General of Bendel State v Attorney General of the Federation and 22 Ors* (1981) 10 SC 1, 133 – 134. *Ojokolobo v Alamu* (1987) 3 NWLR (Pt. 61) 377, 413.

<sup>11</sup> (2012) 6 NWLR Pt. 1226) 199, 337.

<sup>12</sup> *Independent Television/Radio v Edo State Board of Internal Revenue* (2014) LPELR-23215 (CA) 1, 43. See also: Brief of Dr. Oladapo Olanipekun as amicus curiae dated 29 January 2014.

<sup>13</sup> Marcus Smith QC and Nico Leslie, *The Law of Assignment* (2<sup>nd</sup> edn, Oxford University Press 2013) 14 – 15.

<sup>14</sup> (1963) 1 All NLR 299, 305.

<sup>15</sup> *UBA v Osok* (2016) LPELR-40110 (CA) 1, 25. See also: *Polaris Bank LTD v Jude Bela* [CA/MK/139/2019] (Unreported).

only to the exceptions under the Constitution. The constitutionally guaranteed right to own property is readily enforced and protected by the court. In the case of *Attorney General of Bendel State v Aideyan*,<sup>16</sup> the Supreme Court stated that:

“In Nigeria, one’s right to one’s property was an entrenched constitutional right under section 31 of the 1963 Constitution as indeed, it is under section 40 of 1979 Constitution. That right is inviolate. In the Ipsissimis verbis of the Constitution itself, such a property or any right attendant thereto can only be taken possession of or compulsorily acquired by or under the provisions of a law. Furthermore, such a law must provide for the payment of adequate compensation therefore to him and must give the owner the right of access to High Court for the determination of his interest in the property and the amount of compensation due to him.”

In respect of a non Nigerian, the range of proprietary rights which may be exercised in Nigeria are somewhat limited. The Courts have given a restrictive interpretation to the provisions of the constitution especially with respect to immovable property. In the case of *Heubner v A.I.E. and P.M. Company Limited*,<sup>17</sup> where the court considered whether a foreigner is entitled to acquire and exercise a Right of Occupancy in respect of immovable property in Nigeria. The court, relying on the earlier decision of the Supreme Court in *Ogunola & Ors v Eiyekole*,<sup>18</sup> held that, an alien lacked the legal capacity to own an interest in land in Nigeria and extended this provision by holding that foreigners are restricted from acquiring land in Nigeria under the name of a company or by way of a company holding the land in trust for a non-citizen.<sup>19</sup> However, the Supreme Court per Peter-Odili, J.S.C.,<sup>20</sup> stated that such interest may at best be regarded as an occupier and no more unless and until the consent is granted by the Governor or Minister of the Federal Capital Territory.<sup>21</sup> However, for proprietary rights in respect of intangible property or personal and movable properties, the constitutional provision is liberally

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<sup>16</sup> (1989) 4 NWLR (Pt. 118) 646, 667.

<sup>17</sup> (2017) All FWLR (Pt. 903) 1000, 1015.

<sup>18</sup> (1990) 4 NWLR (Pt. 146) 632, 642.

<sup>19</sup> Y.Y. Dadem, *Property Law Practice in Nigeria* (4<sup>th</sup> edn, Jos University Presss Limited, 2018) 202.

<sup>20</sup> *Ibid* (n 14) 431 – 432.

<sup>21</sup> Land Use Act 1978, s 46(1). See also: Acquisition of Lands by Aliens Law, Cap A1, Laws of Lagos State, 2015, under which foreigners must obtain consent before they can acquire land in Lagos unless exempted under the Law.

interpreted. Non-Nigerian citizens may validly own property in this regard without prohibition but subject to legally acquiring same. Thus, foreigners may own shares in Nigerian companies through Foreign Direct/Portfolio Investments.<sup>22</sup> In *Heubner v A.I.E. and P.M. Company Limited*,<sup>23</sup> the court emphasised that obligations arising from an illegal contract cannot be enforced anywhere in Nigeria. Thus, property acquired by a foreigner (or a Nigerian citizen) without due process of the law will be voided by the court.

The right of natural persons of full capacity to own and acquire property anywhere in Nigeria, whether movable or immovable has been established by the Constitution. This right also extends to juristic persons such that a company which is duly incorporated under the Companies and Allied Matter Act, 2020 (CAMA), acquires a juristic personality and is vested with the rights which accrue to a natural person of full capacity, including the right to acquire and own property anywhere in Nigeria its own name, different and distinct from the rights of the shareholders in the company.<sup>24</sup> The court, per Tobi JCA (as he then was), held in the case of *Onagoruwa v State*,<sup>25</sup> that:

“Although a company has no mouth to talk and function physically like a natural person, it has the legal capacity to own property and it owns property separate and distinct from those of its members...”

This right has been established by the courts in a plethora of cases to the effect that the assets of a company are owned by the company itself rather than the members of the company.<sup>26</sup> In the case of *Obeya Memorial Hospital v Attorney General of the Federation*,<sup>27</sup> the court stated that ownership of the property of a company is vested in the company and must not be mistaken for the property of its directors or members. The court further reiterated the inviolability of this pertinent right which must be readily protected and enforced, when it held that:

“A Nigerian citizen and indeed any Nigerian company as a Corporate body in lawful possession of their properties are entitled to protection of those

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<sup>22</sup> Investments and Securities Act, 2007, s. 13 (l); Companies and Allied Matters Act, 2020, s. 78; Nigerian Investment Promotion Commission Act, Cap N117 Laws of the Federation of Nigeria, 2004, ss. 17 and 20.

<sup>23</sup> Ibid (n 17) 440 – 441.

<sup>24</sup> Companies and Allied Matters Act, 2020, ss. 42 and 43 (1).

<sup>25</sup> (1993) 7 NWLR (Pt. 303) 49, 88.

<sup>26</sup> *Shonubi v Onafeko* (2003) 12 NWLR (Pt. 834) 254, 267 – 278; *Marina Nominees Ltd v F.B.I.R* (1986) 2 NWLR (Pt. 20) 48, 55 – 56; *Union Beverages v PepsiCola Int. Ltd.* (1994) 3 NWLR (Pt. 330) 1, 16.

<sup>27</sup> (1987) 3 NWLR (Pt. 60) 325, 349 – 350. See also: *Azuh v UBN Plc* (2014) 11 NWLR (Pt. 1419) 580, 606.

properties under our Constitution; and until they are proved not entitled, the courts as guardian of the Rule of Law will frown at any unlawful invasion of such properties by anyone no matter how highly placed”

The right of a company to own the property in its own right and its own name is different and distinct from the rights of the shareholders in the company, to own and acquire shares in the company. Shares are a form of property, intangible property, which confers on the holder, proprietary interest in a company, though not in its property.<sup>28</sup> A shareholder is a proportionate owner of the company in line with to the amount of unpaid shares in his name as stated in the company’s Memorandum and Articles of Association.<sup>29</sup> Thus, he does not own the company’s assets but an interest in the company’s capital or income.<sup>30</sup> The nature of the rights of shareholders is outlined in the company’s Memorandum and Articles of Association, and incidental rights under CAMA, which includes the right to dividend when declared by the company’s directors,<sup>31</sup> the right to vote at a general meeting etc.<sup>32</sup>

## INCIDENTAL RIGHTS

These are the rights which are vested on and attributable on the property owner. Some of the incidental rights include:

### 1. Right of Use and Enjoyment:

This refers to the legal authority or entitlement exercisable by a person or entity in respect of utilising a property or asset to his satisfaction. It encompasses the freedom to possess, occupy and utilise the property in a manner that is consistent with the law, subject to any other applicable restrictions or conditions provided by statute or regulation. In effect, the property owner is allowed to enjoy the benefits and profits derived from holding, occupying or utilising the property. It also grants individuals or corporate entities the exclusive right to own and profit from their intangible rights in the property to the exclusion of other persons.

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<sup>28</sup> P.L. Davies, S. Worthington and E. Micheler, *Gower and Davies’ Principles of Modern Company Law* (8<sup>th</sup> edn, Sweet & Maxwell) 815 – 818.

<sup>29</sup> Companies and Allied Matters Act, 2020, s 21.

<sup>30</sup> *Ibid*, s. 868 (1); *Borland Trustees v Steel Bros and Co Ltd* (1901) 1 Ch 279. See also: Hon. Dr Olakunle Orojo, *Company Law and Practice in Nigeria* (5<sup>th</sup> edn, Lexis Nexis 2008) 125.

<sup>31</sup> *Ibid*, s. 426(1).

<sup>32</sup> *Ibid*, s. 138 (1)(b).

## **2. Right of Disposal:**

An individual or corporate entity is vested with the authority and freedom to sell, transfer or otherwise dispose of their proprietary rights or interest. This confers the freedom to exploit the property for commercial gain as well as derive benefits from the property either by way of a sale, transfer, or lease of their land, buildings, vehicles etc or to license, assign, or sell their patents, copyrights, trademarks, or trade secrets to third parties, and subject to the Wills Act, he can dispose of it by will. In other words, the right confers on individuals or corporate entities the exclusive right to own and profit from their intangible rights in the property such as the right of a patent holder to use and profit from their patented invention and the right of a copyright owner to control the reproduction and distribution of their creative works.

## **3. Rights of Shareholders:**

Certain rights are vested in the shareholders of a company. These rights are usually in line with the terms on which the shares are issued, as well as stipulated in the Company's Memorandum and Articles of Association. Generally, one of the most basic rights is the right to receive notices of meetings, attend general meetings of the company and vote at such meetings.<sup>33</sup> Shareholders also have the right to paid dividends out of the company's distributable profits, subject however to the declaration of dividends by the company's directors. Similarly, shareholders have a right to participate in the surplus assets of the company during winding up after all the company's liabilities have been discharged.<sup>34</sup> Under the provisions of CAMA, the members or shareholders of the company may also appoint or remove the directors of the company in a general meeting. This confers on shareholders the right to manage the company.<sup>35</sup>

## **CHALLENGES AND LIMITATIONS IN ASSERTING PROPERTY RIGHTS IN NIGERIA**

### **1. Statutory Rights of Occupancy:**

This limitation relates primarily to immovable property and anything attached thereon, such that, although the right to own, use and dispose of immovable property is constitutionally guaranteed, it is made subject to obtaining a right

<sup>33</sup> Ibid, ss. 140 (1), 237 (1), 250, 251 (1).

<sup>34</sup> Marcus Smith QC and Nico Leslie, *The Law of Assignment* (n 13) 111.

<sup>35</sup> Ibid (n 27) ss. 272, 273 and 288.



of occupancy as well as the Governor's consent as stipulated under the Land Use Act, 1978. A Statutory Right of Occupancy confers a beneficial interest on the holder of the right of occupancy and in effect, qualifies the legal right to own property in Nigeria. The court, in the case of *Abioye v Yakubu*,<sup>36</sup> held that:

"The only interests in land the Military Governor and the Local Government can lawfully grant are rights of occupancy. (See sections 5 and 6). These rights of occupancy fall into two categories, namely (a) statutory right of occupancy. (See sections 5(1) and (2), customary right of occupancy (see section 6(1)(a & b). They cannot grant absolute interests or fee simple absolute to any person...

Statutory rights of occupancy are granted by the Governor (see section 5(1) & (2) and customary rights of occupancy by the Local Government in whose area the land situates (see section 6(1). These rights of occupancy bear resemblance to leasehold interests. They can be assigned. They can be mortgaged and they can be under-let or sublet. These transactions, however, can only be engaged in by the holder of the right of occupancy with the consent of the Military Governor as provided by the Act."

The grant confers exclusive right to the land on a grantee subject only to the reversionary rights of the Governor, as well as the latter's right of inspection.<sup>37</sup> The Act confers similar powers on the Local Government in respect of a customary grant of occupancy. Similarly, although the right of alienation is incidental to a grant of statutory right of occupancy, the Governor's consent must be sought and obtained before any alienation of land which is subject to a statutory right of occupancy.<sup>38</sup> Thus, the right is only exercisable subject to a grant of the Right of Occupancy.

## **2. Compulsory Acquisition for Public Purposes:**

Under section 44 of the Constitution, immovable property may be compulsorily acquired by the Government, where it is in the interest of the public to do so. In line with public interest considerations and implications, such property may be taken over irrespective of an owner's interest in the property. Such acquisition may be for a fixed term, in which case the holder's reversionary right is preserved, or ownership may be vested in the government

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<sup>36</sup> (1995) 5 NWLR (Pt. 190) 130, 223 – 225.

<sup>37</sup> Land Use Act, 1978, s 14.

<sup>38</sup> Ibid, ss. 22 and 26. See also: *Savannah Bank v Ajilo* (1989) 1 NWLR (Pt. 97) 305, 315.

upon the acquisition.<sup>39</sup> The law, however, provides some sort of mitigation and protection for the owner by ensuring that he is duly notified of the intended acquisition. Also, prompt payment of compensation must be made to the owner,<sup>40</sup> as well as ensuring the right of access to court to enforce his right to and or determine the quantum of compensation.<sup>41</sup> Similarly, under section 44(3) of the Constitution, ownership and control of all mineral resources found in Nigeria, is vested in the Federal Government. This limits the right to own a property which contains mineral resources as it vests automatically on the government. This seeks to protect the general interest of the public and for the benefit of all Nigerians.

### **3. Limitations on the Proprietary Rights of Aliens in Nigeria:**

As stated previously, a limitation on the rights of non Nigerians/foreigner to acquire and own property in Nigeria largely depends on the type of property in question. From the literal interpretation of the provisions of the Constitution in sections 43, it is clear that only a citizen of Nigeria may own immovable property in Nigeria,<sup>42</sup> and a foreigner may only own immovable property subject to the requisite approval.<sup>43</sup> However, a foreigner may own other forms of property, especially moveable property as well as shares in a company in line with the requirements for registration with the relevant regulatory bodies such as the Corporate Affairs Commission, Securities and Exchange Commission, as well as the Nigerian Investment Promotion Commission.

### **4. Limitations on the Proprietary Rights of Minors:**

Under the Land Use Act, a statutory right of occupancy or consent for assigning or subletting a statutory right of occupancy cannot be granted to a person under the age of 21, by a Governor. The rationale for this restriction is to protect the interest of minors, and stems from the fact that minors lack the legal capacity to enter a binding contract, as well as the fact that they may not fully understand the obligations and implications of property ownership under the law. However, such consent may be granted to a guardian or trustee acting on behalf of a minor.<sup>44</sup> Furthermore, section 20 (1) CAMA, an individual of less

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<sup>39</sup> O. Aluko, *The Law of Real Property and Procedure* (2<sup>nd</sup> edn, Brighter Star 2003) 74.

<sup>40</sup> *Attorney General of Bendel State v Aideyan* (n 16) 667 – 669.

<sup>41</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 44 (1)(a) and (b).

<sup>42</sup> *Heubner v A.I.E. and P.M. Company Limited* (n 17).

<sup>43</sup> Acquisition of Lands by Aliens Law, Cap A1, Laws of Lagos State, 2015 (supra).

<sup>44</sup> Land Use Act 1978, s 7. It must be stated that a minor on whom property devolves acquires the obligations and liabilities as if he were a person of full age.

than 18 years is prohibited from joining in the formation of a company except where it is in conjunction with two other persons of majority. This denotes that minors are generally precluded from becoming members or shareholders of a company in Nigeria. Thus, this limits the right of a minor to own shares in a company.

**5. Other Statutory Limitations:** (CAMA, 2020; Enforcement of Tax Liability under Tax Laws; Town Planning Laws etc).

**i. Town Planning Laws and Regulations:**

Town planning laws and regulations, such as the Nigerian Urban and Regional Planning Act,<sup>45</sup> and the Lagos State Urban and Regional Planning and Development Law, 2015, must also be complied with where a person seeks to exercise his right to develop or alienate his property in line with the purpose of such areas and in compliance with the designated standards for designated urban and regional areas. For example, areas which are designated as commercial districts cannot be utilised for residential purposes.

**ii. Forfeiture of Property:**

In certain instances, where investigations are conducted in respect of an alleged breach of the law, forfeiture of property may be ordered pending conclusion of such investigation, or for the purpose of imposing penalties where a conviction for an offence is made.<sup>46</sup> Also, forfeiture may be ordered in line with an execution of a valid court order/judgment by a court of competent jurisdiction. Under the provisions of section 37 of the Independent Corrupt Practices and Other Related Offences Act, 2000, the Commission established under the Act is empowered to seize property pending the conclusion of an investigation into an alleged crime. Similarly, section 27 of the National Drug Law Enforcement Agency Act, an interim order of forfeiture may be made against the property of a person suspected of committing an offence, and an order of forfeiture may be made absolute upon his conviction.<sup>47</sup>

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<sup>45</sup> Nigerian Urban and Regional Planning Act, Cap N138 Laws of the Federation of Nigeria, 2004.

<sup>46</sup> Ibid (n 28), s 44 (2)(b) (e) and (k).

<sup>47</sup> National Drug Law Enforcement Agency Act, Cap N30 Laws of the Federation of Nigeria, 2004, ss. 27 and 34.

### iii. Enforcement of Tax under the Various Tax Laws:

Matters of revenue generation, assessments of tax liabilities and enforcement of the provisions of tax laws generally, are issues which border on public policy, and limit the proprietary rights of individuals to the extent that compulsory acquisition of property may be effected under section 44(2)(a) Constitution, as a limitation to the right. The court, in considering the constitutionality of the provisions of section 104 of the Personal Income Tax Act in the case of *Independent Television/Radio v Edo State Board of Internal Revenue*,<sup>48</sup> held that although it is an established fact that individuals are entitled to proprietary rights, it is however subject to the enforcement tax laws and as such, his property may be distrained by a valid court order sought by the appropriate tax authority, in order to satisfy such tax liability.

### iv. Limitations on Shareholders' Rights:

The rights exercisable by shareholders are fraught with several limitations. Firstly, the shareholder's rights and interests in a company are limited to the number of unpaid shares held by him, or which he guarantees to pay in the event of the company being wound up. A shareholder's right does not ordinarily extend to the assets of the company. In *Okoli v Morecab Finance (Nig.) Ltd*,<sup>49</sup> the Supreme Court held that a limited liability company is different from its members and as such, the funds and assets of the company cannot be described as the funds and assets of its members. Shareholders may only participate in the assets of the company where a liquidator is appointed upon winding up, until the assets of the company are fully liquidated and distributed to contributories in order of their priority. Similarly, where a receiver/manager is appointed, a moratorium is created, which suspends the rights of debtors to go after the company's assets until debt owed by the company is realised.<sup>50</sup> Secondly, a shareholder's right to dividends are dependent on the

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<sup>48</sup> (supra), 56.

<sup>49</sup> (2007) 14 NWLR (Pt. 1053) 37, 67.

<sup>50</sup> See: Companies and Allied Matters Act, 2020, s. 657 which provides for the order of priority of payment of debt owed to members in the winding up of a solvent company. See also: sections 556 and 585.

directors' right to declare dividends.<sup>51</sup> This gives the company's directors the discretion to give shareholders dividend, which can only be done pursuant to their recommendation. Thirdly, shareholders rights of removal or appointment of directors may be interfered with by a regulatory body, especially in highly regulated or public interest sectors, like the banking sector, where the regulators are generally empowered to remove and replace the board of directors of a company where it becomes expedient to do so in order to safeguard the interest of the public.<sup>52</sup> In the case of *Danson Izedonmwun & Anor v Union Bank PLC & Anor*,<sup>53</sup> in considering the legality of the removal of the directors of Union Bank in 2009, the Court of Appeal held that the Central Bank of Nigeria, as regulator, had the power to remove the directors of a failing bank and to appoint new directors in their stead. The action of the shareholders was thus dismissed.

## CONCLUSION

The right to own property in Nigeria is preserved under the Constitution and protected by the courts. The courts tend to give a liberal interpretation to the provisions of Chapter IV, in a bid to safeguard the fundamental rights of citizens. However, as with every other right, it is subject to several limitations as considered above. The constitutional provisions are clear and a person cannot by his will, expand the frontiers of the right as guaranteed beyond the intendment of the Constitution. It is laudable that individuals are guaranteed the right of access to court, which resonates with the fair hearing principle, to enable them enforce their proprietary rights. In a plethora of cases, the court have considered the extent, as well as the various limitations on the exercise of the right and has stated plainly that a guardians of the Rule of Law, it is saddled with the responsibility of ensuring that proprietary rights and interests are duly and adequately protected.<sup>54</sup> Similarly, it is trite that the law cannot be used as a vehicle of fraud or illegality, thus, a person cannot be allowed to hide under the umbrella of the law where to extend the rights ordinarily provided by the law. The implication of this is that, the right to acquire or own property in

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<sup>51</sup> Ibid, s. 426 (1).

<sup>52</sup> Banks and Other Financial Institutions Act, 2020, ss. 33 and 34.

<sup>53</sup> (2011) LCN/4919(CA). See also: Dayo Adu , Adeyemi Ayeku and Halima Aigbe, 'Removal of Directors of First Bank of Nigeria Limited: An Analysis of the Action Taken By the Central Bank of Nigeria' <<https://www.mondaq.com/nigeria/shareholders/1070686/removal-of-directors-of-first-bank-of-nigeria-limited-an-analysis-of-the-action-taken-by-the-central-bank-of-nigeria>> accessed 25 March 2024.

<sup>54</sup> Ibid (n 24).

Nigeria is not limitless or boundless. It can only be exercised within statutory parameters.

