



NLS

# SAMPLE DRAFT

on

## PROPERTY LAW PRACTICE



### Highlights

- ▶ Deeds
- ▶ Assent
- ▶ Search Report
- ▶ Power of Attorney
- ▶ Scales of Charges
- ▶ Tenancy Agreement
- ▶ Probate Application
- Leases ▶
- Mortgage ▶
- Bills of Charges ▶
- Contract of Sale ▶
- Wills and Codicils ▶
- Deed of Assignment ▶
- Registration of Title Application ▶

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### Week 3

## GENERAL OVERVIEW AND APPLICABLE LAWS TO PROPERTY LAW PRACTICE

The word property has a variety of meanings depending on the context in which it is used. Sometimes, it may mean ownership or title such as when it is said that property in the goods passes to the buyer immediately the contract of sale is concluded whether or not the goods have been physically transferred to him. It may mean the 'res' (thing) over which ownership may be exercised. It may also mean an interest in a thing less than ownership but nevertheless conferring certain rights such as when it is said that 'B' as pledgee has 'special property' in the subject matter of the security – ***Donald v. Suckling***.

### Property Transactions, Parties, Documents Involved

S/N	Transactions	Parties	Document	Responsibility of Drafting the Document
1	Assignment	Assignor/Assignee	Deed of Assignment	Assignee's Solicitor
2	Conveyance/Contract of Sale	Vendor/Purchaser	Deed of Conveyance	Vendor's Solicitor
3	Mortgage	Mortgagor/Mortgagee	Deed of Legal Mortgage	Mortgagee's Solicitor
4	Gift of Land	Donor/Donee	Deed of Gift	Donee's Solicitor
5	Lease	Lessor/Lessee	Deed of Lease	Lessor's Solicitor
6	Sub-Lease	Sub-Lessor/Sub-Lessee	Deed of Sub-Lease	Sub-Lessor's Solicitor

NLS SAMPLE DRAFTS ON PROPERTY LAW PRACTICE

7	Tenancy	Landlord/Tenant	Tenancy Agreement	Landlord's Solicitor
8	Donation of Power	Donor/Donee	Power of Attorney	Donor's Solicitor
9	Will/Codicils	Testator/Testatrix; Executor/Executrix; and Beneficiaries	Will	Testator/Testatrix's Solicitor
10	Assent	Personal Representatives/Beneficiaries	Assent	Personal Representatives' Solicitor
11	Administration of Estate	Administrators/Beneficiaries	Letter of Administration	
12	Search		Search Report	Purchaser/Mortgagee's Solicitor
13	License	Licensor/Licensee		

## **Week 4**

### **DEEDS AND DEED OF CONVEYANCE**

A deed is a document which passes interest in property (a deed of conveyance) or which binds a person to perform or abstain from doing some action. It is a general word to describe a document, which is in writing on a good quality/durable paper (papers like A4 paper, Indenture paper, and parchment) that is signed, sealed and delivered. This essence is for the transaction contained in the deed to be binding and has the force of the Law. Example of deeds are Deed of lease, gift, transfer, release, mortgage, assignment etc. A deed of release of mortgage may be used to discharge a legal mortgage created by deed. Factors required for validity of a deed are the deed must be signed, sealed and delivered.

Note: A deed is different from a contract of sale. A contract of sale becomes binding upon the exchange of their parts (of the document) by both parties to the contract. A deed becomes binding upon delivery without necessarily parting with the possession of the deed - once there is intention to be bound, the parties become bound.

#### **SAMPLE DRAFTS OF DEEDS**

##### **Deed of Assignment**

THIS DEED OF ASSIGNMENT is made the 6<sup>th</sup> day of December, 2020

#### **BETWEEN**

Mrs. Ashley Alobi, a trader of No. 75 Ibong Street Calabar, Cross River State  
(The Assignor) on the one part

#### **AND**

Professor Bukola Akinola, a lecturer of No. 5 Straight Road Akure, Ondo State  
(The Assignee) on the other part.

#### **BACKGROUND**

This Deed recites as follows:

1. The Assignor is the legal owner of a Certificate of Occupancy No. 49/59/2018A over a parcel of land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State.
2. The Assignor is willing to alienate her interest while the Assignee is willing to buy subject to the conditions to be stated herein.

NOW THIS DEED WITNESSES AS FOLLOWS:

In consideration of the sum of thirty five million naira (~~N~~35, 000, 000.00) now PAID to the Assignor by the Assignee (the Receipt of which the Assignor hereby acknowledges), the Assignor as a BENEFICIAL OWNER ASSIGNS ALL THAT parcel of Land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State covered by a Certificate of Occupancy No. 49/59/2010A and more rightly described in the Survey plan to be prepared by a licensed Surveyor attached to the Schedule with all rights, easements and appurtenances TO HOLD unto the Assignee as holder of a Statutory right of Occupancy for the term unexpired on the Certificate of Occupancy.

IN WITNESS OF WHICH the parties have executed this Deed in the manner below the day and year first above written.

(Or if it is an individual and a corporate body that are the parties, then it may be like this:

IN WITNESS OF WHICH the Assignor has signed this Deed and the Assignee (a company) has caused its common seal to be affixed in the manner below the day and year first above written.)

SCHEDULE

1. Survey Plan

SIGNED, SEALED AND DELIVERED

By the Assignor

.....

Mrs. Ashley Alobi

IN THE PRESENCE OF:

Name: Eyeke Kenneth Samuel

Address: No. 12 Umoji Street Abakaliki, Ebonyi State

Occupation: Lawyer

Signature:

Date: 6<sup>th</sup> December, 2020

SIGNED, SEALED AND DELIVERED

By the Assignee

.....  
Prof. Bukola Akinola

IN THE PRESENCE OF:

Name: Ayorinde Victor O.

Address: No. 8 Ahmad Road, Akure, Ondo State

Occupation: Business Man

Signature:

Date: 6<sup>th</sup> December, 2020

I CONSENT TO THIS AGREEMENT

.....  
DATED THE 16<sup>th</sup> DAY OF DECEMBER, 2020  
GOVERNOR OF ONDO STATE

**Deed of Assignment where a Party is an Illiterate/Blind Person**

THIS DEED OF ASSIGNMENT is made the 6<sup>th</sup> day of December, 2020

BETWEEN

Mrs. Ashley Alobi, a trader of No. 75 Ibong Street Calabar, Cross River State  
(The Assignor) on the one part

AND

Zenith Bank Plc. a body corporate duly incorporated under the Company and  
Allied Matters Act, CAP C20 LFN 2004 with RC 8356 and its registered office  
address at 10 Bank Street Victoria Island, Lagos State (The Assignee) on the  
other part.

BACKGROUND

This Deed recites as follows:

3. The Assignor is the legal owner of a Certificate of Occupancy No. 49/59/2018A over a parcel of land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State.
4. The Assignor is willing to alienate her interest while the Assignee is willing to buy subject to the conditions to be stated herein.

NOW THIS DEED WITNESSES AS FOLLOWS:

In consideration of the sum of thirty five million naira (N35, 000, 000.00) now PAID to the Assignor by the Assignee (the Receipt of which the Assignor hereby acknowledges), the Assignor as a BENEFICIAL OWNER ASSIGNS ALL THAT parcel of Land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State covered by a Certificate of Occupancy No. 49/59/2010A and more rightly described in the Survey plan to be prepared by a licensed Surveyor attached to the Schedule with all rights, easements and appurtenances TO HOLD unto the Assignee as holder of a Statutory right of Occupancy for the term unexpired on the Certificate of Occupancy..

IN WITNESS OF WHICH, the parties have executed this Deed in the manner below the day and year first above written.

#### SCHEDULE

##### 1. Survey Plan

SIGNED, SEALED AND DELIVERED, By the Assignor, Mrs. Ashley Alobi, being blind, the contents of this Deed having been first read and interpreted (aloud if Blind) to her From English language to Calabar Language by me Udoh Edet of No. 15 Bank Street Lagos when she appeared perfectly to have understood same before affixing her thumbprint.

BEFORE ME

.....  
MAGISTRATE/ NOTARY PUBLIC

The common seal of Zenith Bank Plc. (The Assignee) was affixed to this Deed on the 6<sup>th</sup> day of December, 2020 and was duly delivered in the presence of:

.....  
Director

.....  
Secretary

I CONSENT TO THIS AGREEMENT

\_\_\_\_\_  
DATED THE 16<sup>th</sup> DAY OF DECEMBER, 2020  
GOVERNOR OF ONDO STATE



**Deed of Assignment Where the Donee of a Power of Attorney Executes on  
Behalf of a Party to the Agreement.**

THIS DEED OF ASSIGNMENT is made the 6<sup>th</sup> day of December, 2020

**BETWEEN**

Mrs. Ashley Alobi, a trader of No. 75 Ibong Street Calabar, Cross River State  
(The Assignor) on the one part

**AND**

Zenith Bank Plc. a body corporate duly incorporated under the Company and  
Allied Matters Act, CAP C20 LFN 2004 with RC 8356 and its registered office  
address at 10 Bank Street Victoria Island, Lagos State (The Assignee) on the  
other part.

**BACKGROUND**

This Deed recites as follows:

5. The Assignor is the legal owner of a Certificate of Occupancy No. 49/59/2018A over a parcel of land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State.
6. The Assignor is willing to alienate her interest while the Assignee is willing to buy subject to the conditions to be stated herein.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

In consideration of the sum of thirty five million naira (N35, 000, 000.00) now PAID to the Assignor by the Assignee (the Receipt of which the Assignor hereby acknowledges), the Assignor as a BENEFICIAL OWNER ASSIGNS ALL THAT parcel of Land with six blocks of flat situate at No. 5 Straight Road Akure, Ondo State covered by a Certificate of Occupancy No. 49/59/2010A and more rightly described in the Survey plan to be prepared by a licensed Surveyor attached to the Schedule with all rights, easements and appurtenances TO HOLD unto the Assignee as holder of a Statutory right of Occupancy for the term unexpired on the Certificate of Occupancy.

IN WITNESS OF WHICH the parties have executed this Deed in the manner below the day and year first above written.

SCHEDULE

1. Survey Plan

SIGNED, SEALED AND DELIVERED

By the Assignor

.....

Mrs. Ashley Alobi

Through her true and lawful Attorney Mr. Eyeke Kenneth Samuel by virtue of a Power of Attorney dated the 4<sup>th</sup> day of February 2020 and registered as 10/23/2020A at the Lands Registry Cross River State.

IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

Date:

SIGNED, SEALED AND DELIVERED

By the Assignee

.....

Prof. Bukola Akionla

IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

Date:

I CONSENT TO THIS AGREEMENT

---

DATED THE 16<sup>th</sup> DAY OF DECEMBER, 2020  
GOVERNOR OF ONDO STATE

## Week 5 POWER OF ATTORNEY

A power of attorney is an instrument (a document in writing) usually but not necessarily a deed, by which the principal called “donor” appoints an agent called “donee” and confers authority on him to perform certain specified acts or kinds of acts on his behalf – *Ude v Nwara; Chime v. Chime*.<sup>1</sup>As it relates to Real Property Law, it was held by the Supreme Court in *Ude v Nwara*<sup>2</sup>that it is a document, usually but not always necessarily under seal, whereby a person seized of an estate in land (the donor) authorises another person (the donee), who is called his attorney to do in the stead of the donor anything which the donor can lawfully do, usually spelt out in the Power of Attorney.

A power of attorney may not always be in writing. It could also be given orally. A power of attorney can thus be used for many purposes, for example to manage property, to receive and sue for rent and rates, to prosecute a case in court, to transfer or convey interest in land, including complete alienation etc. Power of attorney can be conferred on more than one person; however it’s necessary to spell out each person’s function to avoid conflict. When in respect of family or community property, the head of the family/community must be present either as a sole donor or a co-donor.

### **SAMPLE DRAFT OF POWER OF ATTORNEY**

BY THIS POWER OF ATTORNEY given this \_\_\_\_\_ day of \_\_\_\_\_ 2020

I, Pastor Enoch E. Adebayo, of No 19 Glory Avenue, Redemption Camp (donor) appoint Eyeke Kenneth Samuel, a Legal Practitioner of Plot 66 Nkaliki Street, Abakaliki (donee) to be my true and lawful Attorney and in my name and on my behalf to do all or any of the following acts or things namely:

1. To manage my property at Plot 042 Redemption Estate, Lagos
2. To let/lease my property at Plot 55 Obi Okoye Street, Port Harcourt
3. To collect rent for property at Plot \_\_\_\_\_
4. To render account of the rent so collected for Plot \_\_\_\_\_ for a period of ... years
5. To sell my property at No \_\_\_\_\_
6. To sell my property at No 65 Amina Street, Kaduna

---

<sup>1</sup>(2001) 3 NWLR (Pt. 701) 527

<sup>2</sup> (1993) 2 NWLR (Pt. 278) 647

AND to do all things necessary and incidental to the matters above as I may lawfully do.

And it is declared that this Power of Attorney shall be irrevocable for a period of 11 months from the ... day ..... 2020.

IN WITNESS OF WHICH I, the said Pastor Enoch E. Adebayo, have executed this Power of Attorney the day and year first above written.

SIGNED, SEALED AND DELIVERED by General Pastor Enoch E. Adebayo  
IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

Date:

Prepared by:

Nwokeke Chidera, Esq

Zenith Chambers

No 13 Eagles Street, Abuja.

**Draft of a Power of Attorney to Execute a Sub-Lease [Deed] Irrevocable For  
Six Months**

BY THIS POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_ 2020.

I, Chief Eyeke Kenneth of No. 3 Ademola Street, Ikeja, Lagos (DONOR) APPOINT Mr. Afolabi Samuel of No 66, Mukumu Road, Kano, Kano state (DONEE) to be my true and lawful attorney and in my name and on my behalf to do all or any of the following acts:

1. To create a term of ten (10) years over my property, the block of four flats at 27, Sabon Gari, Kano, Kano state, covered by Certificate of Occupancy NO 37679 date 23/11/2013 and registered as 45/45/2098 in favour of Lawal Bashir & Sons Limited whose registered office is at 5, Nuhu Street, Kano, Kano state.

2. To commence and conclude the transaction on my behalf and on my behalf to sign all necessary documents in respect of the transaction with Lawal Bashir & Sons Limited.

3. To collect from Lawal Bashir & Sons Limited the sum of ~~N~~30 million, the sum being the agreed rent for the property for the first three years of the lease and to remit the money collected into my account less his fees, charges and commission as may be agreed between the two of us.

AND to do all and any other things and to exercise all other powers as are necessary and incidental for the purpose of carrying out of the powers created above as I may lawfully do.

AND I DECLARE that this Power of Attorney shall be irrevocable for a period of six (6) months from the date of its execution.

OR

AND I DECLARE that in consideration of the sum of ~~N~~50, 000 already paid by the donee to the donor (the receipt of which the donor acknowledges), this power of attorney shall be irrevocable.

IN WITNESS OF WHICH I, the Donor, has executed this Power of Attorney in the manner below the day and year first above written.

SIGNED, SEALED AND DELIVERED by the within named DONOR

---

CHIEF EYEKE KENNETH

IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

Date:

PREPARED BY

Nwokeke Chidera, Esq

Zenith Chambers

No 13 Eagles Street, Abuja.

**Draft by Registered Trustees**

BY THIS POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_\_ 2020,  
We the Registered Trustees of Igboamaka Progressive Union of Lagos,  
registered under the Companies and Allied Matters Act with registered office at  
15, Authur Eze Street, Ikeja, Lagos state (DONOR) APPOINT Mr. Kenneth Okwor  
of 6, Alkali Street, Onitsha, Anambra State (DONEE) to be our true and lawful  
attorney and in our name and on our behalf to do all or any of the following acts:

1. ....
2. ....
3. ....

AND to do all and any other things and to exercise all other powers as are  
necessary and incidental for the purpose of carrying out of the powers created  
above as we may lawfully do.

THE COMMON SEAL of the Registered Trustees of Igboamaka Progressive  
Union of Lagos was affixed to this Power of Attorney and it was duly delivered.

IN THE PRESENCE OF

\_\_\_\_\_  
SECRETARY/TRUSTEE

\_\_\_\_\_  
TRUSTEE

PREPARED BY:

Nwokeke Chidera, Esq  
Zenith Chambers  
No 13 Eagles Street, Abuja.

**A Draft of the Testimonium and Execution Clauses of Sub-Lease Executed  
under Power of Attorney**

IN WITNESS OF WHICH the parties have executed this DEED in the manner  
below the day and year first above written:

SIGNED, SEALED AND DELIVERED by

\_\_\_\_\_  
the lawful attorney of Chief Eyeke Kenneth, the sub-lessor by virtue of a power of  
attorney dated \_\_\_\_\_ and registered as num \_\_\_\_\_ page \_\_\_\_\_ vol \_\_\_\_\_ of the  
Lands Registry Office at \_\_\_\_\_ state.

THE COMMON SEAL of Lawal Bashir & Sons Limited has been affixed pursuant to a Resolution dated \_\_\_\_\_ and duly delivered.

IN THE PRESENCE OF

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
DIRECTOR

PREPARED BY:

Nwokeke Chidera, Esq  
Zenith Chambers  
No 13 Eagles Street, Abuja

**Power Of Attorney Executed By Husband and Wife**

BY THIS POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_\_ 2020,  
We Mr. Otache Shaibu (1) and Mrs Brisibe P. Otache (2), all of 3 Tinubu Street, Ikeja, Lagos state (DONOR) APPOINT Mr. Geoffrey-Mina Marily of 16, Sabon Gari, Kano, Kano state (DONEE) to be our true and lawful attorney and in our name and on our behalf to do all or any of the following acts:

1. ....
2. ....
3. ....

AND to do all and any other things and to exercise all other powers as are necessary and incidental for the purpose of carrying out of the powers created above as we may lawfully do.

IN WITNESS OF WHICH, We the Donors have executed this Power of Attorney in the manner below the day and year first above written.

SIGNED, SEALED AND DELIVERED by within named Donors

1. \_\_\_\_\_  
MR. OTACHE SHAIBU

2. \_\_\_\_\_  
MRS. BRISIBE P. OTACHE

**IN THE PRESENCE OF**

Name

Address

Occupation

Signature

**PREPARED BY:**

Nwokeke Chidera, Esq

Zenith Chambers

No 13 Eagles Street, Abuja

**Draft Sample of Concluding Part of Deed of Assignment Executed By  
Attorney On Behalf of Donor**

IN WITNESS OF WHICH the parties have executed this deed of assignment in the manner below on the date and year first above written

SIGNED, SEALED AND DELIVERED by

\_\_\_\_\_  
Waate Goodness Niabari,

(Lawful Attorney of Dr. Esegi Maureen Izibevie (the assignor) by virtue of Power of Attorney dated 09/09/2026 and registered as NO 3 at page 9 in volume 2044 in the Lands Registry, Yola, Adamawa State)

**IN THE PRESENCE OF:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**READ THE FOLLOWING CASES:**

1. Ibrahim Vs. Obaje (2018) All FWLR (pt. 937) 1682
2. Ezeigwe v. Awudu (2008) 11 NWLR (pt. 1097) 158
3. Chime v. Chime (1995) 6 NWLR (pt. 404) 734
4. Ude v. Nwara (1993) 2 NWLR (pt. 278) 638
5. Abina v. Farhat (1938) 14 NLR 18
6. ACB Ltd and Others v. Ihekwoaba and others (2004) FWLR (pt 194) 555



## Week 6

# CONTRACT OF SALE AND CONVEYANCING I

Sale of land is a process by which interest or rights in land are created/transferred from one person to another. The person transferring the interest is the vendor/seller and the person to whom the interest is transferred is the purchaser/buyer. In certain instances, the consent of 3<sup>rd</sup> parties is required to perfect the transfer – consent of Governor, head lessor. Conveyancing is the transfer of the total interest (legal and equitable) from one person to another.

The applicable laws in a contract of sale are: **CFRN 1999, CA 1881& 1882, PCL, Land Instruments Registration Laws** of various states, **Registration of Title Law, Stamp Duties Law**, and **Land Instrument Preparation Law**. The means of acquiring land in Nigeria are by:

1. Customary law
2. Inheritance
3. State grant – government allocation
4. Purchase e.g. an assignment
5. Gift inter vivos e.g. a deed of gift

In a contract of sale, there is a preliminary step in the transfer of title in land; the purchaser acquires equitable title only while the legal interest passes on completion stage; and then the purchaser is given time to investigate the title while being sure of his bargain. Vendor will have to prove a good title to pass (nemo dat quod non habet). Note that legal practitioners now insert a clause showing that time is of the essence (e.g. 6 months for completion) since reasonable time is too vague. All contracts for the sale of land must be evidenced in writing: **Section 4 Statute of Frauds 1677; Section 5(2) Law Reform (Contracts) Act 1961, Section 67 PCL 1959.**

### CASE STUDY & DRAFT SAMPLE OF CONTRACT OF SALE

#### Content/Parts of a Contract of Sale

1. Commencement
2. Testatum
3. Consideration
4. Receipt clause
5. Capacity of vendor
6. Words of grant
7. Parcel clause

8. Habendum
9. Terms/Covenants
10. Deposit/Part Payment
11. Testimonium
12. Schedule
13. Execution
14. Franking

**Particulars of Information to Draft a Contract of Sale**

1. Names, occupation and addresses of parties
2. Names, occupation and addresses of witnesses
3. Description of property
4. Capacity of vendor
5. Date of completion
6. Consideration

**Case Study**

Mrs Juliet Eskor of No 20 Abakpa Close, Kaduna has agreed with Mr Biyo Aku of Plot 12 FHA Lugbe, Abuja for the sale of his 4 bedroom bungalow with BQ fenced round with hollowed red bricks at No 4 Chime Avenue, Benin City for the sum of ~~N~~4, 000,000. They have agreed to execute a contract of sale with the following terms:

1. That she will take possession upon execution of the contract.
2. That in the event of default by Mrs Eskor, the interest rate shall be at the going CBN rate. That the deposit shall be 8% of the purchase sum and paid to Mr Aku's lawyers, the firm of Ntephe, Smith & Wills to hold same as a stakeholder.
3. That since the vendor has insured the property, the insurance policy will be assigned to Mrs Eskor at completion. That completion shall be on or before 31<sup>st</sup> March 2015 (3 months from the execution of the contract)
4. That Mrs Eskor will in addition purchase the 12.5KVA Top-Max generator in the property for ~~N~~1, 000,000 million, the industrial Bosch refrigerator in the kitchen for ~~N~~1, 200,000 and 6 oriental rugs for ~~N~~500, 000.
5. That Mr Aku is conveying as a beneficial owner

Draft a contract of sale of land between the parties in the case study

**Sample Draft of a Contract of Sale**

THIS AGREEMENT made the 12th day of December 2014

BETWEEN Mr Biyo Aku of Plot 12 FHA Lugbe, Abuja (the 'Vendor') of the one part

AND Mrs Juliet Eskor of No. 20 Abakpa Close, Kaduna (the 'Purchaser') of the other part.

IT IS AGREED AS FOLLOWS:

That the Vendor sells and the Purchaser buys ALL THAT PROPERTY described in the first schedule to this Agreement subject to the following terms and conditions -

1. The consideration for the sale of the property shall be the sum of ~~N~~4, 000,000 (four million) naira.
2. The Purchaser shall before the execution of this Agreement pay a deposit of the sum of ~~N~~320,000 (three hundred and twenty thousand) naira to the Vendor's solicitor, the firm of Ntephe, Smith & Wills who shall hold the deposit as stakeholder pending completion.
3. The balance of the consideration being the sum of ~~N~~3,680,000 (three million, six hundred and eighty thousand) naira shall be paid at completion, and if there is delay caused by the default of the Purchaser he shall be liable to pay interest at the prevailing Central Bank of Nigeria rate.
4. The sale includes chattels, fittings, and other items specified in the second schedule and valued at the sum of ~~N~~2,700,000 (two million and seven hundred thousand) naira. The receipt of which the vendor acknowledges.
5. The Vendor sells as Beneficial Owner PROVIDED ALWAYS and it is agreed that the covenants which are by law implied by reason of assigning as Beneficial Owner shall not be deemed to imply that the Vendor has performed covenant for repairs contained in his document of title.
6. The Purchaser acknowledges that she has inspected the property for her use and enjoyment as licensee, and if she defaults in payment of the balance of the property to the Vendor and the deposit paid under this Agreement shall be forfeited.
7. The purchaser after the execution of this Agreement shall take immediate possession of the property for her use and enjoyment as licensee, and if she defaults in the payment of the balance of the property to the Vendor, the deposit paid under this Agreement shall be forfeited.
8. It is agreed that time is of the essence in this Agreement which shall be

completed on or before 31st of March 2015 at the office of the Vendor.

9. The Vendor agrees to execute in favour of the purchaser, a Deed of Assignment and such other documents as are required to vest legal title in the purchaser and also to obtain the Governor's consent to assign the property to the purchaser.
10. The vendor having insured the property shall assign the insurance policy to the purchaser upon completion. PROVIDED THAT where reinstatement is not possible, the insurance money shall be shared between the parties *pro rata* the deposit paid by the Purchaser.
11. The Vendor indemnifies the Purchaser for any loss or damages arising from and connected with the title of the Vendor.
12. The Purchaser shall pay all costs incidental to the preparation and execution of this Agreement and any further instruments necessary and proper for carrying this agreement into effect.
13. This contract shall prevail over any previous agreement and it contains all the terms finally agreed by the parties.

#### FIRST SCHEDULE

(Description of the property)

ALL THAT property situate at No 4 Chime Avenue, Benin City which include a four bedroom bungalow with Boy's Quarters fenced round with hollowed red bricks.

#### SECOND SCHEDULE

(List of chattels and fittings sold along with property and their respective prices)

1. One 12.5KVA Top-Max generator for the price of ₦1,000,000 (one million) naira
2. One Industrial Bosch refrigerator for the price of ₦1,200,000 (one million and two hundred thousand) naira
3. Six Oriental Rugs for the price of ₦500,000 (five hundred thousand) naira

IN WITNESS OF WHICH the parties have executed this contract in the manner below the day and year first above written.

SIGNED by the within named vendor Mr Biyo Aku

#### IN THE PRESENCE OF:

Name: Mr Uko Banki

Address: No. 5 Bwari Crescent, Bwari, Abuja, FCT

Occupation: Business man

Signature:

SIGNED by the within named purchaser, Mrs Juliet Eskor

IN THE PRESENCE OF:

Name: Mr Joel Adamu

Address: No. 25 Bwari Crescent, Bwari, Abuja, FCT

Occupation: Business man

Signature:

Prepared by:

N.E. Killi Esq.

Ntephe, Smith & Wills.

No. 80 Pankshin Road Ikeja

Lagos State

## Week 7

### CONTRACT OF SALE AND CONVEYANCING II

After the exchange of contract, the vendor is required to show that he has a good root of title, that is, he is in a position to transfer what he has contracted to convey and the manner in which he discharges that duty in practice. This is because before the contract is exchanged, there is no obligation on the vendor to establish that he is the owner of the title which he intends to convey, but once the contract has been exchanged, he is under duty to do so – **MEPC Ltd v. Christian-Edwards**.

#### Abstract/Epitome of Title

Vendor deduces his title by preparing and delivering to the purchaser the following documents:

- (a) **Abstract of Title:** this is the historical summary of all recorded instruments and proceedings affecting title to the property up until the present vendor.
- (b) **Epitome of Title:** this is a chronological list of the documents which prove title to the land usually to be accompanied by photocopies of the documents.

Both the abstract and epitome of title must show a good root of title.

#### **Contents of an Abstract of Title**

- (a) Date of transaction or proceeding
- (b) Nature of event
- (c) Parties to the transaction
- (d) Whether original or photocopy
- (e) Number of documents available
- (f) Whether original document will be handed over

#### Sample Draft of an Abstract of Title

Date of transaction	Nature of event	Parties to the transaction	Whether original or photocopy	Number of documents available	Whether original document will be handed over at completion

1902	Settlement	Sallau family	Nil	Nil	Nil
1956	Assignment	Sallau Zainb and Amaebi Osaribie	Original	1	YES
1975	Mortgage	Amaebi Osaribie and Zenith Bank	Original	1	NO

**Note** that the abstract of title should be in a letter head and should be dated and signed

**Contents of an Epitome of Title**

- (a) Date of document
- (b) Nature of transaction
- (c) Parties to the transaction
- (d) Whether original, CTC or photocopy available
- (e) Number of documents available
- (f) Whether original document will be handed over at completion

**Sample Draft of an Epitome of Title**

Date of document	Nature of transaction	Parties to the transaction	Whether original or photocopy	Number of documents available	Whether original document will be handed over at completion
1956	Assignment	Amaebi Osaribie and John Adamu	Original	1	YES
1975	Mortgage	John	Original	1	NO

		Adamu and First Bank			
--	--	-------------------------	--	--	--

**Note** that the epitome of title should be in a letter head and should be dated and signed

**Sample Draft of Cover Letter**

**EYEKE KENNETH & ASSOCIATES  
LEGAL PRACTITIONERS AND SOLICITORS**

NO 15, Deeper life Road, Abakaliki

Email: [Eyekekennethsamuek@gmail.com](mailto:Eyekekennethsamuek@gmail.com) 08102959631

Our Ref: \_\_\_\_\_

Your Ref: \_\_\_\_\_

Date:

To:

Mohammed Sani Bala  
No. 5 Balarabe Crescent,  
Sabon Gari,  
Kano.

Dear Sir,

**REPORT OF SEARCH CONDUCTED ON PROPERTY REGISTERED AS  
NUMBER 45 ON PAGE 45 IN VOLUME 2908 (45/45/2908) AT THE LANDS'  
REGISTRY OFFICE, KANO STATE**

Kindly refer to the above subject matter and find attached the reports of the searches conducted pursuant to your instructions.

Our bill of charges is also attached for your kind and prompt consideration.

Attached to this letter are the following:

1. Search report
2. Bill of charges

Thank you,

Yours faithfully

\_\_\_\_\_  
Nwokeke Chidera Esq  
For: Eyeke Kenneth & Associates  
Solicitor



**Sample Draft on Search Report**

EYEKE KENNETH & ASSOCIATES  
LEGAL PRACTITIONERS AND SOLICITORS

NO 15, Deeper life Road, Abakaliki

Email: [Eyekekennethsamuek@gmail.com](mailto:Eyekekennethsamuek@gmail.com)

Phone: 08102959631

Our Ref: \_\_\_\_\_

Your Ref: \_\_\_\_\_

Date

**REPORT OF SEARCH CONDUCTED ON PROPERTY REGISTERED AS  
NUMBER 45 ON PAGE 45 IN VOLUME 2908 (45/45/2908) AT THE LANDS'  
REGISTRY OFFICE, KANO STATE**

**Date of Search:** 7/12/2020

**Place of Search:** Lands Registry office, Kano, Kano State

**Name of Registered Owner:** Mohammed Sani Bala

**Particulars of the Property:** The property is registered as number 45 on page 45 in Volume 2908 at the Lands Registry, Kano

**Description of the Property:** The property is a five bedroom bungalow with a boys quarters located at No 3, Ijesha Close Kano and is covered by Certificate of Occupancy numbered 1234529hl

**Nature of Title/Interest:** Statutory Right of Occupancy

**Encumbrances:** There is an undischarged mortgage on the property.

The mortgage is registered as number 65 at page 87 in volume 8763 at the lands registry Kano State.

**Comments:** The title to the property is sound, but the property is encumbered by the undischarged mortgage. Purchaser is therefore advised to stay action on the contract for sale until the said mortgage is completely discharged.

---

Kenneth EyekeEsq.  
For: Eyeke Kenneth& Associates  
Solicitor

*Note That Where More Than One Search Report Is Involved, Then A Cover Letter Is Drafted And The Search Reports Are Attached Including The Bill Of Charges. See Sample Draft:*

**Sample Draft of Search Report Issued by AGIS**

**FEDERAL CAPITAL TERRITORY ADMINISTRATION ABUJA  
GEOGRAPHIC INFORMATION SYSTEMS (AGIS)**

*(AGIS LOGO)*

**LEGAL SEARCH REPORT**

**Date: 7/1/2020**

To: Muhammed Sani of No 12 Buhari Close, Maitama, Abuja

Dear Sir,

Below is the status report to title over which you applied a search.

**A. Particulars of Title for: Dr Joel Nancwat**

<b>Plot Number:</b> 23C	<b>Date of C of O:</b> 23/6/2010
<b>District:</b> Area 1	<b>Plot Size (m2):</b> 1400 <sup>2</sup>
<b>Land Use:</b> Lease	<b>Rent per Annum:</b> N10, 000
<b>C of O Number:</b> No. 59/59/2010A	<b>Outstanding Rent Dues:</b> Nil
<b>Registration Number:</b> 45	<b>Page:</b> 45 <b>Volume:</b> 2910

## B. Encumbrances

<b>Action:</b> Subsisting Lease with CCTCC Industries Ltd	<b>Date:</b> 1/1/2016
	<b>Number:</b> 234 <b>Page:</b> 35 <b>Volume:</b> 1002

## C. Other Details

<b>Present Status:</b> The title to the property is sound.
<b>Other Comment:</b> Purchaser is therefore advised to proceed action on the contract for sale

Yours faithfully,

.....  
For: Deeds Registrar (AGIS)  
Adviser (AGIS)

.....  
Certified by Company Sec/Legal

**NOTE:** Where the purchaser fails to investigate title, he buys subject to any defect in title.

### **SAMPLE DRAFT OF DEED OF ASSIGNMENT**

THIS DEED OF ASSIGNMENT is made the 6<sup>th</sup> day of December, 2020  
BETWEEN

Dr Kenneth Okwor, a Legal Practitioner, of No. 42 Udoaku Street, Ibadan, Oyo State (The Assignor) on the one part

AND

Mr Killi Nancwat, a Legal Practitioner, of No. 22 Bank Road, Ikoyi, Lagos State (The Assignee) on the other part.

#### BACKGROUND

This Deed recites as follows:

1. The Assignor is the legal owner of a Certificate of Occupancy No. 29/29/2014A over a parcel of land with six blocks of flat situate at Plot 45 Gadzama Road, Area 5, Abuja.
2. The Assignor is willing to alienate his interest while the Assignee is willing to buy subject to the conditions to be stated herein.

NOW THIS DEED WITNESSES AS FOLLOWS:

In consideration of the sum of thirty five million naira (~~N~~35, 000, 000.00) now PAID to the Assignor by the Assignee (the Receipt of which the Assignor hereby acknowledges), the Assignor as a BENEFICIAL OWNER ASSIGNS ALL THAT parcel of Land with six blocks of flat situate at Plot 45 Gadzama Road, Area 5, Abuja covered by a Certificate of Occupancy No. 29/29/2014A and more rightly described in the Survey plan to be prepared by a licensed Surveyor attached to the Schedule with all rights, easements and appurtenances TO HOLD unto the Assignee as holder of a Statutory right of Occupancy for the term unexpired on the Certificate of Occupancy.

IN WITNESS OF WHICH the parties have executed this Deed in the manner below the day and year first above written.

SCHEDULE

1. Survey Plan

SIGNED, SEALED AND DELIVERED

By the Assignor

.....

Dr Kenneth Okwor

IN THE PRESENCE OF:

Name

Address:

Occupation:

Signature:

Date:

SIGNED, SEALED AND DELIVERED

By the Assignee

.....

Mr Killi Nancwat

**IN THE PRESENCE OF:**

Name

Address:

Occupation:

Signature:

Date

**Prepared by:**

Eyeke Kenneth Esq

Eagles Chambers

I CONSENT TO THIS AGREEMENT

.....

DATED THE ..... DAY OF ....., 2020

MINISTER OF THE FEDERAL CAPITAL TERRITORY ABUJA

## **Week 8**

### **LAND REGISTRATION UNDER LAGOS STATE LANDS REGISTRATION LAW**

The Lagos Lands Registration Law 2015 consolidated the numerous laws on lands registration. It repealed the Registered Land Law of Lagos 2003; the Registration of Titles Law and Registration of Titles (Appeals) Rules 2003; the Land Instrument Registration Law 2003; and the Electronic Documents Management System Law 2007. The registration districts that were hitherto stated under the RTL are still applicable under the LRL 2015. The registration districts are the areas covered by the LRL. The registration districts are:

1. Lagos Island
2. Obalende
3. Victoria Island
4. Ebutte-Metta
5. Mushin (Part)
6. Yaba
7. Badagry
8. Ikoyi
9. Gbagada
10. Apapa
11. Somolu
12. Surulere

#### **The features of the Land Registration Law**

1. Establishment of the Land Information Management System
2. Requirement for the registration of every interest/title in land
3. Establishment of offences and punishment
4. Establishment of the Land Registry where all registrations are made

**Sample Drafts**  
**Registration of Title to Land (Form 1)**

**APPLICATION FORM FOR REGISTRATION OF TITLED LAND**

District.....  
Title  
No.....  
Address of Property.....  
Assignee's Name.....  
Residential Address.....  
E-mail/Website Address.....  
Assignor's Name.....  
Residential Address.....  
Type of Registration.....  
Document Submitted by.....  
Office Address.....  
Date of Submission.....

\_\_\_\_\_  
Receiving Officer  
(Official Stamp & Seal)

**Registration of Land Covered by Deeds/Certificate of Occupancy (Form 2)**

**APPLICATION FORM FOR REGISTRATION OF LAND COVERED BY  
DEEDS/CERTIFICATES OF OCCUPANCY**

District.....  
Registered Instrument No.....  
Address of Property.....  
Assignee's Name.....  
Residential Address.....  
E-mail/Website address.....  
Assignor's Name.....  
Residential Address.....  
E-mail/Website Address.....

Type of Registration.....  
Document Submitted by.....  
Office Address.....  
Date of Submission.....

\_\_\_\_\_  
*Receiving Officer*  
*(Official stamp & date)*

**Application to Conduct a Search (Form 3)**  
**APPLICATION FOR CONDUCTING SEARCHES**

1. Search conducted at.....
2. Registration no. of property.....
3. Description of property.....
4. Name of proprietor.....
5. Search conducted by.....  
Name.....  
Address.....  
E-mail/website.....  
Phone.....Fax No.....
6. Reasons for search.....
7. Date search conducted.....
8. Payment of fees for search.....
9. Payment of fees for printing.....

**Electronic Search Report (Form 4)**  
**ELECTRONIC SEARCH REPORT**

1. Document searched.....
2. Date of search.....
3. Description of property.....
4. Grantor.....
5. Grantee.....
6. Term.....
7. Area of land.....
8. History of Land.....
9. Subsequent Transaction/Encumbrance.....
10. Remarks.....



## **Week 9**

### **LEASE I**

A lease is a document that creates an interest in a property or land for a fixed term of years usually (but not necessarily) in consideration of the payment of rent. The interest created is called a term of years, but it is also often referred to as a lease or a leasehold interest. Leases are used to describe long-term grants. A lease is both a contract and an estate (an interest in land).

In a lease, the consideration flowing from the lessor (landlord) to the lessee (tenant) is the demised premises. The consideration paid by the lessee is the rent and the observance of any condition or covenant in the lease. A lease is a grant of land by the lessor to the lessee for an interest less than that of the grantor. Grantor is the transferor of an interest in property to the grantee.

It should however be noted that title to the land is not conveyed, only the use and occupation of the property is given out; the property reverts back to the lessor after the expiration of the term. The reversion is any future interest left in the grantor or his successor. The owner of the property who makes the grant is the lessor or landlord/landlady, whilst the person who takes over the exclusive use of the demise is the lessee or tenant.

#### **ETHICAL ISSUES**

1. A lawyer should not fail to reflect instructions given to him by his client
2. A lawyer has a duty to show competence when drafting the lease agreement - **Rule 16 RPC.**
3. The document should correctly and fully reflect the wishes of the party with special reference to the covenants.
4. Duty not mix the rent paid to the client with solicitors money or not spend such fund belonging to the client - **Rule 23(2) RPC.**
5. Duty not to frank a document not prepared by the Solicitor - **Rule 3(2) RPC and Section 10 LPA.**
6. Duty not to aid a non-lawyer in the unauthorised practice of law - **Rule 3(1) (a) RPC.**

#### **CASES ON LEASES**

##### **Bosah v Oji (2002) 6 NWLR (Pt. 762) 137**

The plaintiff and defendant came to an agreement in writing for a lease of a building and clause 7 of the agreement stated that "The term of sixty years will be counted from the time when the lessee obtains the Certificate of Occupancy for

the building on the un-built area in front if he builds or if he chooses to convert it into a commercial use from the time he begins to make use of it." The defendant shall pay a sum of 980 pounds if added to 100 pounds already paid will represent three years rent paid in advance. Supreme CT: for a lease to be valid, the term of lease and date of commencement must be certain or capable of being ascertainable. In order to have a valid agreement, there must be in express terms or written so that the commencement can be inferred. SC held there was a certain term of 60 years and the date of commencement could be inferred from the contingency of getting the certificate of occupancy i.e. reference to the happening of an event that will occur.

**Okechukwu v. Onuorah(2000) 12 SCNJ 146**

A deed of lease made on 17<sup>th</sup> July 1972, appellant demised a piece of land to the defendant. One of the covenants: "for a term of 50 years from the day the lessee is issued with a certificate of occupancy". Issue of commencement date in this case. Supreme Court held for the defendant. Certificate of occupancy was a condition precedent to moving into the house (to inspect the house by the Onitsha Local Government) not the same as under the Land Use Act. Where the date for commencement for the lease is unspecified but stated in reference to a contingency, until the contingency happens the lease is unenforceable but once the contingency happens, the lease becomes enforceable.

**Tejumola & Sons Ltd v U.B.A (1988) 2 NWLR (Pt. 79) 662**

The defendant (UBA) made a conditional offer to the plaintiff to grant him a lease. They entered into negotiations and the date of commencement was to be made that physical possession would be taken, Plaintiff suggested a date for commencement for UBA to take possession. UBA stated that defendant should effect some repairs on the property which he did. Negotiations broke down. Correspondence by UBA was headed subject to contract so a mere invitation to treat and so no contract was made. (NB: if terms have already been agreed and concluded and the letter is still termed subject to contract, Supreme CT held that this is cosmetic and the Ct will not accept that there is no contract). In this case, no terms were agreed upon so no valid contract. UBA did not agree to physical possession to be the date of commencement. A commencement date is enforceable even though made subject to a contingency, if the contingency actually happened. In this case, the contingency never happened, therefore there was no enforceable lease.

## Week 10 LEASES II

**COVENANTS IN LEASES:** These are agreements creating obligations usually in a deed. Promises and pledges made by parties to a lease. Either party can make promises that something is done, shall be done, shall not be done or speaks the truth about certain facts. In respect to the nature of a covenant, it can either be positive or restrictive. Positive covenants stipulate the performance of an act or payment of money, while Negative/Restrictive covenants forbids doing of an act or acts. Covenants are drafted in leases using good precedent books.

### **Draft of Rent Clause (Usually called Reddendum)**

*The Lessee covenants with the Lessor to pay the rent reserved in the lease at the time and in the manner prescribed.*

*Or*

*The reserved rent shall be payable in advance and if not paid within 21 days after one month notice issued by the Lessor, it shall be lawful for the Lessor to re-enter upon the premises and the lease shall cease.*

### **Draft of Covenant to Pay Rate and Charges**

*The Lessor/Lessee covenants to pay all rates, taxes, charges, duties, assessments and other outgoings which may fall due and payable now or subsequently in respect of the demised premises or on the Lessor or Lessee.*

### **Draft of Covenant on Use**

*The Lessee covenants to make use of the premises and to permit the premises to be used for the purpose of residence/commerce/agriculture only.*

### **Draft of Covenant to Repair**

*The Lessee covenants to keep in tenantable repair all the inside fixtures, fittings and glasses on the demised premises and not to remove from it any of the furniture and effects, but to keep them in their present state of repair and condition (reasonable wear and tear excepted).*

*Or*

*The Lessee covenants to internally redecorate the demised premises including all additions to it and to deliver up the premises in the same condition at the determination of the lease.*

### **Draft of Alterations**

*The tenant covenants not to make any addition or alteration to the premises without the written consent of the Landlord, such consent not to be unreasonably withheld and to restore the property to its original position at the end of the term of the lease at his own expense.*

### **Draft of Covenant to Insure**

*“The Lessee covenants to immediately insure the premises at all times during the term against loss or damage by fire in the sum of N10, 000,000 (ten million naira) in the NICON Insurance Co. Ltd (RC No 9999) insurance office, in the name of the Lessor (or in the joint names of the Lessor & Lessee), and that in case the premises is or any part of it is damaged or destroyed, then all moneys received in respect of the insurance shall be laid out in repairing or otherwise reinstating the premises in a good and substantial manner.”*

### **Draft of Covenant against Assignment and Sub-Letting**

*“The Lessee covenants not to assign, sublet or otherwise part with possession of the demised premises or any part of it.”*

*or*

*“The Lessee covenants not to sublet, assign or otherwise part with possession of the demised premises or any part of it without first obtaining the written consent of the Lessor; such consent not to be unreasonably withheld in the case of responsible or respectable person.”*

## **PROVISOS IN A LEASE**

**Option to Renew/Covenant for Renewal of a Lease:** This is a lessor’s covenant made to the lessee that at the expiration of the lease and a new lease will be created for similar or reviewed terms, rents and covenants (as agreed upon by both parties based on certain conditions e.g. tenant complied with covenants in the lease).

### **Draft of perpetually renewable lease –**

*“The Lessor shall on the written request of the lessee made at least three months before the expiration of the current term, grant to the lessee the lease of the demised premises for another term of five years from the expiration of the current term on the same terms and conditions as this present lease.”*

The solicitor can avoid a perpetually renewable lease by stating that the terms of the new lease are created by reason of the option to renew and expressly excluding the option to renew in the subsisting lease agreement. For instance:

*“The Lessor/Landlord shall on the written request of the lessee/tenant made three (3) months before the expiration of the term hereby created, grant to the lessee/tenant the Lease of the demised*

*premises for another term of three (3) years at a rent to be agreed and containing all the terms and conditions of this Lease/Agreement except the option to renew and the rent clause’.*

Or

*“The Lessor shall on the written request of the Lessee made at least three months before the expiration of the current term, grant to the Lessee the lease of the demised premises for another term of five years from the expiration of the current term on the same terms and conditions as the present lease, except rent and this option to renew; Provided, however, that Lessee shall have materially observed all its obligations under the present lease.”*

**Option to Purchase Reversion:** This is Assignable - **Re Buttons Lease**. The tenant may enforce option by action for specific performance and may even sue to set aside the sale of the property to another person - **Owosho v. Dada**. An offer by the landlord to the tenant for the sale of the premises on fulfilment of certain conditions (payment of rent and compliance with other covenants).

**Proviso for Forfeiture and Re-Entry:** This may lead to the suspension or termination of the lease for non-payment of rent or non-observance of covenants of the lease. It operates to bring a lease to an end earlier than it would otherwise terminate. The law presumes against forfeiture of leases except where the clause is expressly stated.

**Draft**

*PROVIDED ALWAYS that if the tenant commits a breach of covenants or conditions in the lease or becomes bankrupt, it shall be lawful for the lessor to re-enter the premise and immediately the term shall absolutely cease and determine.*

**Abatement of Rent:** Abatement must be provided for because generally, frustration is inapplicable in leases. At Common Law, if rent was paid over a premises and the premises is destroyed or anything prevents its use, the rent will run till it expires and the tenancy will be exhausted even if the tenant could not use the premises.

**Draft**

*“The Lessor covenants with the Lessee that the rent shall not continue to run in a case of an act of God where the demised premise is destroyed or anything happens preventing the use of the premises.”*

### FORMAL PARTS OF LEASE

1. **Commencement:** *THIS LEASE* or *THIS DEED OF LEASE*. Where it is a simple tenancy, it is commended thus *THIS TENANCY AGREEMENT* or *THIS AGREEMENT*.
2. **Date:** *Made this 4<sup>th</sup> Day of December, 2020*. The date is the day the lease is made. Where it is by deed, the important date is the date of delivery of the lease. In tenancy agreement, the important date is the date of execution.
3. **Parties**
  - (a) **Individuals:** *BETWEEN Edward Evbuomwan, a lawyer, of No.5 Chess Club Street, Benin, Edo State the lessor/landlord of the first part AND Mrs Afinjuomo Oluwafunmilayo, a banker, of No. 5 Simi Crescent, Ikeja, Lagos State, the lessee or tenant of the second part.*
  - (b) **Company:** *Musa & Sons Limited, a company registered under CAMA with RC No: 85840 and registered office at No 14 Democracy Estate, Ikoyi Estate, Lagos State (the lessor) of one part or (the lessee) of the other part.*
  - (c) **Attorney:** *BETWEEN Mr Umunnakwe Michaelangelo of No. 22 Ibori Street Ikeja Lagos (through her true and Lawful Attorney Eyeke Kenneth of Area 10 Owerri Imo Lagos) (The Assignor) on the one part*
4. **Recitals:** This is not an essential part of a lease except
  - (a) A sub-lease
  - (b) Surety or guarantor
  - (c) There is a Power of Attorney
5. **Testatum:** *WHEREBY the lessor agrees to demise to the lessee or WHEREBY/BY WHICH the Landlord gives and the Tenant takes*. The Lessor demises to the Lessee. The testatum contains the operative words and parcel clause. The operative words show what the parties have agreed to do. The parcel clause describes the subject matter of the lease.
6. **Parcel Clause:** *ALL THAT property (describe the property)*
7. **Habendum:** *TO HOLD UNTO the lessee for the terms of 10 years commencing on the 1<sup>st</sup> May, 2020 and ending on the 30<sup>th</sup> April, 2030*. Note that the phrase “commencing on” includes the date named in computation while “commencing from excludes the named date.”The habendum specifies the quantity, commencement of the term of a lease.
8. **Reddendum:** *YIELDING AND PAYING yearly during the term the rent of N20, 000 clear of all deductions by yearly payments in advance, the first of such payment to be made on the 24<sup>th</sup> day of May, 2020*. The reddendum

defines the amount of rent payable by the lessee, the person to whom the rent is payable; as well as mode of payment usually in advance. Generally, rent is payable in arrears. Thus, it must be clearly stated if it is intended to be payable in advance.

**9. Covenants:** (Treated above)

**10. Provisos:** *'Provide That'*

**11. Testimonium:** *IN WITNESS OF WHICH the parties have executed this lease in the manner below the day and year first above written.* This clause connects the parties with the agreement

**12. Schedule:** It should be inserted where necessary. It serves the following functions -

- (a) To describe the property in details.
- (b) The parts of the property to be repaired by each party
- (c) Rent review formula

**13. Execution**

**(a) Individuals:** *SIGNED, SEALED AND DELIVERED by the within named lessor or lessee.* This provides for the signature, mark or seal of the parties to the lease. In Tenancy Agreement -*SIGNED by landlord or tenant.*

**(b) Company:** *The COMMON SEAL of Musa & Sons Limited is affixed to this lease and the lease duly delivered in the presence of DIRECTOR and SECRETARY.*

**(c) Illiterate or Foreigner (that does not understand English):** *SIGNED,SEALED AND DELIVERED by the within named lessor, the contents having been first read and interpreted to him in Igbo Language by me(name of interpreter and address) when he appeared perfectly to understand it before Affixing his thumb print, mark/signature.* For blind say read aloud; For deaf and dumb add *"the contents of this lease having been first been read over to him by sign language by\_\_\_\_\_a sign language instructor when he appeared to perfectly understand it before affixed his thumb print/mark)."*

**(d) Attorney:** *SIGNED, SEALED AND DELIVERED by The lawful attorney of the lessor by virtue of a power of attorney dated \_\_\_\_\_and registered as No\_\_\_\_\_ page \_\_\_\_\_Vol\_\_\_\_\_of the (State) Land Registry.*

**14. Attestation:** This contains the witnesses to the lease and their signature.

*IN THE PRESENCE OF:*

*Name*

*Address:*  
*Occupation*  
*Signature*

### **PERFECTION OF A LEASE**

1. Obtain the Governor's consent, which is endorsed on the Deed of sub Lease. This is not needed for a tenancy agreement or a normal lease.
2. Stamp the Deed of Lease at ad valorem rate
3. Registration at the Lands Registry of the State where the Land is situate

### **EXPRESSIONS RELATING TO TIME**

1. **On** - plus the date mentioned; start counting from the day mentioned.
2. **From** - minus mentioned date; exclude the mentioned date.
3. **After** - Exclude the day mentioned
4. **Till and Until** -not clear if mention date should be included or excluded
5. **As soon as possible/within a reasonable time:** these expressions should be avoided, and once a quit notice is badly drafted, it is void for defective computation of time.

**NB: In computation, one does not have half of a day, the day starts from 12am**

### **SAMPLE DRAFTS**

#### **Deed of Sub-Lease (Illiterate and Company)**

THIS DEED OF SUB-LEASE made this 4<sup>th</sup> day of December, 2020  
BETWEEN Mr. *Edward Evbuomwan*, a lawyer, of No.5 Chess Club Street, Benin, Edo State (The Sub-Lessor) of the first part  
AND *Musa & Sons Limited*, a company duly incorporated under the Companies and Allied Matters Act 2004 with its registered office address at No. No 14 Democracy Estate, Ikoyi Estate, Lagos State (The Sub-lessee) of the second part.

#### **RECITALS**

1. The sub-lessor is the lessee of the property owned by *Edward Evbuomwan*, the beneficial owner of a Duplex with Boys Quarters situate at No. 8 Ofuru Estate, Benin Edo State, by virtue of a Deed of assignment dated 21st June 2005 registered as No. 4051 pages 50 in volume 1350 at the Lands registry



of Edo State.

2. The sub-lessor has the consent of the lessor/owner to enter into the transaction
3. The sub Lessor desires to lease the property to the Lessee for a term of five years.

Or.....

If it is pursuant to a certificate of occupancy

1. The sub-lessor is the beneficial owner of the property a Duplex with Boys Quarters situate at No. 8 Ofuru Estate, Benin Edo State, by virtue of a certificate of occupancy dated 21st June 2005 registered as No. 4051 pages 50 in volume 1350 with the Lands registry of Edo State
2. The consent of the Governor has been obtained
3. The sub Lessor desires to lease the property to the Lessee for a term of ten years.

NOW THIS SUB-LEASE WITNESSES AS FOLLOWS:

1. In CONSIDERATION of the rent and covenants reserved in this Deed, the Sub-Lessor AS BENEFICIAL OWNER demises to the Sub-Lessee ALL THAT Duplex with Boys Quarters situate at No. 8 Ofuru Estate, Benin Edo State covered by a certificate of Statutory Occupancy registered as 45/45/2345 and rightly described in the survey plan attached to the 1<sup>st</sup> Schedule referred to as 'The demised Premises'.
2. TO HOLD UNTO the Sub-Lessee for a term of ten (10) years commencing on the 1<sup>st</sup> day of April 2020 and to expire on the 31<sup>st</sup> day of March 2030, subject to any proviso for determination contained in this Sub-Lease.
3. PAYING the sum of four million naira only per annum (N4, 000, 000.00) (the receipt of which the Sub-Lessor hereby acknowledges) as rent for the term granted, payable in advance the first of such payment to be made on the 2<sup>nd</sup> day of April 2020.

(The covenants are to be here as part of the miscellaneous part of this sub-lease)

PROVIDED ALWAYS THAT in breach of any of the covenants contained in this Deed by the Sub-lessee, the Sub-Lessor may forfeit the sub-lease by re-entering the premises or any part of it and the term granted in this Deed shall come to an end immediately.

OPTION TO RENEW:

The Sub-Lessor shall on the written request of the Sub-Lessee made three (3)

months before the expiration of the term hereby created, grant to the Sub-Lessee the sublease of the demised premises for another term of three (3) years at a rent to be agreed and containing all the terms and conditions of this Deed except the option to renew and the rent clause.

IN WITNESS OF WHICH the parties have executed this sublease in the manner below the day and year first above written.

1<sup>st</sup> Schedule

SIGNED, SEALED AND DELIVERED

By the Sub-Lessor

.....

Mr. *Edward Evbuomwan*

The contents of the foregoing having been first read and explained to her from English Language to Edo Language by me Akioya Ofuru of No. 23 Akafu Street, Benin, Edo State when he appeared perfectly to have understood same before making her thumb impression above.

BEFORE ME

.....

MAGISTRATE/NOTARY PUBLIC/COMMISSIONER OF OATHS

The common seal of the Sub-Lessee is affixed on this Deed the 24<sup>th</sup> day of March, 2020 and duly delivered in the presence of:

.....

Director

.....

Secretary

I CONSENT TO THIS SUB-LEASE

DATED THE 30<sup>TH</sup> DAY OF MARCH 2020

EXECUTIVE GOVERNOR EDO STATE

**Tenancy Agreement**

THIS TENANCY AGREEMENT made the 4<sup>th</sup> Day of December, 2020.

BETWEEN

MR. EMEREONYE GODSPOWER of No. 4 Rotimi Crescent, Port Harcourt, River State (Landlord) of the one part

AND

MRS. LOVETH BAKO of No. 55 Buhari Close Wuse 2, Abuja (Tenant) of the other part.

IT IS AGREED AS FOLLOWS:

The landlord demises to the tenant ALL THAT premises together with the Boys Quarters and known as No. 8 Rotimi Crescent, Port Harcourt, River State, TO HOLD the same to the tenant on the 1st day of January, 2021 for the term of two years to end on 31<sup>th</sup> December, 2022 .

PAYING the yearly rent of N1, 000,000(One Million Naira only) clearly of all deductions by yearly payment in Advance; the first of such payment to be made on 22<sup>nd</sup> Day of December, 2020.

The rent is subject to review in accordance with the provisions contained in the Schedule to this lease.

THE TENANT COVENANTS WITH THE LANDLORD AS FOLLOWS:

1. To pay rent reserved in the lease on the day mentioned.
2. Pay all rates, taxes, assessment, charges and outgoings or as may be imposed later whether payable by Landlord or not.
3. Not to assign, sublet, or otherwise part with possession the property or any part without the consent of the Landlord in writing first had and obtained such consent not to be unreasonably withheld for a respectable and responsible person.
4. Not to make any alteration to the property except for installation of A-C and Burglary proof without the consent of the Lessor and to restore the property to its original position at the end.
5. To keep the premises in a good state of repairs, fair wear and tear excepted and to deliver up possession of the property at the end of the lease term.
6. To use the property for residential purposes only.

THE LANDLORD COVENANTS WITH THE TENANT AS FOLLOWS:

1. The Lessee shall have a quiet possession of the property free from

interference by the landlord or his agents.

2. To insure the property against fire with NICON Insurance Co. Ltd(RC NO 9769 )to the tune of N10,000,000 (ten million naira) to be paid by the tenant and in the event of the property being damaged, all money received in respect of the insurance shall be used to reinstate the property. If reinstatement is not possible, the sum will be shared PRO RATA between the parties.
3. Upon the Lessee paying the rent and observing all the terms and covenant in the Lease upon 3 months before the expiration of the tenancy the Landlord shall (may) grant him a further term of two years at a rent and terms to be agreed by the parties.
4. The Lessor covenants with the Lessee that the rent shall not continue to run in a case of an act of God where the demised premise is destroyed or anything happens preventing the use of the premises.

PROVIDED ALWAYS that if the rent reserved or any part of it shall be unpaid for twenty eight (28) days after becoming payable and demand made for it or if the lessee commits a breach of the covenants in the Lease or the Lessee become bankrupt, it shall be lawful for the Lessor to re-enter the premises and immediately the term shall absolutely cease and determine.

IN WITNESS OF WHICH the parties have executed this agreement in the manner below the day and year first above written.

SIGNED

By the within named landlord

.....  
Mr. Emereonye Godspower

**IN THE PRESENCE OF:**

Name:

Address:

Occupation:

Signature:

SIGNED by the within named tenant

.....

Mrs. Loveth Bako

IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

NB: Ensure to learn execution clause for family land, illiterate, blind, attorney  
(where there is a power of attorney), company

## **Week 11**

### **MORTGAGES & CHARGES I**

A Mortgage is a legal relationship or security transaction by which rights in land are transferred to secure payment of money or the discharge of some other obligations subject to redemption upon repayment of the loan or discharge of the obligation – ***Suberu v. AISL Ltd, Santley v. Wilde***. It is an agreement which may be expressed by deed between persons in which a borrower of a sum of money puts up his property as collateral for the money given with the understanding that the property will be conveyed back to him upon the repayment of the money and any interest on it. Mortgage is a security created by contract for the payment of a debt already due or to become due - ***Olowu v. Millers Bros Limited***.

#### **Sample Draft of Search Report**

##### **Specimen Search Report**

From: [Person making the report]:

To: [Person who requested or needs the report]:

1. Location of the Property: No. 12 Sweet Mother Street, Ikom, Cross River State
2. Title No. of the Property: No. 6532 dated 2/06/2011 and registered as 12/12/6532 at the Lands Registry Calabar, Cross River State.
3. Date of Search: 15<sup>th</sup> December, 2020
4. Place of Search: Lands Registry Calabar, Cross River State
5. Name of Registered Owner: Chief. Eyeke Kenneth Samuel
6. Nature of Interest of Registered Owner: Statutory Right of Occupancy
7. Existing Encumbrance(s) on the Property: Nil
8. Observations and Comments by the Solicitor: The property is a good security and it is unencumbered.
9. Any other comment:

Note: write a covering letter for the search report.

**Sample Draft of Search Report**

**EYEKE KENNETH & CO  
BARRISTERS AND SOLICITORS  
NO. 15 LOKOJA STREET, IKEJA  
LAGOS STATE**

OUR REF: \_\_\_\_\_ YOUR REF: \_\_\_\_\_

DATE: \_\_\_\_\_

The Bank Manager  
Zenith Bank Plc No. 23 Marina Lagos State

Dear Sir,

**SEARCH REPORT CONDUCTED ON PROPERTY REGISTERED AS  
12/12/6532 AT THE LANDS REGISTRY IBADAN, OYO STATE**

Sequel to your briefing our Firm to conduct a search on the above property, we are pleased to inform you that the search has been carried out and a copy of the Search report is attached below:

1. **DATE OF SEARCH:** 6<sup>th</sup> January, 2021
2. **PLACE OF SEARCH:** Lands Registry Ibadan Oyo State
3. **NAME OF REGISTERED OWNER:** Chief Mrs. Remi Yakossi
4. **NAME OF BORROWER:** Chief Nosa Okon of No. 16 Makurdi Close Kwara State.
5. **DESCRIPTION OF THE PROPERTY:** No. 12 Croker Street Oyo State.
6. **NATURE OF INTEREST:** Right of Occupancy No. 6532 dated 12/07/2004 registered as 12/12/6532 at the Lands Registry Ibadan Oyo State.
7. **ENCUMBRANCES:** Nil
8. **COMMENTS/OBSERVATIONS:** The property is a good security and it is unencumbered

Yours faithfully,

---

Eyeke Kenneth Samuel, Esq.  
(Principal Partner)  
For: Eyeke Kenneth & Co.  
External Solicitors to Zenith Bank Plc

**Specimen of Electronic Search Report**

1. Document Search:
2. Date of Search:
3. Description of Property:
4. Grantor:
5. Grantee:
6. Term:
7. Area of Land:
8. History of Land:
9. Subsequent Transaction/Encumbrance:
10. Remarks:



## Week 12

### MORTGAGES AND CHARGES II

Covenants in mortgages are specific contractual agreements (terms) between the parties reached to regulate the relationship between the mortgagor and mortgagee in a particular mortgage transaction. The eight covenants are: Covenant to pay the mortgage sum and interest at a fixed date; covenant to insure against risk; covenant to consolidate; observance and performance of covenant in head lease; covenant to repair; covenant to create lease and sublease; restriction of redemption for a term certain; and covenant to create a power of attorney or declaration of trust.

#### DRAFTING DEED OF MORTGAGE

##### Particulars of Information needed to Draft a Deed of Mortgage

1. Particulars of the parties: Full names and addresses
2. Date of commencement
3. Duration of the mortgage
4. Principal sum
5. Interest rate
6. Description of the mortgage property
7. Value of the property
8. The various covenants
9. Execution
10. The witnesses

##### Formal Parts/Contents of a Deed of Mortgage

1. **Commencement:** THIS MORTGAGE/THIS DEED OF MORTGAGE
2. **Date:** Made the ..... day of ..... 20... Note: A deed takes effect from the date of delivery not necessarily the date on the deed.
3. **Parties:** BETWEEN..... of ..... (The mortgagor) of the one part AND .....of ..... (The mortgagee) of the other part. It is possible to have a third party, a guarantor or some person forwarding his property as security.
4. **Recitals:** THIS DEED RECITES AS FOLLOWS: The following facts should be recited, borrower's title, the mortgagor's property, his desire to borrow and mortgagee's agreement to lend, guarantor's agreement to guarantee the

loan, Governor's consent where necessary.

**5. Testatum:** NOW THIS DEED WITNESSES AS FOLLOWS”

(a) The undertaking by mortgagor to pay to the mortgagee the principal sum with interest on a named date.

(b) The interest rate

(c) The deed may also contain a second testatum, stating the capacity of the mortgagor conveying as beneficial owner”

**6. Provision for Redemption:** this is the clause that allows the mortgagor to redeem the mortgaged property upon repayment of the mortgaged sum.

**7. Parties Covenants:** the various covenants that the parties to the mortgage transaction are expected to observe.

**8. Testimonium:** IN WITNESSES OF WHICH

**9. Execution:** SIGNED, SEALED, AND DELIVERED BY... If a company, COMMON SEAL of... is affixed to this deed.

**10. Attestation:** IN THE PRESENCE OF: Name, address, signature, and occupation of witness. If a company, IN THE PRESENCE OF: Director, Secretary.

**11. Consent Clause:** where required

### **Sample Drafts**

#### **Deed of Legal Mortgage**

THIS DEED OF MORTGAGE is made this 6<sup>th</sup> day of September, 2019 BETWEEN Eyeke Kenneth Samuel of No. 7 Ogoja Road, Abakaliki, Ebonyi State (the Mortgagor) on one hand AND Heritage Bank Plc, a company registered under the Companies and Allied Matters Act with RC No: 191102 and a registered address at Plot E13 Express way, Ibadan, Oyo State (the Mortgagee) on the other part.

#### **BACKGROUND:**

1. The Mortgagor is entitled to the property, a 5 bedroom duplex at Plot 68 Melanin Crescent, Ibadan, Oyo State which is covered by Certificate of Occupancy dated 13/9/88 with Registration No. 88/13/13.
2. The Mortgagor has agreed to take the sum of **N50, 000,000** (Fifty Million Naira) loan and the Mortgagee has agreed to advance it using the said property as security.
3. This mortgage is made subject to Governor's consent to be obtained by the Mortgagor.

THIS DEED WITNESS AS FOLLOWS:

The Mortgagor covenants to repay the principal sum of fifty million (N50, 000, 000.00) naira only to be paid by monthly instalments and the interest at 15% rate per annum, provided that if the Mortgagor pays the instalments at the last day of every month or within 14 days after that day, the interest rate shall be reduced to 12% per annum. The mortgagor further agreed with the mortgagee that the mortgage shall last for 24 months which the principal sum and interest shall become due on 30<sup>th</sup> March, 2020.

The Mortgagor as BENEFICIAL OWNER hereby SUB-DEMISES to the Mortgagee ALL THAT PROPERTY, a 5 bedroom duplex at Plot 68 Melanin Crescent, Ibadan, Oyo State which is covered by Certificate of Occupancy dated 13/9/88 and registered as No. 88/13/13 at the Lands Registry Office Ibadan, Oyo State rightly described by the survey plan to the First Schedule TO HOLD unto for the unexpired residue of the term granted under the Certificate of Occupancy less one day.

PROVIDED always that if the mortgagor repays the principal and interest on the loan, the mortgage shall cease and the mortgagee shall re-convey the property to the mortgagor at his cost.

TESTATUM

The miscellaneous part-provisos/covenants

IN WITNESS OF WHICH the parties have executed this deed of mortgage in the manner below the day and year first above written.

FIRST SCHEDULE

SIGNED, SEALED AND DELIVERED by the Mortgagor:

\_\_\_\_\_  
Eyeke Kenneth Samuel

**IN THE PRESENCE OF:**

Name: Olowoyeye Itunu

Address: No. 9 Mission Road, Ibadan, Oyo State

Occupation: Lawyer

Signature: \_\_\_\_\_

THE COMMON SEAL OF HERITAGE BANK PLC (THE MORTGAGEE) IS AFFIXED ON THIS DEED THE 6<sup>TH</sup> DAY OF SEPTEMBER, 2019 AND DULY DELIVERED IN THE PRESENCE OF:

.....  
Director

.....  
Secretary

I CONSENT TO THIS LEGAL MORTGAGE

DATED THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2019  
EXECUTIVE GOVERNOR OF OYO STATE

**Tripartite Deed of Legal Mortgage**

THIS DEED OF LEGAL MORTGAGE is made this 6<sup>th</sup> day of December, 2020  
BETWEEN Eyeke Kenneth Samuel of No. 7 Ogoja Road, Abakaliki, Ebonyi State  
(The Mortgagor) of the first part  
AND Mrs. Ukamaka Oriaku of No. 56 Calabar Road Agbani, Enugu State (The  
Guarantor) of the second part  
AND Zenith Bank Plc, a public company duly incorporated under the Companies  
and Allied Matters Act with RC No: 891102 and a registered address at 10 Bank  
Road, Maitama Abuja (The Mortgagee) of the third part.

**BACKGROUND:**

1. The Guarantor is the holder of a Certificate of Occupancy No. 26971 dated 10/10/2001 and registered as 19/19/1167 at the Lands Registry office, Enugu, Enugu State.
2. A loan Agreement between the Mortgagor, Guarantor and the Mortgagee where the sum of fifty million naira (N50, 000, 000.00) was advanced to the Mortgagor by the Mortgagee was made on 6<sup>th</sup> day of December, 2020 and duly executed.
3. The Guarantor agreed in the Agreement to secure the repayment of the loan collected by the Mortgagor on the property covered by a certificate of occupancy No. 26971 dated 10/10/2001 and registered as 19/19/1167 at the Lands Registry Enugu, Enugu State.
4. The Mortgagor has agreed to obtain the loan and the Mortgagee to advance

it while the Guarantor is standing as surety for the repayment of the loan using the said property as security.

THIS DEED WITNESS AS FOLLOWS:

The Mortgagor covenants to repay the principal sum of fifty million (N50, 000, 000.00) naira only to be paid by monthly instalments and the interest at 15% rate per annum, provided that if the Mortgagor pays the instalments at the last day of every month or within 14 days after that day, the interest rate shall be reduced to 12% per annum, while the Guarantor is standing as a surety for the repayment of the loan. The mortgagor further agreed with the mortgagee that the mortgage shall last for 24 months which the principal sum and interest shall become due on 30<sup>th</sup> May, 2021.

The Guarantor as BENEFICIAL OWNER hereby SUB-DEMISES to the Mortgagee ALL THAT PROPERTY, a 6 bedroom duplex at No 68 Fr. Mbaka Street, Enugu, Enugu State which is covered by Certificate of Occupancy dated 13/9/98 and registered as No. 26971 dated 10/10/2001 and registered as 19/19/1167 at the Lands Registry office Enugu, Enugu State rightly described by the survey plan to the First Schedule TO HOLD unto for the unexpired residue of the term granted under the Certificate of Occupancy less one day.

PROVIDED always that if the Mortgagor repays the principal and interest on the loan, the mortgage shall cease and the Guarantor shall re-convey the property to the mortgagor at his cost.

IN WITNESS OF WHICH the Mortgagor have executed this deed of mortgage in the manner below the day and year first above written

TESTATUM

The miscellaneous part-provisos/covenants

IN WITNESS OF WHICH the parties have executed this Deed in the manner below the day and year first above written.

SCHEDULE

SIGNED, SEALED AND DELIVERED

By the Mortgagor

.....  
Eyeke Kenneth Samuel

**IN THE PRESENCE OF:**

Name: Esegi Maureen Izibevie

Address: No. 5 Akachukwu Road, Abakaliki, Ebonyi State

Occupation: Medical Doctor

Signature: \_\_\_\_\_

SIGNED, SEALED AND DELIVERED

By the Guarantor

.....

Mrs. Ukamaka Oriaku

**IN THE PRESENCE OF:**

Name: Ikokwu Rejoicce

Address: No 8 Fr. Mbaka Street, Enugu, Enugu State

Occupation: Civil Servant

Signature: \_\_\_\_\_

THE COMMON SEAL OF ZENITH BANK PLC (THE MORTGAGEE) IS AFFIXED  
ON THIS DEED THE 6<sup>TH</sup> DAY OF SEPTEMBER, 2020 AND DULY DELIVERED  
IN THE PRESENCE OF:

.....

Director

.....

Secretary

I CONSENT TO THIS LEGAL MORTGAGE

DATED THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2017  
EXECUTIVE GOVERNOR OF ENUGU STATE

## Week 14

### SOLICITORS BILLING AND CHARGES

A solicitor cannot be paid legal fees except he is engaged to render legal services: and where an agreement provides for the payment of legal fees, a solicitor can only successfully recover fees where he acts for a party to that agreement – ***Rebold Ind. Ltd. v. Magreola***

#### ETHICAL CONSIDERATIONS

1. The solicitor should comply strictly with the scales of charges particularly scale I and II.
2. The solicitor should diligently prepare bills of charges where necessary
3. The solicitor should not submit bills that are objectionable
4. The solicitor should observe the rules of professional conduct in the legal profession in respect of fees
5. The solicitor should not enter into an agreement for, charge or collect an illegal or clearly excessive fee
6. The solicitor should not share his professional fee with non-lawyer
7. The solicitor should not sign legal documents prepare by a non-lawyer for a fee

#### Scenario

Air Cdr. Yabo Uzezi, public Servant of No 63 Kofar Eyong Road, Jimeta-Yola, is the owner of property at Plot 134 Najiv Avenue, Victoria Island, Lagos with Certificate of Occupancy No 231/LVI/2003. He also owns No. 46 Vitalis Close, Maitama Abuja.

At a **rent of N2m annually**, Yabo **created a term of three years** over the property at Lagos in favour of Engr. Tanko Calista, a Civil Engineer of No. 37 Augie Street, Apapa Lagos.

The three years rent was paid in advance. The agreement was to commence on February 1, 2009.

Later, on February 25, 2019, he used the same property to **secure a loan of N20m** obtained from RitzBank Plc. of No. 56 Ovie Faleti Road Ikoyi, Lagos at annual rate of 15% redeemable within 6 months of commencement.

Yabo was unable to redeem a loan of N25m he obtained from Fidelity Bank Plc in April 2016 within the agreed period; to avoid total loss of the mortgaged property, he contacted Engr. Tanko Calista for the **purchase of the property, which was agreed for N32m.**

You **acted for all the parties** in the negotiation for the **loan of N20m**, and also in negotiation for the sale **on behalf of both parties**. You had earlier **represented both parties** in the tenancy agreement.

You later sent a Bill of Charges for your professional services to both clients. The Bank has failed to pay. You filed summary summons at the Chief Magistrate Court, Yaba, Lagos since the amount claimed is just N3.8m.

### **Transactions Identifiable**

The transactions identifiable in the scenario are:

1. Mortgage – acted for all the parties in the negotiation for the loan of N20m.
2. Sale of Land – acted for both parties in negotiation for the sale of land worth N32m.
3. Lease - represented both parties in the tenancy agreement of N6m.

### **Rules of Computing Charges/Fee**

#### **1. Mortgage (Scale I)**

- (a) **Different Solicitors:** where the mortgagor and mortgagee are represented by different solicitors, the mortgagor solicitor will be entitle to full payment and the mortgagee solicitor will equally be entitle to full payment.
- (b) **One Solicitor:** where the mortgagor and the mortgagee are represented by one solicitor, the solicitor will be entitle to half payment of what is due to the mortgagor solicitor and
- (c) full payment of what is due to mortgagee's solicitor.

#### **2. Sale of Land (Scale I)**

- (a) **Different Solicitors:** where the vendor and the purchaser are represented by different solicitors, the vendor solicitor will be entitle to full payment and the purchaser solicitor will also be entitle to full payment.
- (b) **One Solicitor:** where the vendor and the purchaser are represented by one solicitor, the solicitor will be entitle to full payment of what is due to the vendor solicitor and half payment of what is due to the purchaser solicitor.

#### **3. Lease (Scale II)**

- (a) **Different Solicitors:** where the lessor and the lessee are represented by different solicitors, the lessor solicitor will be entitle to full payment and the lessee solicitor will be entitle to half payment of what is due to the lessor's solicitor. E.g. if the lessor solicitor is entitle to N10, 000 from the lessor, then lessee solicitor will be entitle to N5, 000 from the lessee.



**(b) One Solicitor:** where the lessor and the lessee are represented by one solicitor, the solicitor will be entitled to full payment of what is due to the lessor solicitor and half payment of what is due to the lessee solicitor. E.g. if the solicitor is entitled to N10, 000 from the lessor, then the solicitor will be entitled to N2, 500 from the lessee i.e.  $\frac{1}{2}$  of the N5, 000.

### **Scales of Charges**

#### **Scale I - Scale of Charges on Sales, Purchase and Mortgages**

(1)	(2)	(3)	(4)	(5)
	For the first N1,000 per N100  N	For the second and third N1,000 per N100  N	For the fourth and each subsequent N1,000 up to N20,000 per N100  N	For the remainder without limit per N100  N
5. Mortgagor's legal practitioner for negotiating loan...	11.25	11.25	3.75	2.50
7. Mortgagee's legal practitioner for negotiating loan...	22.50	22.60	7.70	5.00
9. Purchaser's legal practitioner for negotiating a purchase and vendor's legal practitioner for negotiating a sale of property by private auction...	22.50	3.75	3.62	2.80

**Scale II – Scale of Charges for Leases and Agreement to Lease**

(c) Where the rent exceeds N1, 000 –

1. N37.50 in respect of the first N100 of rent
2. N25 in respect of each N100 of rent or part thereof up to N1, 000
3. N12.50 in respect of each subsequent N100 or part thereof

**Answer**  
**MORTGAGE**

Total Value of Transaction – N20, 000, 000

**Mortgagor's Solicitor Fee**

**(Step 1 - For the first N1, 000 per N100 is N11. 25)**

$$1,000/100 \times 11.25/1 = 112.5$$

**(Step 2 - For the second and third N1, 000 per N100 is N11.25)**

$$2,000/100 \times 11.25/1 = 225$$

**(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N3.75)**

$$17,000/100 \times 3.75/1 = 637.5$$

**(Step 4 - For the reminder without limit per N100 is N2.50)**

$$19,980,000/100 \times 2.50/1 = 499,500$$

**(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the mortgagor's solicitor)**

$$112.5 + 225 + 637.5 + 499,500 = 500,475$$

**(Step 6 – Since the solicitor is entitle to half payment of what is due to the mortgagor's solicitor, the total value of Step 5 will be divided by 2)**

$$500,475/2 = \text{N}250,237.50\text{k}$$

**Mortgagee's Solicitor Fee**

**(Step 1 - For the first N1, 000 per N100 is N22.50)**

$$1,000/100 \times 22.50/1 = 225$$

**(Step 2 - For the second and third N1, 000 per N100 N22.60)**

$$2,000/100 \times 22.60/1 = 452$$

**(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N7.70)**

$$17,000/100 \times 7.70/1 = 1,309$$

**(Step 4 - For the reminder without limit per N100 is N5.00)**

$$19,980,000/100 \times 5.00/1 = 999,000$$

**(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the mortgagee’s solicitor)**

$$225 + 452 + 1,309 + 999,000 = \text{N}1,000,986$$

Final Answer

**The total amount due to the solicitor who acted for both the mortgagor and mortgagee will be an addition of the total value gotten under mortgagor’s solicitor fee and mortgagee’s solicitor’s fee as follows:**

$$\text{N}250,237.50\text{k} + \text{N}1,000,986 = \text{N}1,251,223.50\text{k}$$

### SALE OF LAND

Total Value of Transaction – N32, 000, 000

Vendor’s Solicitor Fee

**(Step 1 - For the first N1, 000 per N100 is N22.50)**

$$1,000/100 \times 22.50/1 = 225$$

**(Step 2 – For the second and third N1, 000 per N100 is N3.75)**

$$2,000/100 \times 3.75/1 = 75$$

**(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N3.62)**

$$17,000/100 \times 3.62 = 615.4$$

**(Step 4 - For the reminder without limit per N100 is N2.80)**

$$31,980,000/100 \times 2.80/1 = 895,440$$

**(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the vendor's solicitor)**

$$225 + 75 + 615.4 + 895,440 = \text{N}896,355.40\text{k}$$

Purchaser's Solicitor Fee

Since the scale for calculating what is due to the purchaser's solicitor is the same with that of the vendor's solicitor, the amount due to the purchaser's solicitor will also be ~~N~~896,355.40k. But considering the rule of computation, the solicitor will be entitle to only half of what is due to the purchaser's solicitor as follows:

$$\text{N}896,355.40\text{k}/2 = \text{N}448,177.70\text{k}$$

Final Answer

**The total amount due to the solicitor who acted for both the vendor and purchaser will be an addition of the total value gotten under vendor's solicitor fee and purchaser's solicitor's fee as follows:**

$$\text{N}896,355.40\text{k} + \text{N}448,177.70\text{k} = \text{N}1,344,533.10\text{k}$$

LEASE

Total Value of Transaction – N6,000,000

Lessor's Solicitor Fee

**(Step 1 - Where the rent exceeds N1,000 – N37.50 in respect of the first N100 of rent)**

$$100/100 \times 37.50/1 = 37.5$$

**(Step 2 - Where the rent exceeds N1,000 – N25 in respect of each N100 of rent or part thereof up to N1,000)**

$$900/100 \times 25/1 = 225$$

**(Step 3 - Where the rent exceeds N1,000 - N12.50 in respect of each subsequent N100 or part thereof)**

$$5,999,000/100 \times 12.50/1 = 749,875$$

**(Step 4 – Addition of the total value of Step 1 – 3 to get what is due to the lessor’s solicitor)**

$$37.5 + 225 + 749,875 = \text{N}750,137.50\text{k}$$

Lessee’s Solicitor Fee

**(Step 1: The lessee’s solicitor is entitle to half of what is due to the lessor’s solicitor as follows:**

$$\text{N}750,137.50\text{k}/2 = \text{N}375,068.75\text{k}$$

**(Step 2: However, since the solicitor acted for both lessor and lessee, the solicitor is entitle to half of what is due to the lessee’s solicitor as follows:**

$$\text{N}375,068.75\text{k}/2 = \text{N}187,534.375\text{k}$$

**Or it can be calculated as one-quarter ( $\frac{1}{4}$ ) of what is due to the lessor’s solicitor as follows:**

$$\text{N}750,137.50\text{k}/4 = \text{N}187,534.375\text{k}$$

Final Answer

**The total amount due to the solicitor who acted for both the lessor and lessee will be an addition of the total value gotten under lessor’s solicitor fee and lessee’s solicitor fee as follows:**

$$\text{N}750,137.50\text{k} + \text{N}187,534.375\text{k} = 937,671.875 \text{ approximated as } \text{N}937,671.88\text{k}$$

**Sample Draft of Solicitors Bill of Charges**

**EYEKE KENNETH & CO**  
**BARRISTERS AND SOLICITORS**  
NO 7 TINUBU STREET IKEJA, LAGOS STATE  
[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com)  
08102959631

Our Ref: \_\_\_\_\_ Your Ref: \_\_\_\_\_

Date: 16<sup>th</sup> December, 2020

To  
Mr. Aguguo Austin  
No. 15 Adoration Avenue  
Ikeja  
Lagos State

Dear Sir,

**RE: PREPARATION OF WILL**  
**BILL OF CHARGES**

Sequel to your instruction to prepare your last Will, please find attached our Bill of Charges on the execution of the instruction.

Date	Particulars of Principal Items	Amount (N)
10 December, 2020	Professional fees on Preparation of Will	400,000
11 December, 2020	Transportation to Probate Registry	15,000
12 December, 2020	Lodging of Will at Probate Registry	11000
	Total	446,000.00
	Less Deposit	200,000.00
	Amount Due	₦246,000.00

TAKE NOTICE that you are expected to make the payment to the firm's Account No: 0156716161 with Guaranty Trust Bank, Ikeja Branch on or before 6th April, 2021.

Yours faithfully,

Eyeke Kenneth, Esq.  
(Managing Partner)  
For: Eyeke Kenneth & Co

## Week 15

### WILLS AND CODICILS I

**A will** is a testamentary document made voluntarily and lawfully executed according to the Wills law by a person called the Testator with a sound disposing mind on how his estate (real and personal) will be disposed upon his death or it is a directive of a person on how his things or his properties will be disposed of upon his death.

Highlights: T-Testamentary Disposition; E-Executed Lawfully; V-Made Voluntarily; By Testator with Sound Disposing Mind; Ambulatory In Nature (TEVSA)

**A Codicil** is an attachment or addition of a Will. It is dependent on the existence of a Will. Where there is a codicil to a Will, the Will cannot be read in full without the codicil. The codicil does any of the following to a Will:

1. Revoke the will,
2. Adds to the will, alters it,
3. Revives the will, or
4. Republish the will.

Everything applicable to the validity of a Will is applicable to it.

THIS IS THE FIRST CODICIL TO MY WILL of (name, address, occupation)  
made \_\_\_\_\_day of \_\_\_\_2021

### ETHICAL ISSUES

1. Counsel to represent client within the bounds of the law He should not contravene the law **Rule 15(2)(a) RPC.**
2. A lawyer should not collude with a Beneficiary to alter the Will.
3. Duty not to take undue benefit from a client's property - **Rule 23(1) RPC.**
4. Where a lawyer is a beneficiary under a Will, he should tell the testator to engage the services of another lawyer to do the Will.
5. Duty not to charge exorbitant fees - **Rule 48(2) RPC**
6. Duty to take instructions in writing
7. Duty to be devoted and not to be negligent - **Rule 14 RPC**
8. Duty of confidentiality - **Rule 19(1) RPC**
9. Duty to disclose any conflict of interest **-Rule 17(1) RPC**
10. Duty not to take instruction in client's house except in special circumstances - **Rule 22 RPC.**

## Week 16

### WILLS AND CODICILS II

#### Types of Gifts/Legacies under a Will

1. Specific gift which is subject to the rule of ademption (a situation where the specific gift bequeathed to a beneficiary is discovered not to be in existence and the gift will fail because of that)
2. General gift
3. Demonstrative gift
4. Substitutive gift
5. Annuity
6. Pecuniary gift
7. Residuary gift which is aimed at avoiding partial intestacy
8. Joint gifts or those given in common or equal shares
9. Contingent/conditional gift
10. Alternative gift
11. Accumulated gift

Order from which executors can use legacies to satisfy debts of the estate: residuary, general, demonstrative, specific legacy.

#### TYPES OF LEGACY

**Specific Legacy:** This is a gift of an identifiable property that is specific and distinguishable from the other properties owned by the testator. It must be properly and sufficiently described. The gift may be indicated by the use of the word “my” followed by a description of the gift.

#### **Examples**

1. A gift of my Toyota Camry car with Reg. No BQ232 AWK to my daughter Bimpe.
2. I give my diamond ring bought from Agoz Jewelleries UK to my niece Nkechi.
3. A gift of my 4 million shares in FBN PLC to my son Bala.

It is not a specific gift if it reads; “A Toyota car for my son Dayo”

*In order to avoid the failure of a specific gift, alternative or substituted gifts are made to the beneficiary e.g. “a gift of my Mercedes Benz with Reg. No BQ232 AWK to my daughter Bimpe. If it fails, I make a gift of Toyota Hiace with Reg DF874 to her.”*

**General Legacy:** It a general legacy, there is no specific description. It does not refer to a particular piece of the testator’s estate. The testator intends that the gift



should be satisfied from the general assets of his estate. There is nothing distinctive about the gift. The use of the word 'my' is not a decisive factor (e.g. a gift of my walking stick to my son Ebuka – could be general if testator has many walking sticks or specific if he only has one).

**Examples**

A gift of a walking stick to my son Joel. If the testator does not own a walking stick at his death, the Executors/Personal Representative will provide for it from the testator's general estate. Note: gifts of shares and stocks.

**Demonstrative Legacy:** This may be in form of general legacy but directed to be satisfied from a specific fund or particular pool of property (not restricted to property) i.e. testator will demonstrate to the executors the source from which the gift is to come from- usually payable from a bank account.

**Example**

1. I give N50, 000 to Bimpe to be drawn from my savings account No. 2345678910 at Diamond Bank. Gift + Description + Source = Demonstrative legacy.
2. A gift of 2 million naira to be paid out of my account with Zenith Bank Plc Okpara Avenue Enugu Branch to Johnson.
3. A gift of my Honda car with Reg. No BC345 parked in my garage at No. 5 Park Lane Independence Layout Enugu to Killi.

**Residuary Legacy:** This is the remainder of the property belonging to the estate after payment of all other gifts and debts, expenses taxes and liability of the testator have been fulfilled, cleared or paid. It is made up of personal or real property. A residuary clause is usually inserted in the Will to transfer all remaining residue and remainder. The beneficiaries are called 'Residuary Legatees'

Such remainder may have been derived from the following:

1. Property acquired by testator after making his will or codicil
2. Properties acquired after testator's death.
3. Gifts that lapsed by the death of the beneficiary or lack of substitution clause
4. Gifts that failed.

**Example**

All my properties as shall be vested in me at the date of my death, not specifically given out in my will or such that fails or lapses by the death of the beneficiary, to my children in equal part.

## Week 17 WILLS & CODICILS III

Under the Wills Act, a testator can freely dispose of his properties and make his will without any hindrance prescribed by statutes, custom and religion. In ***Banks v Goodfellow***: Ct affirmed the right of testamentary freedom of a person. However, overtime, it was felt that the absolute right to dispose any property to any beneficiary occasioned hardship on the relatives of the testator and dependants.

### FORMAL PARTS OF A WILL& CODICIL

#### Formal Parts of a Will

1. **Commencement:** Describes the document and the maker of the document as his act.

THIS IS MY LAST WILL OR THIS IS THE LAST WILL OF ME...

2. **Date:** States the day the will was made/executed. This helps in proving due execution.

MADE THIS 5<sup>TH</sup> DAY OF JANUARY 2020

3. **Revocation Clause:** This annuls any earlier Will or codicil made by the testator and assists in affirming the present Will a last testamentary act of the testator (must be in all wills even if client says he has never made a will before)

I REVOKE ALL FORMER TESTAMENTARY DOCUMENTS OR DISPOSITIONS MADE BY ME...

4. **Appointment Clause:** This clause appoints the personal representatives and trustees of the testator.

I APPOINT...

5. **Charging Clause:** This clause permits and mandates the Personal Representatives and any person acting in that capacity to charge for the services they render otherwise their services would be taken to have been rendered gratuitously.

I DECLARE THAT MY EXECUTORS SHALL CHARGE OR I AUTHORISE MY EXECUTORS TO CHARGE...

- 6. Disposition Clause (Gifts):** This is the clause that bequeaths gifts (Legacies and devices) to respective beneficiaries

I GIVE TO...

- 7. Residuary Clause:** This states the person who will be entitled to the residue (remainder) of the estate of the testator.

I DECLARE THAT THE REMAINDER OF MY ESTATE SHALL... I GIVE TO ...

- 8. Substitution Clause:** In case any gift fails or ceases to exist at the death of the testator

- 9. Testimonium:** This links the testator with the Will.

IN WITNESS OF WHICH...

- 10. Execution and Attestation Clause:** the execution clause satisfies the basic requirement in Wills that the testator must sign the Will as indicative that the document is his act. To prevent fraud, the law requires attestation of witnesses. The attestation clause confirms the presence of persons who witnessed the execution of the Will by the testator.

SIGNED AS HIS LAST WILL BY THE ABOVE NAMED TESTATOR IN OUR JOINT PRESENCE AND THEN BY US IN HIS PRESENCE.

SIGNED BY THE ABOVE NAMED TESTATOR IN THE JOINT PRESENCE OF US AND EACH OTHER WHO IN HIS PRESENCE AND THAT OF EACH OTHER HAVE SUBSCRIBED OUR NAMES AS WITNESSES.

## **SAMPLE DRAFTS**

### **Specimen Will**

THIS IS THE LAST WILL of me, Mr. Eyeke Kenneth Samuel of 42 Umoji Street, Abakaliki, Ebonyi State (The Testator) made on the 10<sup>th</sup> day of December, 2020.

1. I REVOKE all previous testamentary dispositions made by me, and I DECLARE this Will to be my last Will.
2. I APPOINT Barr. Ndubueze Ekene of 14 Osibanjo Avenue, Ikorodu, Lagos and Mr. Olorunniyi Adeboyin Ifeoluwapo of No. 39 Abacha Street Ikoyi Lagos State to be the Executors (Trustees) of my Will.

3. I DECLARE that my Executors or any Professional or person engaged in proving my Will and administering the estate may charge reasonable fees for their services.
4. I GIVE my three storey building at 5 Saint Thomas Avenue Ikorodu Lagos to my son, Dr. Ikenna Eyeke of 10 Nkaliki Street, Abakaliki, Ebonyi State.
5. I GIVE my Toyota Camry 2015 model to my son, Kennedy Eyeke.
6. I GIVE my 100, 000 shares of Nancwat Microfinance Bank Plc to my wife, Blessing Eyeke of 42 Umoji Street, Abakaliki, Ebonyi State
7. I GIVE the remainder of my estate to my son Dr. Ikenna Eyeke and my daughter Mrs. Precious of 18 Light Street Ikoyi Lagos in equal share.
8. I GIVE \_\_\_\_\_
- 9.

IN WITNESS OF WHICH I, Mr. Eyeke Kenneth (The Testator) have executed this Will in the manner below the day and year first above written.

Mr. Eyeke Kenneth.....  
(Sign)

SIGNED by the Testator, in the presence of us both and at the same time who at her presence subscribed our names as witnesses.

.....  
Chukwuemeka Queen O.  
(Witness)

.....  
Henrietta M Ekefre  
(Witness)

### **CODICILS**

This is otherwise known as a miniature or supplemental Will attached to a previous valid Will. For there to be a codicil, there must be an earlier Will. All the formalities for a Will to be valid apply to a codicil. The testator must possess the testamentary capacity and the codicil must be executed by the testator in the presence of two witnesses who must be present at the same time and who shall attest to the codicil. There could be a Will without codicil but there can never be a codicil without a Will. The Commencement of a codicil is as follows: "THIS IS THE FIRST CODICIL TO THE LAST WILL of me, Mrs. Jones Emeka of No.2 Ejure Street Isolo Lagos made the 13 day of June 2020".

**Specimen Codicil**

THIS IS THE FIRST CODICIL to the last Will and testament of me, Mr. Eyeke Kenneth Samuel of 42 Umoji Street, Abakaliki, Ebonyi State (The Testator) made on the 4<sup>th</sup> day of January, 2021.

1. I REVOKE clause 5(five) of my Will made on the 10<sup>th</sup> day of December, 2020.
2. I GIVE all my residuary Estate to my wife, Blessing Eyeke 42 Umoji Street, Abakaliki, Ebonyi State, Dr. Ikenna Eyeke, my son and Mrs. Precious Agubata of 18 Light Street Ikoyi Lagos in equal share.
3. I confirm my Will in all other respects.

IN WITNESS OF WHICH I, Mr. Eyeke Kenneth (The Testator) have executed this Will in the manner below the day and year first above written.

Mr. Eyeke Kenneth.....  
(Sign)

SIGNED by the Testator, in the presence of us both and at the same time who at her presence subscribed our names as witnesses

.....  
Chukwuemeka Queen O.  
(Witness)

.....  
Henrietta M Ekefre  
(Witness)

## Week 18

# PROBATE & LETTERS OF ADMINISTRATION

Probate practice comprise of the procedure for the grant of probate and letters of administration both in contentions and non contentions cases. Until probate or letters of administration is granted, the executor or administrator who interferes with the state of the deceased person is inter-meddler. See **Bank of West Africa LTD. V Ricket (1959 NRNLR 125)** Probate is an official verification of a Will; admitting the Will. It is granted only where there is a valid Will and Executors were appointed in the Will.

### STEPS

1. Search for the Will at the Probate Registry or Bank etc.
2. If the Will is found, send it within 14 days to the Court within the jurisdiction where the testator died.
3. The Will is to be read after 7 days of the testator's burial in the presence of persons interested.

### TYPES OF GRANT

- 1. GRANT OF PROBATE** – This grant will be given when the deceased died testate living a valued Will with executors validly appointed in the Will.
- 2. GRANT OF ADMINISTRATION WITH THE WILL ANNEXED:** This grant will be given when the deceased died testate either without appointing executors or those appointed renounce probate or minors are appointed as executors.
- 3. GRANT OF SIMPLE ADMINISTRATION** This grant will be issued where the diseased died in testate either wholly or partly. Where he died partially testate, the part of his estate not covered in the Will would be administered by the grants of simple administration.

**SAMPLE DRAFT: APPLICATION LETTER FOR THE GRANT OF PROBATE**

**EYEKE KENNETH & CO**  
**BARRISTERS AND SOLICITORS**  
**NO 7 TINUBU STREET IKEJA, LAGOS STATE**  
[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com)  
08102959631

Our Ref: \_\_\_\_\_ Your Ref: \_\_\_\_\_

Date: 6<sup>th</sup> December, 2020

To  
The Probate Registrar  
High Court 2  
Ikeja Judicial Division Lagos State.

Sir,

IN THE MATTER OF THE ESTATE OF LATE MRS OLORUNNIYI DIVINE DESMOND  
APPLICATION FOR GRANT OF PROBATE (RE-SEALING OF PROBATE/  
LETTERS OF ADMINISTRATION)

We are Solicitors to Dr. Abdulkareem Abdulhamid, Mrs. Ogah Ogechi Lovelyn and Gunat Nansat who are the Executors of the Will of Mrs Olorunniyi Divine Desmond (now deceased) of No. 12 Aduke Street Ikeja Lagos, who we will refer to herein as 'our clients'.

It is our clients' instructions that we apply for the grant of Probate on the Will of Mrs Olorunniyi Divine Desmond (deceased) who died on the 10 day of January 2020 and before her death she lived at No. 12 Aduke Street Ikeja Lagos and within the jurisdiction of this Court.

Please find attached the following documents for your kind consideration:

1. Certified true copy of the Will of Mrs Olorunniyi Divine Desmond dated 14 March 2016.
2. Copy of the death certificate of Mrs Olorunniyi Divine Desmond dated 14 January 2020.

We will appreciate if the necessary Forms to process Probate are made available to us. Thank you.

Yours faithfully,

Eyeke Kenneth Esq  
(Principal Partner)  
For: EYEKE KENNETH & CO.

## Week 19

### PERSONAL REPRESENTATIVES AND ASSENT

The term when used includes Executors and Administrators. They are the ones appointed or granted the authority to administer the estate/properties of a deceased. An executor if appointed under the will. An administrator where done by operation of law/court outside the act of the deceased. Where deceased appoints executors, he could also appoint trustees. An executor is expected to act in good faith but he is not a trustee so he has no power to assign his duties, function and powers of office of executor. If executor is also appointed as trustee, he can appoint someone else and transfer the duties of trusteeship to that person and retire from the trust - **Adeniji v Probate Registrar.**

#### Sample Draft of an Assent

WE, DR. ABDULKAREEM ABDULHAMID OF 43 USMAN STREET IKEJA LAGOS AND MRS. OGAH OGECHI LOVELYN OF 27 CHRIS CLOSE IKEJA LAGOS, THE PERSONAL REPRESENTATIVES (EXECUTORS) OF MRS OLORUNNIYI DIVINE DESMOND (Deceased) of 12 Aduke Street Ikeja Lagos who died on the 10 day of JANUARY 2020 and whose Will was proved on the 10 day of APRIL 2020 in the Probate Registry of the High Court of Lagos State:

1. DO HEREBY on this 26<sup>th</sup> day of April 2020 as such personal representatives, ASSENT to vesting in Dr. Nansat Mark of No. 10 Ikorodu Road Surulere Lagos State (the Beneficiary) ALL THAT two storey building at 56 Awolowo Avenue Ikeja Lagos covered by a certificate of Occupancy No. 876534 dated 12/11/2004 and registered as No.24 page 45 and volume 5647 of the said Mrs Olorunniyi Divine Desmond at the time of her death.
2. WE DECLARE that we have not previously given or made any assent or conveyance in respect of any legal estate in the property or any part of it.
3. WE ACKNOWLEDGE the right of Dr. Nansat Mark (the Beneficiary) to the production of the Probate of the Will (the possession of which is retained by us) of the deceased and to the delivery of copies.

IN WITNESS OF WHICH we, Dr. Abdulkareem Abdulhamid and Mrs. Ogah Ogechi Lovelyn have executed this Assent the day and year first above written.

SIGNED AND DELIVERED

By the within named

.....  
Dr. Abdulkareem Abdulhamid



IN THE PRESENCE OF:

Name:

Address:

Occupation:

Signature:

Date:

SIGNED, AND DELIVERED

By the within named

.....

Mrs. Ogah Ogechi Lovelyn

IN THE PRESENCE OF:

Name

Address

Occupation:

Signature:

Date

## WEEK 20

# PROPERTY LAW TAXATION

Tax is a compulsory charge by the government on the income of an individual, corporation, trust as well as the value of an estate. An amount of money levied by a government on its citizens and used to run the government, the country or state.

### Types of Taxes

1. Stamp Duties
2. Personal Income Tax
3. Value Added Tax
4. Tenement Rates
5. Capital Gains Tax
6. Ground Rent
7. Consent Fee
8. Company Income Tax
9. Withholding Tax on Companies

### Applicable Laws

1. Land Use Act – e.g. consent fees
2. Value Added Tax Act Cap V1 LFN 2004
3. Stamp Duties Act Cap S8 LFN 2004
4. Land Instrument Registration Laws (LIRL) of the various states
5. Capital Gains Tax Act Cap C1 LFN 2004
6. Personal Income Tax Act (PITA) Cap P8 LFN 2004
7. Companies Income Tax Act (CITA)
8. Land Use Charge Law Lagos – all properties and land based rates in one uniform body in Lagos State **AND** Tenement Rate Laws of the States

### Note:

#### **Section 12 Personal Income TAX**

Every person other than a Government employee must keep record of his personal incomes for tax purposes.

Default attracts fine; **N100,000.00 for individuals N500,000.00 for corporate bodies.**

Withholding Tax: There is a duty imposed on individuals to deduct tax and remit same to the government. Failure to do so is called withholding.

**EXERCISE**

Chief Clifford Sanusi brought a plot of land from state government in 1970 for N100,000. He completed building consisting a block of four flats (3 bedrooms each). He spent N900, 000 to complete the project. In 2007, he sold the block of flats to Alhaji Rita Odia, the Sebe-Sebe of Oyo State for N5 million after renovating the building with N500,000. Vike Idris Esq. is the solicitor handling the sale on behalf of the parties. He advised Chief Clifford Sanusi to pay his capital gain tax. Assuming the Solicitor was paid N500,000 compute the capital gain tax to be paid.

**Answer**

- |   |             |
|---|-------------|
| 1. Consideration received                       | N5 million  |
| 2. Cost of purchase of property                 | N100,000    |
| 3. Gain = 5,000, 000 – 100,000                  | = 4,900,000 |
| 4. Allowable income                             |             |
| Building Cost                                   | 900,000     |
| Renovation                                      | 500,000     |
| Solicitors Fees                                 | 500,000     |
| Total   | 1,900, 000  |
| 5. Gain less total allowable income             | 4,900,000   |
|   | 1,900,000   |
|   | 3,000,000   |
| 6. 10% of (total Gain – Total allowable income) |             |
| = 10/10 x 3,000,000                             |             |
| Capital Gain Tax = N300,000.00                  |             |

**REVISION QUESTIONS****Scenario 5**

Amount property was sold for: 4,000,000

Allowable expenses:

1. Amount vendor acquired the property: 50,000
2. Building of block of 4 flats: 950,000

Total = 1,000,000

Capital gain: 4,000,000 -1,000,000 = N3,000,000

Capital gain tax: 10% x 3,000,000 = N300,000

Under Governor's Executive Order = 0.5% x 4,000,000 = N20,000

1. **Effect of the Constitution on Tax Jurisdiction:** Nigeria being a Federation, the tax jurisdiction is influenced by the division of legislative powers under the CFRN, a unit of government can only impose tax on matters it can legislate on –**Section 4(1) CFRN 1999.**
2. **If an Estate Valuer Sells Property, Will He Pay CGT:**No, he will not. Such taxes will be paid by him as Personal Income Tax or a Companies Income Tax. This is because such property sold (or selling such property) is his stock-in-trade which sale does not qualify as a disposal of assets to warrant the charging of capital gains tax.
3. **Who Takes the Proceeds of Capital Gains Tax and Stamp Duties:** Where CGT and stamp duties are collected by state, they will be deposited into a consolidated fund of the state. Even where the Federal Government collects CGT and stamp duties, it is expected to remit it back to state based on Duration formula i.e. based on how much was collected from each state. There must be an Act of the National Assembly specifying how such tax is to be shared.

**EYEKE KENNETH SAMUEL**

[Eyekekennethsamuel@gmail.com](mailto:Eyekekennethsamuel@gmail.com)

08102959631