

A CRITICAL EXAMINATION OF THE APPLICATION OF LACHES AND ACQUIESCENCE UNDER CUSTOMARY LAND LAW IN NIGERIA

BY

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Abstract

The equitable maxims of laches and acquiescence require that, delay defeats equity and that equity will not assist an indolent. The law requires that, an owner of property takes prompt action to check and set aright a trespasser who goes unto his land from continuing his act of trespass. Where an owner of a property allows a trespasser to continuing his mistaken believe that the property is his and expend money thereon, without setting him aright, such person will be estopped from denying the ownership of the land by the former after the expiration of ten to twelve years being the limitation period in some states of the Federation of Nigeria. That being the case, it is essential to note that, the applicability of the maxims are limited in application under customary land law in Nigeria. This is because, possession however long, does not confer ownership under customary law. It is thus the aim of this article to examine the limitation in the application of the maxims under customary law. It is therefore suggested that, the application of the maxims be extended to cover customary values of Nigerians as modern trend globally is towards the individual acquisition of property as against communal and family ownership. It will also seek to check the magnitude of injustices and hardships being occasioned on the adverse possessor;

Key Words: Laches, Acquiescence, Common Law, Customary Law, Limitation

1. Introduction:

The doctrines of laches and acquiescence are equitable remedy; they serve as mitigation to the harshness imposed by common law and the principles

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are applicable in all common law jurisdictions.² These principles are utilized by paying close attention to facts and surrounding circumstances of different cases rather than the strict nature of common law in determining liability. They remain applicable at the Judge's discretion. The doctrine of laches and acquiescence originated from the Latin Maxim "*Vigilantibus non dormientibus jura subveniunt*" meaning "Equity aids the vigilant and not the indolent" Laches and acquiescence have been used interchangeably as a defence which arises due to the conduct of the proprietary right owner whether expressly or impliedly depending on the circumstance surrounding the case

It is significant to note that under customary law, a member of the family or the family can institute an action to challenge the validity of the alienation of family property at any time. Put simply; time does not run against an action to recover possession of family land³. This principle has been affirmed in several cases, *Atunrase v. Sunmola*⁴. This notwithstanding, it has been recognized that certain defences such as waiver or matter caught by limitation period if properly pleaded can bar the claim of the family to the land or the right of the member to have the transaction set-aside.

In light of the above, this article is divided into six parts. Part one deals with the introductory description of the doctrines of laches and acquiescence as propounded by various writers and judicial pronouncements. This will then lead to part two which discusses the definition of the doctrines of laches and acquiescence. Parts three and four deal with the nature of ownership under customary law and the distinctions between laches and acquiescence; this then leads to part five which examines the applicability of the doctrines of laches and acquiescence in Nigeria. The article is concluded in part seven, which posits that, the scope of application of doctrines of laches and acquiescence are still limited under the Nigerian law especially the customary land law. This part seeks to recommend several options that could be adopted in order to ensure that, that doctrines are made available under the customary law as ownership of land no longer rests on communal and family acquisition but on individual acquisition of property.

² *Ludmilla R., Equity* (Sydney, LexisNexis 2011) 1

³ *Mora v. Nwalusi* (1962) 1 ANLR 681, 684

⁴ (1985) 1 NWLR 1

2. The nature and definition of Laches and Acquiescence

Laches and acquiescence are equitable defences which evolved through the doctrine of equity. Laches ordinarily means delay for the purpose of the defence. It is a delay for which equity will refuse to grant to the plaintiff the remedy which he is seeking against the defendant. Usually, such a delay is coupled with the knowledge of the plaintiff that the defendant had been on his/their land unlawfully. Thus, the delay will constitute laches is a question of fact and varies from case to case. For instance, in the case of *Agaran v. Olushi*⁵, a delay of 3 years was held sufficient to constitute laches. In *Mogaji v. Nuga*⁶ it was a delay of 10 years and in *Manko v. Bonsu*⁷ it was a delay of 20 years

In his contribution to the meaning of laches, Adedayo⁸ states that laches is from the old French *laschesse* meaning "remissness", "slackness". It is an unreasonable delay in pursuing a right or claim in a way that prejudices the opposing party. Laches is an equitable doctrine invoked when, through an unreasonable delay; plaintiff fails to act in a timely fashion in asserting its rights. But while laches properly focuses on plaintiff's blame in sitting on its rights, ultimately it is the harm to defendant from plaintiff's inaction that forms the basis for the defence. As an affirmative defence, defendant bears the burden of proof in establishing both unreasonable delay and harm therefrom: mere delay or passage of time is insufficient. Put another way, failure to assert one's rights in a timely manner can result in a claim being barred by laches. Laches is associated with one of the maxims of equity.

In addition, laches is also a legal defence that may be claimed in a civil matter, which asserts that there has been an unreasonable delay in pursuing a claim, which has prejudiced the defendant or prevents him from putting on a defence. The doctrine of laches is an equitable defence that seeks to prevent a party from ambushing someone else by failing to make a legal claim in a timely manner. Because it is an equitable remedy, laches is a form of estoppels. On the other hand, acquiescence or standing by has been described in the case of *Atunrase v. Sunmola*⁹ to imply the abstinence of a

⁵ (1907) 1 NLR 66

⁶ (1960) 5 FSC 107

⁷ (1936) 3 WACA 62

⁸ Adedayo E. S., *The Doctrine of Laches* (DNL Legal & Style 2017)

⁹ (1985) 1 NWLR (Pt. 1) 105

person from interfering when a violation of his right is in process. Oputa JSC (Justice of the Supreme Court of Nigeria) described it as a species of estoppels or quasi estoppels. A conduct from which may be inferred assent with a consequent estoppels or quasi estoppel¹⁰. The classical statement on acquiescence is to be found in the words of Lord Gramworth in *Ramsden v. Dyson*¹¹ according to him:

If you find a stranger building on your land with the belief that the land belongs to him and you fail to warn him of your adverse title in the hope that on the completion of the building you will assert your right and claim the benefit of his labour, equity will not assist you.

It should, however, be noted that a delay will not amount to acquiescence unless it amounts to fraud on the part of the rightful owner.¹²

Under the Nigerian Customary Law, there is no corresponding law to the English rule of prescription for conferring title to land as held in *Mora v. Nwalusi* (supra). There is no length of squatting possession that can ever suffice to bar an owner's title under customary law. This position of law was fortified by the decision of the court in the case of *Olubode & Another v. Sangodeyi*¹³. In order to temper the rigours of this rule of customary law, the court laid it down that it would protect its exercise of its equitable jurisdiction the person who has been in continuous and undisturbed possession for many years in the belief that he has a valid title thereto. This rule was first formulated in *Akpan Awo v. Cookey Gam*¹⁴. The rule runs thus:

It will be wholly inequitable to deprive a person of property to which he has held undisputed possession to the knowledge and acquiescence of those who now dispute his title. Even if it were as clear as crystal upon the evidence that he entered into possession contrary to the principle of Native law

In *Akpan Awo v. Cookey Gam*, the plaintiff failed to recover possession of the property from the defendant who had been in undisturbed possession for 21 years exercising acts of ownership to the knowledge and acquiescence of the plaintiffs. The rule will not be defeated by notice on the

¹⁰ *Balogun v. Aduuni* (2013) All FWLR (Pt. 666) 539 CA

¹¹ (1866) 1 RH 129 @ 140

¹² *Kajola & others v. Egbuja* (1974) 1 ANLR 426 @ 434

¹³ 1996) 4 NWLR (Pt. 444) 500

¹⁴ 2 NLR 100

part of the defendant of plaintiff's title. This rule is to prevent the entertainment of stale claims by a strict adherence to native law.

The term acquiescence was also defined in the case of *Kayode V. Odutola*¹⁵ as:

Where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches. As the authors of Halbury's Laws of England 4th Edition Para 1473 at page 994 explained: "The term (acquiescence) is however, properly used where a person having a right and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he assents to its being committed a person so standing by cannot afterwards be heard to complain of the act" ...See *De Bussche v. Alt* (1878-80) All E. R Repint 1247. The learned authors went on: "In that sense, the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct the principle of estoppel by representation applying both at law and in equity, although, the application to acquiescence is equitable

3. The nature of Ownership under Customary law

The concept of long possession is alien and foreign to customary law. Under customary law, land is said to belong to the community, village or family. After many generations of continuous and undisturbed possession with no tribute ever having been demanded or paid, such land is said to belong to the community. The community regards itself and is regarded as the owner of such land. Thus, in the case of *Udeze & Another v. Chidebe & Others*¹⁶, the Supreme Court of Nigeria as per Nnaemeka-Agu JSC (as he then was) held that –

¹⁵ (2001) LPELR- 1682 (SC) 37-38 para D

¹⁶ (1990) LPELR- 3295 (SC)

It is trite that once it is claimed that land is communally owned, it instantly conjures up a number of vagaries incidental to our indigenous system of tenure and ownership of land. Among them are the rights of the head of the community (Okpala in Ibo land) to allocate parcels thereof on condition of varying occupational rights ranging from separate ownership to mere temporary occupation. Can it be stated that once a person is shown to be in occupation of a parcel of land which forms part of land communally owned, he should be presumed to be the owner? I think not.

A striking characteristic of this system of land holding under customary tenure is that it lacks the modern connotation of individualistic ownership of land. In the words of the Privy Council in *Amodu Tijani v. Secretary, Southern Nigeria*¹⁷ per Lord Haldane said '...the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village and the family, never to the individual...'

The decision of the Privy Council in the case of *Amodu Tijani v. Secretary, Southern Nigeria* has been followed by Nigerian Courts in many cases afterwards. Such cases include; *Omowhosa v. Odiuzor*¹⁸; *Ali v. Alesinloye*¹⁹. It is of course not true to hold the presumption that individual ownership was foreign to customary law. On the contrary, it can be argued that family lands must have had their origin in individual ownership. However, the onus is on him who asserts individual ownership to prove that the land belongs to him. The Supreme Court of Nigeria, as per Uwaifo JSC (as he then was), in the case of *Lebile v. Registered Trustees of Cherubim & Seraphim Church of Zion of Nigeria, Ugbonla*²⁰ stated as follows:

It has long been recognized as a principle that when communal ownership of land is established or known to exist, it must be presumed to remain the customary practice of the community particularly throughout the coast of West Africa until the contrary is proved in the context or circumstances in which an individual successfully claims and proves ownership of a

¹⁷ (1921) 2 AC 399 @ 410

¹⁸ (1999) 1 NWLR (Pt. 586) 173

¹⁹ (2004) 4 SC (Pt.1) 111 @ 136

²⁰ (2003) LPELR- 1774 (SC)

particular portion of the land. See. *Amodu Tijani v. Secretary, Southern Nigeria* (1921) 2 AC 399 at 410...

Community land ownership can come from the history of origin and settlement of the community. The founders of the settlement may treat the land as jointly owned and refuse to permit an individual member to appropriate any part of the land to himself as individual property. However, the individual could acquire occupancy rights in perpetuity. Acquisition of occupancy right in perpetuity by an individual which may results to individual ownership of land under customary tenure was enunciated by the Supreme Court, as per Obaseki JSC (as he then was), in the case of *Mogaji & Others v. Cadbury*²¹ as follows: "Property is acquired under customary law either by settlement, by inheritance, by grant or by sale."

Community or village ownership of land is of a relatively limited scope. Except for communities with strong central authority like Ife, Benin, Ibadan, Ijebu, Itsekri just to mention but few, where ownership is vested in the community or Oba. Thus, the Supreme Court of Nigeria in the case of *Amayo v. Erinmwingbovo*,²² as per Katsina-Alu JSC (as he then was) stated that:

Land in Benin is vested in the Oba of Benin under customary law. This, however, was not the law before 1950. In any event the question in land claims has always been which of the parties had made a good title to the land and not which of them obtained the Oba's title...

Community land is often limited to strips of communally held land. For example, public pathways, meeting grounds, markets, ancestral shrines, riverbanks, and specifically designated community land. It is significant to note that the decision of the Privy Council as stated in the case of *Amodu Tijani v. Secreatry, Southern Nigeria* with regards to denying individual ownership of land under customary law has been held to be bad law. The Supreme Court of Nigeria as per Obaseki JSC (as he then was) in the case of *Otogbolu v. Okeluwa*²³ stated that "...under customary law, an individual could still own land. This principle of law has been held in earlier

²¹ (1985) LPELR-1889 (SC)

²² (2006) LPELR-458 (SC)

²³ (1981) 6-7 SC 99

cases of *Eze v. Igilegbe*²⁴; *Ovie v. Onoriobokinhe*²⁵ and *Tongi v. Khali*.²⁶

On the other hand, the concept of ownership under family land or family property is very much akin to the features under communal land. This is because family land is also vested in a family as a corporate entity. The individual member of the family has no separate claim to the ownership to any part, or the whole of the property. The established rule of customary law is that no member of a land owning family has a separate individual title of ownership to the whole or any part of the family land. Therefore, a member has no disposable interest in family property either during his lifetime or under his Will. This means that it is only the family that can transfer its title to any person. A purported transfer of family land by a member of the family is therefore void and of no effect. Thus, the Supreme Court as per Onu JSC (as he then was) in the case of *Ojoh v. Kamalu & others*²⁷ stated that the "The law is settled that where family property is conveyed as personal property, the purchaser gets no title to the property"

4. Differences between Laches, Acquiescence and Statute of Limitation

It is essential to note that, the doctrines of laches and acquiescence are mostly used interchangeably as if both are the same. There is a subtle distinction between the two doctrines. The Court of Appeal of Nigeria as per Ogunwumiju JCA (Justice of the Court of Appeal) in the case of *Erokwu & Another v. Erokwu*²⁸ stated that:

There is some subtle distinction between laches and acquiescence. It is true that the two overlap and that in pleadings, the two defences go together like twins but it is desirable to bear in mind that there is indeed a distinction. The doctrine of laches applies where it would be practically unjust to give a remedy, either because the party has by his conduct, done that which might fairly be regarded as equivalent to a waiver of the remedy, or where by his conduct and neglect he has though perhaps not waiving that remedy yet put the other

²⁴ (1952) 14 WACA 61

²⁵ (1957) WRNLR 169 @ 170

²⁶ (1953) 14 WACA 331

²⁷ (2005) LPELR-2389 (SC)

²⁸ (2016) LPELR-41515 (CA)

party in a situation in which it would not be reasonable if the remedy were afterwards to be asserted. In these cases, lapse of time and delay are most material. Always important are the length of the delay and the nature of the acts done during the interval. See *Kaiyaoja & Others v. Egunla* (1974) 12 SC (REPRINT) 49. In essence, Laches is a form of estoppel for delay. It basically means that a person has slept on his right and is thus bared from claiming such rights. On the other hand, there can be acquiescence without delay. It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent to him to set up those rights. See *Okereke v. Nwankwo & Another* (2003) 4 SC Pt. 1 page 16. One important condition for acquiescence to be successfully pleaded is for the party relying on it to have been led or induced to expend money or alter his position in a detrimental way. It is important to state that acquiescence has the effect of extinguishing title. See *Omolere v. Elias* (1978) 7 F. C. A

On the other hand, there is nexus between laches and acquiescence with the statute of limitation in the sense that, the doctrine of laches and acquiescence and statute of limitation are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence have been lost, memories have faded and witnesses have disappeared. This principle of law was enunciated in the case of *Attorney-General, Adamawa State & Others v. Attorney-General of the Federation*²⁹

5. Applicability of Laches and Acquiescence under the Nigerian laws: The importance of the doctrines of laches and acquiescence is well recognized under the English legal system. Hanbury³⁰ conceded that the doctrines run through the whole of equitable doctrine. The exercise of this equitable jurisdiction, like others, is discretionary and, in the usual manner

²⁹ (2014) LPELR-23221 (SC)

³⁰ Cited by Clement Imoh in "Brief Analysis of the Application of the Doctrine of Laches in Nigeria" mylawyeronline.blogspot.com accessed on 19 May 2018

the discretion may not be exercised arbitrarily. The doctrines may be invoked where conduct or neglect of the plaintiff indicates to the defendant a waiver of the plaintiff's rights which rights have been acquired by the defendant. The Supreme Court of Nigeria in the case of *Erikotola v. Alli & Others*³¹ as per Butler Lloyd Ag. C. J delivering the judgment contended that laches consists of standing by while an infringement of one's rights is in progress. In this case, the Supreme Court refused to invoke the doctrine because the owners of the rights in dispute did not stand by but posted caution notices on both occasions when an infringement of their rights by the sale of the property was attempted.

Also, in *Chukwuma v. Ifeloye*³² the Supreme Court of Nigeria held that since there was no evidence that the Plaintiff/Appellant had been aware of the trespasser's entry upon her land earlier than the time she caused a "Stop Work Order" to be served on the Defendant/Respondent or that she had caused the "Stop Work Order" to be vacated before she ultimately sued in court. Merely negotiating with the Defendant/Appellant is not enough evidence to support the conclusion that she had waived the trespass committed on her land. It would have a different situation if she had, following the negotiation, caused the "Stop Work Order" to be vacated.

The circumstances under which the doctrine may be invoked were explained by Lord Selbourne, in his often-quoted passage in *Lindsay Petroleum Co v. Hurd*³³ said

The doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere

³¹ (1941) 16 N. L. R 56

³² (2008) 12 SC (Pt. II) 291

³³ (1874) L. R. 5 P. C. 221 @ 239-240

delay, that delay, of course, not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy

Thus, the circumstances warranting the invocation of the doctrine were aptly stated by the Supreme Court in the case of *Fagbemi v. Aluko*³⁴. In considering the equitable doctrine of laches, the court does not act only on the delay of the plaintiff, but must also consider (i) acquiescence on the plaintiff's part, and (ii) any change of position that has occurred on the defendant's part.

It is worth saying that the doctrines of laches will not be available where the legislatures have acted by enacting laws on limitation period. This is because statutes of limitation are purely creatures of legislatures, while laches is a judicially created doctrine. Thus, the application of laches is limited to where there was no statute of limitations and thus laches functioned as a form of judicial flexible statute of limitations. But where the legislatures have acted, laches becomes unavailable.

6. Laches and Acquiescence Under Customary Law

Importantly, there is laches and acquiescence under customary law in Nigeria. Thus, in the case of *Afolayan v. Ogunrinde & Others*³⁵, the Supreme Court held that: "The policy of the legislation is that the courts will enforce the observance of native law and custom in so far as they have not been varied or suspended by law..."

The above judicial pronouncement is to further established the fact that, policy that are recognized by native and custom are bound to be administered and those that are alien to it are not to be applied. Thus, in *Adisa V. Ladokun*³⁶, the Supreme Court held that,

Under Yoruba customary law, laches and acquiescence

³⁴ (1968) 1 All NLR 233 @ 237

³⁵ (1990) LPELR- 198 (SC)

³⁶ (1973) LPELR- 24953 (SC)

cannot be a bar to the undoubted right of the children of a deceased person to succession. In this respect, we refer to the case of *Taiwo & Another v. Taiwo & Another* (1958) 3 FSC 80 at page 82 where Hurley Ag F. J in delivering the judgment of this Court said "In the present case the rights of the parties depend on native law and custom not on any dealings between individuals given rise to private rights which the passage of time might have made more difficult to establish. Evidence relevant to the native law and custom governing the case is as available now as it was 14 years ago. In my view, the defendants inactivity, by itself and unaccompanied by any other circumstances which would make it fraud or unconscionable on their part to maintain whatever right they may have to a share in Rosannah's estate has not relieved the plaintiffs from the burden of showing positively that the native law and custom in this matter is what they assert it to be. It still rests with the plaintiff to show that the native law entitled them to succeed to Rosannah's share to the exclusion of Frederick's children

In addition, it is also an established principle of law that, a land used by customary tenant under Yoruba customary law will not ripen into ownership however long. In other words, title by prescription is unknown to native law and custom in Nigeria³⁷. Similarly, the Supreme Court in *Olugbode & Another v. Sangodeyi*³⁸ held that the question of laches, acquiescence and standing by are very alien to Yoruba native law and custom, because possession however long cannot be converted to title. However, the Court in the case of *Iheanacho & Another v. Iwuamadi & Another*³⁹ as per Tsammani JCA stated that:

It should however be noted that under customary law, no prescriptive title can be dealred in favour of a party inspite of his long possession of the land in dispute. In other words, there is nothing known in customary law as prescriptive title except where the Court finds there is concrete and

³⁷ *Obawole & Another V. Coker* (1994) LPELR-2157 (SC) as per Onu JSC

³⁸ (1996) LPELR-2619 (SC)

³⁹ (2013) LPELR-20689 (CA)

unavoidable evidence that there has been laches and acquiescence, so that strict application of such Customary law would inflict hardship and injustice on the adverse possessor...

It is an established fact that the doctrines of laches and acquiescence are equitable defences evolved sequel to the fusion of law and equity together by the Judicature Act of 1873-85. It is a well known fact that the equitable defences which is popularly known as 'laches and acquiescence' derive from the equitable maxim "Delay defeats equities" or equity aids the vigilant and not the indolent". Delay which is sufficient to prevent a party from obtaining an equitable remedy is technically called "laches". But that does not mean that laches consists simply of mere lapse of time. In order for the defence of laches to operate, such lapse of time must be coupled with the existence of circumstances which make it inequitable to enforce the claim. In the absence of such circumstances, delay will be immaterial. Thus, in the case of *Kaiyaoja v. Egunla*⁴⁰, Ibekwe JSC (as he then was) stated that no hard and fast rule can be laid down with regard to this aspect of the law, for each case will have to be determined with due regard to its own peculiar facts and the surrounding circumstances. It was held by the court that, delay will be fatal to a claim for equitable relief if the plaintiff has so acted as to induce the defendant to alter his position on the reasonable faith that the claim has been released or abandoned. Also, where the delay may have resulted in the destruction or loss of evidence by which the claim might have been rebutted, the doctrine has been invoked.⁴¹

There are four ingredients that must be present for the plea of defence of laches and to be sustained as laid down by the Supreme Court in the case of *Kayode v. Odutola*⁴². These ingredients are (i) the person seeking to set up the plea must have made a mistake as to his legal rights; (ii) he must have expended some money or must have done some act on the faith of his mistaken belief; (iii) the person whose right has been infringed must know of the existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea of acquiescence and (iv) the person whose right has been infringed must have encouraged

⁴⁰ (1974) LPELR- 1644 (SC)

⁴¹ *Bourne v. Swan and Edgar Ltd* (1903) 1 Ch. 211 @ 219-220

⁴² (2001) LPELR- 1682 (SC)

the person seeking to set up the plea of acquiescence in the latter's expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal rights

It is significant to note that for the plea of defence of laches and acquiescence to be sustained; it must be pleaded and proved. Thus, in the case of *Isaac v. Imasuen*⁴³ the Court as per Kekere-Ekun JSC stated that The law is that a defence of laches and acquiescence must be specially pleaded and proved. Full facts and particulars must be pleaded. See *Adeniran v. Alao* (2001) 12 SCNJ 337. The person relying on the defence must plead that the respondent fraudulently knowingly and deliberately stood by while he changed his position...

On the other hand, the defence of laches and acquiescence will not apply where a party consistently challenged the other party as a trespasser on his land. Thus, the Court in *Fagge v. Amadu*⁴⁴ as per Abiru JCA stated that:

It is the law that where a party consistently challenged the other party as a trespasser on his land, the party cannot be said to be guilty of acquiescence – *Salako v. Dosumu* (1997) 8 NWLR (Pt. 517) 371, *Ageh v. Tortya* (2003) 6 NWLR (Pt. 816) 385, *Okereke v. Nwankwo* (2003) 8 NWLR (PT. 826) 592, *Adebo v. Omisola* (2005) 2 NWLR (Pt.909) 149. Thus, where a trespasser ignored the warning of a land owner and goes ahead to build on the land, the trespasser cannot raise the defence of acquiescence – *Okpaloka v. Umeh* (1976) 9-10 SC 269, *Ogundiani v. Araba* (1978) 6-7 Sc 55, *Nnaeme v. Maduekwe* (1987) 2 NWLR (Pt. 54) 1. In *Owie v. Ighiwi* (2005) 5 NWLR (Pt. 917) 184 @ 224, *Edozie JSC* stated thus: "Similarly, the defences of laches and acquiescence do not avail the appellant as there was evidence accepted by the trial Court that the appellant was duly warned when he commenced to dig the foundation for the erection of his building. This case underscores the need for any developer to satisfy himself with the validity of the title of the land on which he proposes to erect

⁴³ (2016) LPELR-26066(SC)

⁴⁴ (2015) LPELR-25920(CA)

a building as the erection of a building on land based on defective title can lead to the disastrous consequence of the developer losing the building to the owner of the land on the principle expressed in the Latin maxim *as quic quid plantatur solo solo cedit* meaning whatever is affixed to the soil belongs to the soil. This is the unfortunate position in which the appellant has found himself

Similarly, the defence of laches and acquiescence will not operate where the statutory limitation period was complied with by the party on whose land was encroached and trespassed on. This position was fortified by the Court in the case of *Okoye & Another v. Kuti*⁴⁵

7. Conclusion

In the light of the foregoing, it is worth saying that there is limitation to the applicability of the doctrine of laches and acquiescence under the Nigerian law. This is because apart from the fact that the doctrines are alien to customary law in Nigeria. It is also an established fact that the concept of ownership of property in Nigeria is towards communal and family acquisition of property as against the individual acquisition of property.

With reference to the fact that, the doctrines are alien to customary law in Nigeria, the position of the law is that, however so long a possession is, it cannot ripen to ownership. This is because ownership of land is primarily based on communal and family ownership. The acquisition of property by an individual takes another process of the property being partitioned before an individual can lay claim of ownership to land in customary traditional Nigerian society.

Be that as it may, flowing from the foregoing, it is crystal clear that, the modern trend globally is a paradigm shift from communal and family acquisition of property to individual acquisition. Thus, it is suggested that, to broaden the application of laches and acquiescence under the Nigerian laws, acquisition of property should be geared towards individual acquisition so as to unify the application of the doctrines under the law generally. Finally, the application of the doctrines should also be broaden so as to check the unnecessary hardships and injustices being occasioned by adverse possessor who are usually caught by the inapplicability of the doctrines in a traditional society where customary law is prevalent.

⁴⁵ (2016) LPELR-40166(CA)