

BALANCING EQUITY AND FINANCIAL SECURITY: A CRITICAL EXAMINATION OF CONVEYANCING LIENS IN NIGERIA

***Dr. Idris Odekunle**

Abstract

*This paper offers a critical examination of conveyancing liens within the Nigerian legal framework, focusing on their nature, enforcement, and doctrinal complexities. Conveyancing liens—both vendor’s and purchaser’s—are recognized as equitable remedies that secure unpaid financial obligations in property transactions. The study traces their jurisprudential development through landmark decisions such as *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.* and *Williams v. Hope Rising Voluntary Funds Society*, highlighting the Nigerian judiciary’s evolving stance on equitable interests and the boundaries of fiduciary conduct. It evaluates the challenges arising from the absence of statutory codification, procedural inconsistencies, and vulnerability to bona fide purchasers. The paper further explores competing jurisprudential views on the creation of liens, enforcement limitations due to reliance on judicial discretion, and the subordination of liens to registered legal interests. Ultimately, the study advocates for legislative reform to harmonize practice, enhance enforceability, and ensure that conveyancing liens fulfill their protective role without undermining transactional integrity.*

Key Words: Conveyancing Liens, Equitable Remedies, Judicial Enforcement, Nigerian Property Law, Vendor and Purchaser Liens.

1. Introduction

Conveyancing liens are fundamental legal instruments in property transactions, providing a form of equitable security for unpaid financial obligations among vendors, purchasers, and legal practitioners. In the Nigerian property law framework, these liens ensure that a vendor retains an equitable interest in the property until the full purchase price is paid. Similarly, a purchaser may assert a lien where payment has been made but legal title has not been transferred. Thus, conveyancing liens serve as equitable remedies operating at the intersection of contract and property law, reinforcing fairness in real estate dealings.

The Nigerian judiciary has played a significant role in the recognition and enforcement of conveyancing liens, particularly by distinguishing between common law liens, which generally require possession, and equitable liens, which arise independent of possession but may be enforced through judicial intervention. For instance, in *Oyamenda & Anor v. Abdulrahman & Anor*, the Court of Appeal recognised the equitable nature of a vendor's lien, confirming that it subsists until the full consideration is paid, even where the vendor no longer has possession of the title documents¹. Similarly, in *Williams v. Hope Rising Voluntary Funds Society*, the

* Ph.D (Lagos), LL.M (London), LL.M (OAU), LL.B (Lagos), B.L, ACI Arb (UK), FCTI, ANIM, ACIS. Law Lecturer Department of Private and Property Law, Faculty of Law University of Lagos, Akoka, Lagos, Nigeria. Email: aodekunle@unila.edu.ng, feyintoluodekunle@yahoo.com Tel: 09027861671, 08110434750

¹ *Oyamenda & Anor v. Abdulrahman & Anor* (2013) LPELR-22744 (CA).

Supreme Court acknowledged a purchaser's equitable lien where payment has been made but legal title was not transferred².

Judicial pronouncements have also provided safeguards against the abuse of conveyancing liens, especially by solicitors. In *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.*, the Supreme Court held that solicitors cannot exercise liens over client funds, underscoring the fiduciary limits of such equitable remedies³. While these decisions promote accountability, they also reflect the inherent tension in balancing the rights of legal professionals with the obligations owed to clients and third parties.

Despite the evolving jurisprudence, conveyancing liens in Nigeria remain marred by several challenges. First, there is a noticeable absence of comprehensive statutory codification, which results in heavy reliance on judicial discretion. This often leads to inconsistencies in interpretation and enforcement. Secondly, the enforcement of liens through litigation may delay property transactions, affecting commercial efficiency. Furthermore, the absence of a central registration framework for liens exposes vendors and purchasers to third-party risks, particularly where competing interests—such as legal mortgages or bona fide purchasers exist.

Given these issues, this paper critically evaluates the strengths and weaknesses of conveyancing liens in Nigeria. It interrogates the judicial approach to the recognition and enforcement of these liens, examines their doctrinal underpinnings, and explores their limitations in modern property transactions. Finally, it advocates for legislative reforms to provide clarity, improve enforcement, and ensure that conveyancing liens fulfil their protective function without compromising the integrity of the conveyancing process.

2. Understanding Conveyancing Liens

2.1 Definition and Doctrinal Foundations

A conveyancing lien, though not explicitly defined in Nigerian statutes, is inferred from the broader legal concept of a lien. It grants one party the right to retain another's property until a contractual or legal obligation is fulfilled. In *B.J. Export & Chemical Processing Co. Ltd & Anor v. UBN*, the Court of Appeal defined a lien as the right of one person to retain possession of another's property until a debt is discharged⁴. Justice Ayoola, JSC, referencing Halsbury's Laws of England, described it as a right to detain goods as security for the satisfaction of an obligation⁵. Similarly, in *Barclays Bank Plc v. Estates & Commercial Ltd*, the court held that upon entering a binding land sale contract, the vendor acquires a lien over the property until full payment is made⁶.

2.2 Legal Preconditions for the Establishment of a Conveyancing Lien

A conveyancing lien typically arises when one party to a land transaction performs their contractual duty but the other fails to reciprocate. For instance, equity recognises a vendor's lien for unpaid purchase money even after the transfer of title. This was affirmed by the Supreme Court in *Afrotec Technical Services (Nig.) Ltd v. Mia & Sons Ltd & Anor*⁷.

² *Williams v. Hope Rising Voluntary Funds Society* (1982) 1 SC 145.

³ *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.* (2000) 15 NWLR (Pt. 692) 730.

⁴ *B.J. Export & Chemical Processing Co. Ltd & Anor v. UBN* (2019) LPELR-49712 (CA).

⁵ Halsbury's Laws of England, 4th ed., Vol. 28, para. 73.

⁶ *Barclays Bank Plc v. Estates & Commercial Ltd* (1997) WLR 415.

⁷ *Afrotec Technical Services (Nig.) Ltd v. Mia & Sons Ltd & Anor* (2000) LPELR-219 (SC).

Conversely, where a purchaser pays but does not receive legal title, a lien arises in their favour, as established in *Oguntimehin v. Unity Bank PLC*⁸.

2.2.1 Divergent Jurisprudential Views on the Creation of a Lien

Two competing schools of thought exist regarding when a lien arises:

The Contract Execution School: This view asserts that a lien is created upon execution of the sale agreement. Authorities such as *Whytes v. Lee* and *Re Birmingham* support this view^{9/10}. The English Court of Appeal in *Barclays Bank Plc v. Estates & Commercial Ltd* reaffirmed this, stating that a lien arises upon exchange of contracts.

The Possession School: This position maintains that a lien only arises upon the grant of possession without full payment. I.O. Smith supports this perspective, asserting that equity intervenes only where possession precedes full consideration¹¹. Sugden reinforces this in *Vendors and Purchasers of Estates*, noting that equitable intervention is warranted where a vendor loses possession before receiving payment¹².

Despite these divergent views, there is consensus that a vendor retains an equitable lien if full payment is not made. Barnsley observed that even after conveyance, the vendor's equitable interest persists where the purchase price remains unpaid¹³.

2.3 Key Legal Attributes of Conveyancing Liens

2.3.1 Equitable Foundation and Security Implications

Conveyancing liens are equitable rather than legal in nature. At common law, a vendor retains a lien until the purchase price is paid. This principle is illustrated in *Re Birmingham Deed*, where Upjohn J. held that the lien is enforceable despite the absence of possession. Similarly, in *Ogunbambi v. Abowaba*, the vendor retained an equitable lien after transferring possession¹⁴. Purchasers may also assert a lien to recover deposits or seek judicial enforcement, as held in *Yaro v. Arewa Construction Ltd & Ors*¹⁵.

2.3.2 Priority and Enforceability in Relation to Legal Interests

Conveyancing liens are generally subordinate to legal interests such as registered mortgages. A vendor's legal lien transforms into an equitable one upon conveyance, making it susceptible to third-party claims. Smith explains that while a lien grants a security interest, it does not confer ownership rights like a mortgage. In *Hewitt v. Court*, Deane J. confirmed that liens secure debt enforcement via judicial sale rather than title transfer¹⁶.

2.3.3 The Primacy of Bona Fide Purchasers Over Vendor's Equitable Liens

Equity will not allow a vendor's lien to override the rights of a bona fide purchaser without notice. In *Ayorinde v. Scott*, the vendor's lien was defeated due to the purchaser's lack of

⁸ *Oguntimehin v. Unity Bank PLC* (2017) LPELR-43244 (CA).

⁹ *Whytes v. Lee* (1885) 61 ER 954.

¹⁰ *Re Birmingham* (1959) Ch. 523.

¹¹ I.O. Smith, *Nigerian Law of Secured Credit*, p. 135–139.

¹² Sugden, *Vendors and Purchasers of Estates*, 14th ed. 1862, Ch. 19.

¹³ Barnsley, *Conveyancing Liens* (1997) 61 Conv. p. 340.

¹⁴ *Ogunbambi v. Abowaba* (1951) 13 WACA 222.

¹⁵ *Yaro v. Arewa Construction Ltd & Ors* (2007) 17 NWLR (Pt. 1063) 333.

¹⁶ *Hewitt v. Court* (1982) 149 CLR 639 at 664

notice¹⁷. The principle that "where equities are equal, the law prevails" remains central to lien jurisprudence.

2.3.4 Mechanisms for Protecting the Vendor's Lien

- i. To secure a lien, several measures are recognised under Nigerian law and practice:
- ii. Endorsement of the encumbrance on the instrument of conveyance at the Lands Registry;
- iii. Lodging of a caveat under the Registration of Titles Law;
- iv. Registration of the agreement for deferred payment; and
- v. Retention of title documents until full payment is made.

2.3.5 Competing Equitable Interests and the Rule of Priority

Where competing equitable interests exist, the rule *qui prior est tempore potior est jure* (he who is first in time has the stronger right) applies. This was affirmed in *Cave v. Cave*¹⁸. However, where another party registers their interest first such as a mortgagee the vendor's equitable lien may be displaced, as held in *Yesufu v. Oke*¹⁹.

2.4 The Right of Retention and Its Limitations

The right of retention permits a vendor to withhold possession or title documents until full payment is made. However, this right is not absolute:

- a. Waiver: Accepting alternate security may imply waiver of lien, as seen in *Ogunbambi v. Abowaba*.
- b. Payment and Transfer of Title: Upon full payment or transfer of legal title, the lien is extinguished, although an equitable lien may still subsist (as seen in *Ashaye v. African Continental Bank Ltd*)²⁰.
- c. Third-Party Interests: Bona fide purchasers for value without notice take free of the lien, as affirmed in *Bank of the North Ltd v. Yau*²¹.

In summary, conveyancing liens rooted in equity provide vendors and purchasers with protective mechanisms in property transactions. However, their enforceability depends on proper documentation, notice, and adherence to legal safeguards.

3. Scope of Conveyancing Lien

Conveyancing liens, comprising vendor's and purchaser's liens, are integral to the structure of Nigerian property law. They provide equitable protection by allowing a vendor to retain an interest in land until full payment is received, or by enabling a purchaser to claim a security interest where payment has been made but legal title has not been conveyed. The functionality of these liens extends beyond mere financial instruments—they serve as critical tools for managing contractual performance and protecting against default in real estate transactions.

However, their application is complex, especially when competing claims emerge—such as from bona fide purchasers or secured creditors. This chapter explores the legal basis, jurisprudence, and operational scope of both vendor and purchaser liens, as well as their interaction with third-party rights.

¹⁷ *Ayorinde v. Scott* (CCCHCJ/2/72).

¹⁸ *Cave v. Cave* (1880) 15 Ch. D. 69.

¹⁹ *Yesufu v. Oke* (1970) 1 All NLR 117.

²⁰ *Ashaye v. African Continental Bank Ltd* (1973) NNLR 59.

²¹ *Bank of the North Ltd v. Yau* (2001) 10 NWLR (Pt. 721) 408.

3.1 Vendor's Lien: Legal Basis and Jurisprudence

A vendor's lien arises where a seller has conveyed the property and handed over title documents but has not received full payment. In *Barclays Bank Plc v. Estates & Commercial Ltd*, the court affirmed that the unpaid vendor retains an equitable right post-conveyance²². This lien extends to unpaid purchase money and compensation for compulsory acquisition, as illustrated in *Re Hamilton Snowball's Conveyance*²³.

However, this equitable protection may be lost where a bona fide purchaser acquires the land without notice of the unpaid sum. In *Ayorinde v. Scott*, the court held that such a purchaser takes free of the vendor's lien, reaffirming the principle that equitable rights cannot override the rights of innocent third parties²⁴.

3.1.1 Protection and Perfection of Vendor's Lien

Given the vulnerability of vendor's liens to third-party interests, the law encourages proactive measures to secure them:

- Endorsement of encumbrances at the Lands Registry;
- Lodging a caveat to provide constructive notice to the public;
- Registering deferred payment agreements;
- Retention of title documents until full payment is made.

As held in *Ayorinde v. Scott*, failure to take such steps may result in the lien being subordinated to the rights of subsequent mortgagees or purchasers.

3.1.2 The Sub-Vendor's Lien: Extension of Equitable Protection

A sub-vendor's lien arises when the original purchaser resells the land before completing payment to the initial vendor. Equity allows the original vendor to assert a lien against the sub-purchaser, provided the sub-vendor's interest is adequately protected through mechanisms such as registration or notice. This aligns with the equitable principle of avoiding unjust enrichment and upholding good conscience.

3.1.3 Transfer and Subrogation of Vendor's Lien

Where a third party, such as a financier, pays the purchase price on behalf of the purchaser, they may be subrogated to the vendor's lien. In *Boodle v. British Films Ltd*, the court held that the financier could assume the vendor's rights to recover unpaid sums²⁵. However, this right is not absolute. In *Nottingham Permanent Benefit Building Society v. Thurstan*, subrogation was denied due to contractual deficiencies²⁶.

3.1.4 Towards a More Secure Vendor's Equitable Interest

Although courts generally uphold vendors' equitable liens, the priority of third-party rights often weakens the protection afforded. This calls for statutory intervention to strengthen lien registration mechanisms and clarify lienholder rights. Legislative reform could require mandatory endorsement of liens at the registry to prevent subsequent purchasers from claiming ignorance of prior interests.

²² *Barclays Bank Plc v. Estates & Commercial Ltd* (1997) WLR 415.

²³ *Re Hamilton Snowball's Conveyance* (1959) Ch. 308.

²⁴ *Ayorinde v. Scott* (CCCHCJ/2/72).

²⁵ *Boodle v. British Films Ltd* (1956) 1 Ch 123.

²⁶ *Nottingham Permanent Benefit Building Society v. Thurstan* (1903) AC 6.

3.1.5 Third-Party Interests in Vendor's Equitable Liens

The primary challenge facing vendor's liens lies in their enforceability against subsequent purchasers and mortgagees. Nigerian courts uphold the rule that bona fide purchasers for value without notice take the property free of prior equitable claims. As seen in *Rice v. Rice*, the court prioritised legal titleholders acting in good faith²⁷. Accordingly, vendors must ensure their liens are visible and enforceable through available statutory instruments.

3.1.6 Priority of Bona Fide Purchasers Over Vendor's Equitable Liens

In *Ayorinde v. Scott*, the court reiterated that where a purchaser has no notice of a vendor's lien, equity will not enforce the lien against such a party. This doctrine protects innocent third parties and underscores the importance of constructive and actual notice.

3.1.7 Mechanisms for Safeguarding the Vendor's Lien

Protective steps remain essential. Smith recommends:

- Endorsement at the Lands Registry;
- Lodging caveats with the Registrar of Titles;
- Registration of agreements for deferred payment; and
- Retention of the title deeds as security.

These steps serve to perfect the lien and notify subsequent parties of the vendor's equitable interest.

3.2 Purchaser's Lien

A purchaser's lien is an equitable interest that arises when a buyer has paid or partially paid the purchase price but has not received legal title. Originating from *Burgess v. Wheate*, the doctrine entitles the purchaser to secure the return of the deposit and compensation for improvements²⁸. This lien also protects expenses incurred during title investigation or possession-related activities. The courts, in *Whitbread & Co. Ltd v. Watt* and *Lee-Parker v. Izz*, extended the lien's scope to include costs directly related to the transaction^{29/30}.

3.3 Exclusion and Waiver of Liens

Liens may be contractually excluded or waived through conduct. In *Capital Finance Co. Ltd v. Stokes*, a contractual exclusion was upheld³¹. In *Barclays Bank Plc v. Estates & Commercial Ltd*, accepting alternative security was deemed a waiver. However, a mere promissory note does not extinguish the lien, as held in *Middleton v. Magnay*³².

While conveyancing liens are vital in protecting the financial interests of stakeholders, their effectiveness hinges on prompt legal actions, proper registration, and consistent judicial interpretation. Statutory intervention remains necessary to eliminate ambiguities, enhance enforcement, and protect equity in Nigerian property transactions.

²⁷ *Rice v. Rice* (1853) 61 ER 646.

²⁸ *Burgess v. Wheate* (1759) 1 W.B. 123.

²⁹ *Whitbread & Co. Ltd v. Watt* (1902) 1 Ch. 835.

³⁰ *Lee-Parker v. Izz* (1971) 1 WLR 1688.

³¹ *Capital Finance Co. Ltd v. Stokes* (1969) 1 Ch. 201.

³² *Middleton v. Magnay* (1849) 71 ER 452.

4. Enforcement of Conveyancing Liens in Nigeria—Legal Framework and Judicial Intervention

Conveyancing liens, being equitable interests, function as essential legal mechanisms to secure unpaid obligations in property transactions. Their enforceability is critical for upholding the integrity of land transactions, ensuring that vendors and purchasers alike are not financially prejudiced. In Nigeria, the enforcement of conveyancing liens requires recourse to judicial remedies due to their equitable nature. This chapter evaluates the various enforcement mechanisms available under Nigerian law, while also considering the limitations imposed by procedural gaps and the discretionary powers of the courts.

4.1 Enforcement of Vendor’s Lien

A vendor’s lien serves as security for unpaid purchase money after transfer of title or possession. Upon purchaser default, the vendor may seek equitable remedies such as judicial declaration, sale, or injunction.

4.1.1 Judicial Declaration of Lien

One of the primary modes of enforcement is by seeking a court declaration affirming the existence of the lien. In *Parrott v. Sweetland*, the court held that such a declaration places the lienholder in a position similar to that of a mortgagee³³. In *Winter v. Lord Anson*, it was held that upon a declaration of lien, the vendor may enforce it through judicial foreclosure or sale³⁴. Similarly, *Williams on Vendor & Purchaser* affirms that once declared, a vendor’s lien may be enforced like a legal charge³⁵.

4.1.2 Judicial Sale of Property

Where the purchaser defaults in payment, the vendor may petition the High Court to order a judicial sale of the property to recover the unpaid amount. In *Savannah Bank Plc v. Ajilo*, the Supreme Court upheld the vendor’s right to seek equitable relief through judicial sale, provided the purchaser’s breach was proven³⁶.

4.1.3 Appointment of a Receiver

Another equitable remedy is the appointment of a receiver to manage the property pending resolution of the debt. This is appropriate where the vendor fears asset dissipation or delay. In *Re Stucley*, the court approved this mechanism to preserve the property’s value while litigation was ongoing³⁷.

4.1.4 Injunction against Further Transfers

To prevent fraudulent alienation of the property, the vendor may apply for an interlocutory injunction restraining the purchaser from transferring or encumbering the property. Nigerian courts routinely uphold such relief where the vendor’s interest would otherwise be irreparably harmed.

4.1.5 Enforceability against Successors in Title

Vendor’s liens may be enforced against successors in title except where such successors are bona fide purchasers without notice. In *Williams v. Hope Rising Voluntary Funds Society*, the

³³ *Parrott v. Sweetland* (1839) 40 E.R. 250.

³⁴ *Winter v. Lord Anson* (1840) 38 E.R. 658.

³⁵ *Williams, Vendor & Purchaser*, 4th ed. (1936), Vol. 2, p. 984.

³⁶ *Savannah Bank Plc v. Ajilo* (1989) SCNJ 159.

³⁷ *Re Stucley* (1906) 1 Ch 67.

court affirmed the lien's enforceability against transferees who were not purchasers for value or who had notice of the lien^[^2].

4.2 Enforcement of Purchaser's Lien

A purchaser's lien arises when the buyer pays the purchase price but does not receive legal title. The courts recognise this lien as an equitable security interest, which may be enforced through several legal remedies.

4.2.1 Judicial Declaration of Lien and Sale of Property

Purchasers may seek a High Court declaration affirming their equitable interest. Where the vendor is unable or unwilling to complete the transaction, the court may order a judicial sale of the property. In *Isaac v. Imasuen*, the court recognised the purchaser's lien where partial payment had been made but legal title was not transferred³⁸.

4.2.2 Specific Performance as a Remedy

Specific performance is an equitable remedy compelling the vendor to honour the contract by completing the transfer of title. This is usually granted where monetary damages are inadequate. Nigerian courts favour this remedy in real estate transactions, as land is considered unique and not readily replaceable.

4.2.3 Judicial Sale of Property to Enforce Purchaser's Lien

Where a vendor fails to convey legal title despite payment, courts may order a judicial sale. In *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor*, the Supreme Court affirmed the purchaser's right to judicial sale where there is a default on the vendor's part³⁹.

Enforcement mechanisms available under Nigerian law for both vendor and purchaser liens underscore the judiciary's pivotal role in maintaining fairness in property transactions. However, several barriers, such as procedural delays, high litigation costs, and absence of statutory guidance, continue to hinder timely and predictable enforcement. These limitations necessitate legislative intervention to streamline enforcement and reduce overreliance on equitable discretion.

5. The Enforceability of Purchaser and Sub-Purchaser Liens in Nigerian Conveyancing Law

Conveyancing liens serve as equitable remedies that protect both purchasers and sub-purchasers from financial loss where property transactions remain incomplete. This chapter analyses the scope, enforceability, and limitations of purchaser and sub-purchaser liens, particularly in the context of Nigerian judicial precedents and evolving equitable doctrines.

5.1 The Binding Nature of a Purchaser's Lien on Successors in Title

A purchaser's lien secures the buyer's interest where payment has been made in full or in part, but legal title depends on registration or proof of notice. In *SO Isaac v. Imasuen*, the Supreme Court held that a purchaser's lien binds successors who had either actual or constructive notice of the original purchaser's equitable interest⁴⁰. Similarly, *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor* reaffirmed that once properly registered or

³⁸ *Isaac v. Imasuen* (2016) 8 NWLR (Pt. 1524) 120.

³⁹ *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor* (2011) 18 NWLR (Pt. 1278) 152.

⁴⁰ *SO Isaac v. Imasuen* (2016) 8 NWLR (Pt. 1524) 120.

brought to the notice of third parties, equitable rights—including purchaser’s liens—retain their binding effect⁴¹.

5.2 Enforcement of Sub-Purchaser’s Lien

A sub-purchaser’s lien arises when a purchaser resells their interest in a property before completing the transaction with the original vendor. This lien protects the sub-purchaser’s investment and ensures financial recovery where the original transaction fails.

5.3 Sub-Purchaser’s Lien before Completion of the Contract

Prior to contract completion, a sub-purchaser holds an equitable lien over the purchaser’s interest. This provides a mechanism for the sub-purchaser to claim compensation if the vendor defaults. In *Benjamin Onwughamba Ezenwa v. Okpara Oko & Ors*, the court upheld a sub-purchaser’s right to enforce their lien in circumstances where the original purchaser had not perfected title⁴².

5.4 Liability for Non-Completion of the Contract

When a transaction fails, liability depends on the party in default:

Vendor’s Default: The vendor must refund the purchaser, who in turn must reimburse the sub-purchaser.

Purchaser’s Default: The sub-purchaser may sue the purchaser for breach of contract.

In *A.O. Williams v. Hope Rising Voluntary Funds Society*, the court clarified that sub-purchasers must direct their claims against the purchaser who failed to meet contractual obligations⁴³.

5.5 Sub-Purchaser’s Lien after Completion of the Contract

After the purchaser perfects title, the sub-purchaser’s interest transitions from an equitable lien to a direct legal interest. In *SO Isaac v. Imasuen*, the Supreme Court held that such an interest may bind subsequent owners, provided they had notice of the prior equitable claim^[43]. Thus, equitable doctrines continue to offer sub-purchasers protection, even after contractual perfection, reinforcing the principle of constructive notice and good conscience.

In conclusion, purchaser and sub-purchaser liens represent essential instruments for equitable redress in property transactions. Nigerian case law, including *Imasuen* and *Ezenwa*, affirms the enforceability of such liens where proper procedures are followed. These doctrines not only promote transactional integrity but also deter fraudulent conduct and financial injustice in the property market.

6. The Judicial Approach to Conveyancing Liens in Nigeria—A Critical Analysis

Conveyancing liens, as equitable interests in property, provide a framework for enforcing financial obligations and promoting fairness in contractual performance. Nigerian courts have played a vital role in shaping the doctrine of conveyancing liens through statutory interpretation, common law development, and equitable balancing. This chapter critically examines the judicial posture toward the recognition, enforcement, and regulation of

⁴¹ *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor* (2011) 18 NWLR (Pt. 1278) 152.

⁴² *Benjamin Onwughamba Ezenwa v. Okpara Oko & Ors* (2016) 4 MILR (SPA. 1503) 300.

⁴³ *A.O. Williams v. Hope Rising Voluntary Funds Society* (1982) 1 SC 145.

conveyancing liens, highlighting both judicial innovation and the challenges posed by discretionary inconsistencies.

6.1 Judicial Interpretation of Conveyancing Liens

The Nigerian judiciary has long recognised conveyancing liens as legitimate equitable tools for protecting financial interests in property transactions. In *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.*, the Supreme Court affirmed that a lien is a legal mechanism by which one party may retain property or documents until a financial obligation is satisfied⁴⁴. Similarly, in *Re Morris*, it was held that legal practitioners may assert general liens over documents related to their professional work, thus reinforcing the doctrine's protective character⁴⁵.

However, the courts have been careful to distinguish between legitimate lien enforcement and fiduciary abuse. For example, solicitors are prohibited from exercising liens over client funds held in trust, reflecting the judiciary's commitment to balancing equitable remedies with professional ethics.

6.2 Distinction between Equitable and Common Law Liens

Nigerian jurisprudence consistently differentiates between common law and equitable liens. In *Oyamenda & Anor v. Abdulrahman & Anor*, the Court of Appeal clarified that common law liens arise only where possession is retained by the lienholder, whereas equitable liens do not depend on possession and may be enforced through court intervention⁴⁶. This distinction has enabled courts to offer relief in situations where physical possession has passed but financial obligations remain unsettled.

6.3 The Judicial Protection of Vendor and Purchaser Liens

Courts have developed equitable doctrines to protect the interests of vendors and purchasers where obligations remain partially fulfilled. In *Williams v. Hope Rising Voluntary Funds Society*, the Supreme Court upheld the purchaser's equitable lien and ruled that it could bind third parties who had notice of the lien⁴⁷. This protection prevents fraudulent conveyances and safeguards the rights of parties who have acted in good faith.

For vendors, the courts also uphold the right to retain title documents or claim equitable relief until full payment is made. However, such rights may be defeated where the transferee is a bona fide purchaser without notice of the lien, as illustrated in *Ayorinde v. Scott*⁴⁸.

6.4 Restrictions and Judicial Discretion in the Enforcement of Liens

The courts exercise discretion in determining the appropriateness of lien enforcement. Excessive or prolonged retention of documents without valid grounds may amount to wrongful detention. Furthermore, where lien enforcement would lead to manifest injustice or disproportionate hardship, the courts may deny equitable relief.

This discretionary approach serves as both a safeguard and a limitation. On the one hand, it prevents abuse by powerful lienholders such as vendors or solicitors. On the other, it introduces uncertainty, as different courts may adopt varying thresholds for enforcement.

⁴⁴ *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.* (2000) 15 NWLR (Pt. 692) 730.

⁴⁵ *Re Morris* (1896) 2 Ch 253.

⁴⁶ *Oyamenda & Anor v. Abdulrahman & Anor* (2013) LPELR-22744 (CA).

⁴⁷ *Williams v. Hope Rising Voluntary Funds Society* (1982) 1 SC 145

⁴⁸ *Ayorinde v. Scott* (CCCHCJ/2/72).

In summary, while the Nigerian judiciary has generally embraced the equitable doctrine of conveyancing liens, it has also imposed procedural and ethical safeguards to regulate their application. Through decisions such as *Afrotec*, *Oyamenda*, and *Williams*, the courts have clarified the nature and enforceability of liens. However, the absence of codified standards and reliance on judicial discretion continue to raise issues of predictability, uniformity, and fairness.

7. Findings

This study examined the legal character, enforceability, and jurisprudential challenges associated with conveyancing liens in Nigeria. The findings reveal several key insights:

1. **Judicial Recognition but Doctrinal Ambiguities:** Although conveyancing liens are judicially recognised as equitable interests, the lack of statutory definition has produced doctrinal inconsistencies. For example, *Barclays Bank Plc v. Estates & Commercial Ltd* viewed the lien as an equitable remedy for unpaid purchase money⁴⁹, whereas classical authorities like *Sugden* regard liens as conditional on possession⁵⁰.
2. **Uncertainty on the Time of Creation:** Nigerian courts remain divided on when exactly a lien arises. Some cases support the view that it arises upon execution of the sale contract⁵¹, while others argue that it arises only upon transfer of possession⁵².
3. **Subordination to Legal Interests:** Conveyancing liens are generally subordinate to registered legal interests, such as mortgages. In *Yesufu v. Oke*, the court held that a legal mortgage registered before the lien displaces the latter's equitable interest⁵³.
4. **Vulnerability to Bona Fide Purchasers:** Where the purchaser of land acquires title without notice of a vendor's lien, such lien is unenforceable, as was the case in *Bank of the North Ltd v. Yau*⁵⁴ and *Ayorinde v. Scott*⁵⁵.
5. **Procedural Weaknesses and Costs:** Procedural requirements—like lodging caveats and registering deferred agreements—are often ignored, increasing the risk of losing lien protection. Unlike mortgages, liens cannot be enforced via statutory foreclosure but require judicial proceedings, which are often time-consuming and expensive.
6. **Judicial Safeguards:** Despite these limitations, the courts have upheld the protective essence of liens. In *Ayorinde v. Scott*, several procedural mechanisms were recommended to perfect a lien, including lodging caveats and retention of title documents⁵⁶. Similarly, subrogation principles in *Boodle v. British Films Ltd* allow financiers to assume the position of a vendor to prevent unjust enrichment⁵⁷.
7. **Doctrinal Vulnerabilities and Waivers:** Vendors who accept alternative securities—such as promissory notes—may be deemed to have waived their lien, though courts like in *Middleton v. Magnay* have held that such instruments do not automatically extinguish a lien⁵⁸.
8. **Ranking below Registered Interests:** Conveyancing liens are generally less effective than registered charges and legal mortgages due to their equitable nature and the absence of formal registration requirements. This weakens their utility as security interests.

⁴⁹ *Barclays Bank Plc v. Estates & Commercial Ltd* (1997) WLR 415.

⁵⁰ *Sugden, Vendors and Purchasers of Estates*, 14th ed. 1862, Ch. 19.

⁵¹ *Whytes v. Lee* (1885) 61 ER 954.

⁵² *Afrotec Technical Services (Nig.) Ltd v. Mia & Sons Ltd & Anor* (2000) LPELR-219 (SC).

⁵³ *Yesufu v. Oke* (1970) 1 All NLR 117.

⁵⁴ *Bank of the North Ltd v. Yau* (2001) 10 NWLR (Pt. 721) 408.

⁵⁵ *Ayorinde v. Scott* (CCCHCJ/2/72).

⁵⁶ *Ayorinde v. Scott* (CCCHCJ/2/72).

⁵⁷ *Boodle v. British Films Ltd* (1956) 1 Ch 123.

⁵⁸ *Middleton v. Magnay* (1849) 71 ER 452.

8. Recommendations

1. Codification of Conveyancing Liens: The National Assembly or State Legislatures should enact laws clearly defining the scope, types, and enforcement procedures of conveyancing liens to reduce judicial inconsistency.
2. Mandatory Registration of Liens: Just like mortgages, conveyancing liens should be subject to registration at the Land Registry. This would protect lienholders and reduce the risk of loss to bona fide purchasers.
3. Statutory Enforcement Mechanisms: Legislation should provide for non-judicial enforcement mechanisms—such as administrative orders for lien satisfaction—to reduce litigation burdens and delays.
4. Standardised Procedures for Lien Creation: Legal professionals should be mandated to include lien clauses and enforcement triggers in sale agreements, thereby ensuring both parties are aware of potential obligations.
5. Capacity Building for Legal Practitioners: Continuous legal education should address the procedural steps required to perfect and enforce liens, including the utility of caveats, endorsements, and document retention.
6. Judicial Consistency through Practice Directions: The judiciary, particularly the High Courts and Courts of Appeal, should issue practice directions that guide lien-related litigation and prevent conflicting rulings.

9. Conclusion

The judicial approach to conveyancing liens in Nigeria reflects a dynamic yet uneven attempt to balance financial security and equitable fairness. The courts have helped entrench the doctrine by distinguishing between common law and equitable liens, and by providing remedies to vendors and purchasers when transactions fail. Landmark cases such as *Oyamenda & Anor v. Abdulrahman & Anor* and *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.* illustrate the Nigerian courts' willingness to uphold liens while limiting their misuse.⁵⁹

However, reliance on case law rather than codified legislation introduces unpredictability. Enforcement delays—often due to litigation—have adverse economic implications, including obstructing title transfer, discouraging investment, and enabling opportunistic conduct by defaulting parties.

In conclusion, while judicial activism has given practical relevance to the doctrine of conveyancing liens in Nigeria, a legislative framework is now needed to consolidate these gains and mitigate ambiguities. Such reforms would enhance predictability, procedural efficiency, and equitable justice in real estate transactions.

⁵⁹ *Oyamenda & Anor v. Abdulrahman & Anor* (2013) LPELR-22744 (CA); and *Afrotec Tech. Services (Nig.) Ltd. v. MIA & Sons Ltd.* (2000) 15 NWLR (Pt. 692) 730.