Consumer Protection and the Purchase of Real Property *Pendente Lite* under the Doctrine of *Lis Pendens:* The Consumer's Nightmare

Obumneme-Okafor, N.J.*

Abstract

Part of our received law in the nature of common law and the principles of equity is the doctrine of lis pendens which operates to prevent the effective alienation and transfer of any property subject to litigation during the pendency of the suit. In its operation as has been applied by the courts in Nigeria, it does not matter whether the purchaser had notice, actual or constructive of the pendency of the litigation at the time of the purchase and it is enough that the suit was already pending in the sense that the case had been instituted and service of the processes effected on the vendor of the property before the transaction took place. The fate of that transaction is that the purchaser stands to lose the property should the vendor turn out to be the loser at the end of the litigation. The rigidity with which the doctrine is applied subjects the purchaser who, within the context of the law of consumer protection, is the consumer, to the unenviable state of uncertainty and the eventual risk of the purchase turning out to be a nullity by reason of the somewhat uncompromising effect of the doctrine. It therefore becomes necessary to examine the position of the purchaser pendente lite, as the consumer to see the extent, if any, to which the law as it stands, affords him any degree of protection and what could be done to better his lot having regard to the state of the law.

Introduction

There is perhaps no other branch of the Nigerian municipal law where fraud is committed with high degree of recklessness than in transactions relating to the sale or transfer of interests in land. The result is that several innocent and unsuspecting intending buyers of land frequently get defrauded by fraudulent land speculators who

* LL.B (Hons), LL.M, Ph.D, BL Senior Lecturer and Ag. Head, Dept. of Jurisprudence and International Law, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State
Phone No: 08033544172 Email: *nikina4eva@gmail.com*

leave them burdened with law suits instead of the interests in land which they set out to acquire. A learned author captured the unwholesome situation thus;

> In more than a handful of cases, a party who suspects that his title is defective surreptitiously sells the property to an unsuspecting purchaser and absconds leaving the purchaser to contend for title with the judgment creditor.[1]

Naturally by reason of the high degree of premium which the law attaches to the property rights of the citizen, the law had been quite alive to the need to develop rules with which property rights are sought to be adequately protected. Generally, property rights can sometimes protect the individual against certain forms of unjust exploitation by other individuals or by government[2]. The doctrine of *lis pendens* is one such means of protection developed by the law to shield parties contending for title over property from having their rights overreached by either party while the suit is still pending. The strictness or harshness of the application of the doctrine particularly with its effect on the transaction and *a fortiori* the interest supposedly acquired by the purchaser *pendente lite* raises the question as to whether such purchaser, even as unsuspecting as he was in the transaction, could be afforded any form of protection by way of remedy under the law against the fraudulent vendor. This enquiry sets out to establish the degree of protection, if any, which the purchaser could be afforded and what could be done to further extenuate and mellow down the effect of the damnable consequences of the application of the doctrine.

The Meaning, Nature and Origin of the Doctrine

Lis Pendens simply, means a pending law suit. It connotes the jurisdiction, power, or control acquired by a court over property while a legal action is pending[3]. The Supreme Court adopted the

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[1] Chianu, E. *Law of Sale of Land, Abuja* Nigeria, Law Lords Publications, 2009 p. 244

[2] Baker C. Edwin, *"Property and its Relation to Constitutionally Protected Liberty"*; 1986, Vol. 134, No. 4 University of Pennsylvania Law Review, 741@ 747

[3] Garner, Bryan A. Ed *Black's Law Dictionary* 9th Ed. USA, Thomson Reuters 2009, 1015.

above definition of the doctrine as given by the Black's Law Dictionary in the case of *Kolawole Oronti v Alhaji S. A Onigbanjo*[4] The doctrine postulates the rule that a sale conducted when a matter is in litigation is void *ab initio* and no title can be passed to the purchaser. As a matter of policy it precludes a plaintiff from selling the land in dispute when he knows that there is dispute in court over the ownership[5]. The doctrine is designed to prevent the vendor from transferring any effective title to the purchaser by depriving him (the vendor) of any right over the property during the currency of the litigation or the pendency of the suit[6]. The doctrine of *lis pendens* is of common law origin and the full maxim is *lis pendens nihil innovetur*, meaning, "law suit pending, nothing new to be done".[7]

The Fundamental Principle

Explicit from the cases in which the doctrine has been applied is the fact that the fundamental principle forming the substratum of the doctrine is that a purchaser, a mortgagee, a transferee or other alienee of interest in land which is *sub judice* acquires no valid title in the land or at least runs the risk of the transaction becoming a ruse in the event of it being declared null and void. This is the scenario decipherable from such cases as *Ogundiani v Araba,*[8] *Barclays Bank (Nig) Ltd v. Ashiru,*[9] *Oronti v Onigbanjo*[10] *and Osagie v Oyeyinka*[11] just to mention a few. In *Ogunsola v NICON* [12], the court explained that if a purchaser chooses to purchase a property subject to litigation from one of the litigants, during the currency of the litigation, he does so at his own risk and if it turns out that the person from whom he bought has no title or was

[4] (2012) 41 WRN 1 @ 21 see also, Ayorinde v Ayorinde (2004) 13 NWLR Part 889. p83@ 96

[5] Osidele & 2ors v Sokunbi (2012) 50 WRN 1 @ 33

[6] Ibid, 34

[7] Adjarho v Agbanelo (2015) 7WRN 160 @ 17 8, Oyegbeni & Anor v Aromire & 3 ors (2012) 30 WRN 142 @ 168. Majekodunine v Co- Op Bank Ltd (1997) 10NWLR Part-524p 198 @249 Ezomo v NNB PLC & Anor (2006) 14NWLR pt-1000p624@648, Doma v Ogiri (1997) 1 NWLR pt 481 P322

[8] (1978) 1 LRN 280

[9] (1978) 1 LRN 266

[10] Supra

[11] (1987) 3 NWLR (Part 59) 144

[12] (1991)4 NWLR (pt 188) 762@ 771, see also Wigran v Buckley (1894) 3 Ch. 483 @ 497

adjudged at the end of the pending action not to be the owner, he takes it as he finds it and where the defendant alienates during the pendency of a suit, the result of the judgment if the plaintiff succeeds will over-reach such alienation. Fabiyi JSC[13] explained that the doctrine of *lis pendens* evolved in order to prevent parties in a pending suit from alienating the subject matter so as to prejudice the opposite party. The effect which the doctrine has on the transaction conducted *pendente lite* is so because the title to the disputed land will not be taken to vest in any of the contending parties as it is regarded as being and remaining at large until the conclusion of the suit. The erudite jurist, Oputa JSC approached the matter thus in his usual lucid manner in *John Osagie v Alhaji Oyeyinka & Anor;*[14]

> Simply put, the doctrine of *lis pendens* operates to prevent the effective transfer of any property in dispute during the pendency of that dispute. It is quite irrelevant whether the purchaser has notice, actual or constructive. The doctrine is really designed to prevent the vendor from transferring any effective title to the purchaser by depriving him (the vendor) of any rights over the property during the currency of the litigation or the pendency of the suit. That being so, the principle of *nemo dat quod non habet* will apply to defeat any sale or transfer of such property made during the currency of litigation or the pendency of the action.

The practical application of the effect of the doctrine will be seen from some of the cases in which it had been applied. *Ogundiani v Araba*[15] would appear to be the first case in which the Supreme Court dealt with the doctrine. In that case, an equitable mortgage had been created by a mortgagor over his property in favour of his bank with an undertaking to execute a deed of legal mortgage whenever called upon to do so. When the time arrived for him to execute the deed of legal mortgage, he reneged. The mortgagee succeeded in an action for specific performance against him to execute the deed of legal mortgage. The mortgagor appealed

[13] Oronti vOnigbanjo Ibid, p. 21.
[14] (1987) 6 SC 199 @ 238
[15] Supra

against the judgement and while the appeal was pending he sold and conveyed the property to the plaintiff. The mortgagee bank in whose favour the appeal went, sold the land to the defendant. The Supreme Court held that the plaintiff who bought from the mortgagor was a purchaser *pendent lite* and as such acquired no title to the land via his purchase. After stating the effect of the doctrine in preventing the effective transfer of rights in any property subject-matter of litigation, Idigbe JSC explained thus;

> In its application against any purchaser of such property, the doctrine is not founded on the equitable doctrine of notice - actual or constructive - but upon the fact that the law does not allow to litigant parties or give to them, during the currency of the litigation involving any property, rights in such property i.e. the property in dispute so as to prejudice any of the litigant parties.[16]

The Supreme Court had placed reliance on some old English cases in which the doctrine was applied and one of which was *Sorrell v Carpenter*[17] in which the plaintiff instituted an action against Ligo upon a claim which the decree established to certain leasehold estates. Pending the suit, Ligo sold the property involved to Carpenter. The question turned upon whether Carpenter qua purchaser could sustain his purchase. It was held that he could not sustain his purchase as the same was made *pendente lite*[18].

In 2003, the Supreme Court in *Bua v Dauda*[19] upheld the judgement of the Court of Appeal which upheld the judgement of the trial court setting aside the sale of the respondent's property by the 1st defendant to the 2nd defendant/appellant and which sale was undertaken after the 1st defendant had filed his statement of defence to the suit of the respondent on the basis that the sale was effected *pendente lite* and the appellant's plea of lack of knowledge of the pending suit when he purchased the property did not avail him. In *Dan-Jumbo v Dan-Jumbo*[20] the grant of probate by the Probate Registrar to the appellants while the respondent's

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[16] Supra @ 289 – 290.
[17] (1728) 2 PWms 482.
[18] See also *Kinsman v Kinsman* (1831) 1 Russ & M 617 or 39 ER 236
[19] (2003) 13 NWLR (Part 838) 657 or (2003) 43 WRN 1
[20] (1999) 11 NWLR (part 627) 445 OR (1999) 7 SCNJ 112

appeal against the judgement of the trial court was still pending before the Court of Appeal was revoked on the ground that the probate having been granted *pendente lite*, was caught by the doctrine of *lis pendens* and therefore null and void.

The Juridical Basis for the Doctrine

From the litany of decisions on the doctrine its juridical basis as clearly explained by the Supreme Court in *Bua v Dauda* could be seen to be that the doctrine which is common to the courts of law and equity rests upon the foundation that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant alienating before the judgement or decree and would be driven to commence his proceedings de novo subject again to be defeated by the same course or proceedings. Where litigation is pending between a plaintiff and a defendant as to the right to a particular estate the necessities of mankind require that the decision of the court in the suit shall be binding, not only on the litigants but also upon those who derive title under them by alienation made pending suit whether such alienees had or had no notice of the pending proceedings. If this were not so, there could be no certainty that litigation would ever come to an end. A mortgage or sale made before a final decree to a person who had no notice of pending proceedings would always render a new suit necessary and so interminable litigations might be the consequence[21.] This is the prism from which if viewed, it would be seen as appropriately described as a corollary of the public policy rule that it is in the public interest that there be an end to litigation which is expressed in the maxim; *interest rei publicae ut sit finis litium* as rightly pointed out by a learned writer.[22] By the way and manner in which the doctrine operates, it is not founded upon any of the peculiar tenets of the court of equity as to the implied or constructive notice. It rests upon the foundation that it would plainly be impossible that any action or suit could be brought to a

[21] *Supra* @ 694 – 695 see also *Bellamy v Sabine (1857) 26 LJ Ch 797* @ 803 as extensively quoted and relied upon by the Supreme Court in *Barclays Bank v Ashiru Supra* @ 276 and *Bua v Dauda* @ 694 – 696.

[22] Ogunniran, H., "Purchasers and Mortgagees of Land Pendente Lite – A Caveat", (1990/91) 13, 14 & 15 JPPL 53 @ 55

successful termination if alienation *pendente lite* were permitted to prevail. Thus in the words of the Lord Chancellor, Turner LJ in *Bellamy v Sabine*[23]

> It is scarcely accurate to speak of *lis pendens* as affecting a purchaser upon the doctrine of notice, although undoubtedly the language of the court often so describes its operation. It affects him not because it amounts to notice but because the law does not allow to litigant parties and give to them pending the litigation rights to the property in dispute so as to prejudice the opposite party.

This passage and more on the issue of the inapplicability of the doctrine of notice were quoted approvingly by the Supreme Court in *Barclays Bank of Nig Ltd v Ashiru*[24] *and Ogundiani v Araba*[25] and according to Niki Tobi JSC *in Matthew Okechukwu Enekwe v International Merchant Bank of Nigeria & 2ors*[26].

> The doctrine which is embedded in the common law gives notice to persons by way of warning that a particular property is the res of litigation and that a person who acquires any interest in it must know well ahead that the interest will be subject to the decision of the court on the property. A person who buys property in the course and pendency of litigation has bought litigation for himself and should be prepared to face the litigation. In other words, the fortunes or gains of persons in respect of the property will be dictated or determined by the result or outcome of the litigation. Such is the strong caveat placed on the property. Although, the doctrine is not the same as caveat emptor in strict legal context, it has some loose or vague affinity with it as it relates to a person buying or purchasing a property in a market overt. Nigeria as a common law country applies the doctrine in appropriate cases.

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[23] Ibid @ 803
[24] Ibid p. 276-277
[25] Ibid p. 290
[26] (2006) 19 NWLR (part 1013) p. 146 @ 171

Surely, the notice talked about by Tobi JSC in *Enekwe v IMB* is not the notice in the sense of the equitable fixation of actual or constructive notice which carries with it the consequence brought about by such equitable principles. It is notice in a lose manner of speech in the sense that since litigation is pending before the court there is a duty cast upon the parties to the suit to respect the court exercising judicial power over the subject matter of the suit. Thus, in *Olori Motors v UBN Plc*[27] the Supreme Court re-echoed the inapplicability of the equitable doctrine of notice to the doctrine of *lis pendens* as upheld in *Ogundiani v Araba* following *Bellamy v Sabine*.

The trial judge in the case of *Osagie v Oyeyinka*[28] had misapprehended the basis for the application of the doctrine of lis pendens and consequently fell into grave error by refusing to apply the doctrine on the ground that the defendant according to him, was *"a real and fair purchaser for value without notice"* but the, Court of Appeal rejected his view and stated *per Agbaje JCA (as he then was)* as follows;

> As was stated in Barclays Bank of Nigeria v Ashiru (Supra) the doctrine of *lis pendens* is not founded upon any of the peculiar tenets of a court of equity as to implied or constructive notice. It is founded upon the fact that the law does not allow to litigant parties and give to them pending the litigation right in the property in dispute so as to prejudice the opposing party. In my judgment in the application of the doctrine no consideration could be given to the fact whether the purchaser was real and fair or to the fact whether the purchaser had no notice of the equitable interest involved.

On further appeal to the Supreme Court[29] this stance was confirmed and it was held that the 2nd respondent was barred by the doctrine of *lis pendens* from selling and conveying the property in dispute or any part thereof at the time he sold to the 1st respondent

[27] (2006) 10 NWLR (Part 989) p. 86
[28] (1985) 3 NWLR (Part 11) 52
[29] *Osagie v Oyeyinka (1987) 6SC 199*

who consequently got noting and the conveyance executed in his favour was declared null and void.

Conditions for the Application of the Doctrine

What crystallizes from the study of the available authorities is that for the doctrine to be held applicable, certain conditions must be proved to exist. These include the time of the sale of the property, the suit regarding the dispute about the said property was already pending, that the action or *lis* was in respect of the real property as the doctrine never applies to personal property and that the object of the action was to recover or assert title to a specific real property[30].

Effect of the Application of the Doctrine

What clearly emerges from the scenario so far presented is that the effect of the doctrine is to put at risk the transaction conducted in respect of the property subject matter of the suit while the suit was pending. Why it is convenient to state that the *effect is to put the transaction at risk* is that the effect is not automatic once there is a sale *pendente lite*. The first state of affairs is captured by the statement of the Supreme Court in *Bua v Danda*[31] to the effect that where a litigation is pending between a plaintiff and defendant as to the right to a particular estate the decision of the court in the suit shall be binding not only on the litigant parties but also upon those who derive title under them by the alienation of the property made pending the suit. It is immaterial whether the alienee had or had no notice of the pending suit. Thus, it becomes clear that the way the sale of the property and *a fortiori* those deriving title under the litigant parties are affected will depend on the outcome of the suit regarding the party who wins.

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[30] *Adjarho v Agbanelo (2015) 7WRN 166, Bellany v Sabine Supra, Wigram v Buckley (1894) 3 Ch 483, Calgary and Edmanton Hand co v Dobinson (1974) 1 All ER 484, Dresser Uk Ltd v Falcongale Freight Management Ltd (1992) 2 ALLER 450, Enekwe v. IMB Ltd (2006) 19WLR (pt 1013), Barclays Bank of Nig. Ltd v Ashiru (Supra), Akiboye v Adeko(2011) 6 NWLR (pt 1244) 415, Bua v Danda Supra, Ogundiani v. Araba Supra, Oyegbemi v Aromire (2012) 30 WRN 142, Osagie v. Oyeyinka Supra, Oronti v Onigbanjo (2012) 41 WRN1, Ikeanyi v ACB Ltd (1991) 7 NWLR (part 205) 626.*

[31] Ibid p. 688

Thus, in *Oronti v Onigbanjo*[32], the Supreme Court, relying approvingly on the decision of the Court of Appeal in *Ogunsola v NICON*[33] put the matter thus;

> If a purchaser chooses to purchase a property subject to litigation, from one of the litigants during the currency of the litigation, he does so in my opinion at his own risk and if it turns out that the person from whom he bought has no title or was adjudged at the end of the pending action not to be the owner, he takes it as he funds it. Where the defendant alienates during the pendency of a suit, the result of judgement if the plaintiff succeeds will over-reach such alienation. See Wigram v Buckcley (1894) 3 Ch483@ 497.

In *Ayorinde v Ayorinde*[34] the Court of Appeal stated the correct position of the law regarding the effect of the doctrine when it held that the doctrine makes the interest so acquired from the purchase of the property involved in the law suit subject to the outcome of that suit and if it turns out that the person from whom he acquired the interest has no title, then in law he has acquired nothing and that acquisition is subject to being set aside by the court of law. It would thus appear that a sale made *pendenete lite* has a chance of becoming and remaining valid depending on who wins the case at the end. If that is so as appears clear from the cases, then it will be wrong to approach the effect of the doctrine with a sweeping tone of finality that once it is established that a sale or purchase had been effected *pendente lite*, the same is void *ab initio* and will be set aside as stated by the court in several cases,[35] for drawing strength from the previous statement of the rule by the Supreme Court, the Court of Appeal stated in *Umoh v Tita* that where there is a sale of real property and a conveyance made *pendente lite* even for good consideration, the sale will be set aside and the Supreme Court was quite assertive in *Ajuwon v Akanni* to the effect that where there is a sale of or conveyance in

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[32] Ibid p. 17-18
[33] Ibid p. 771
[34] (2004) 13 NWLR (Part 889) 83@ 96-97
[35] Conbined Trade Ltd v ASTB Ltd (1995) 6 NWLR (Part 404) 709@ 717, Umoh v Tita (1999) 12 NWLR (part 631) 424 @ 436-437, Ajuwon v Akanni (1993) 12 SCNJ 32 @ 42-43 and Osidele v Sokunbi (2012) 50 WRN1@33

respect of a land in dispute by either side to a litigation, even though the alienation be for ever so good a consideration, if it was made *pendente lite* the purported purchase would be ineffective and must be set aside as void and in *Osidele v Sokunbi*[36] Mohammed JSC, while stating what the doctrine postulates was emphatic that a sale conducted when a matter is in litigation is void *ab inito* and no title can be passed to the purchaser, and as for the effect of the doctrine on the vendor and purchaser of the property *pendente lite*, the Learned Justice stated that both the vendor and the purchaser suffer some disadvantages. The former stands the risk of lack of capacity to effect a legal transfer of title while the latter stands the risk of purchasing nothing from the vendor. However, in a more recent decision, the Court of Appeal would appear to have realized the true import of the effect of the doctrine and thus stated the effect with the appropriate equivocation as truly represents the correct effect of the doctrine. Hear the Court *in Adjarho v Agbanelo*[37] per Ogunwumiju JCA;

> The rationale for the doctrine of *lis pendens* as stated by all the authorities is that even bona fide purchaser for value would have no recourse to equity where he has bought a property in litigation if at the end of the litigation his predecessor-in-title is found not to have title or capacity to transfer title to him.

The Learned Justice of the Court of Appeal then continued;

> The doctrine is not one brought up in isolation. It is to protect the person who wins a landed property by court case form another who puts a claim in equity to the effect that he was a bona fide purchaser for value. If the outcome of litigation favours the party who has violated the doctrine of *lis pendens*, then no more need be said. However, the violator of the doctrine does so at peril if he loses the claim.

The dictum of Oputa JSC in *Osagie v Oyeyinka*[38] would appear to be somewhat self-contradictory in that in one breath, he stated that

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[36] Ibid pp. 33-34
[37] (2015) 7 WRN 166@ 180-181
[38] (1987) 6SC 199@238-244

the doctrine of *lis pendens* was really designed to prevent the vendor from transferring any effective title to the purchaser by depriving him (the vendor) of any rights over the property during the currency of the litigation or the pendency of the suit. That being so, the principle of *nemo dat quod non habet* would apply to defeat any sale or transfer of such property made during the currency of litigation or the pendency of the action. Later in his judgement, after expressing the view of Lord Coke to the effect that nothing should be changed during the pendency of an action, he went on to state as follows;

> "thus, a *pendente lite* purchaser buys at his own risk".[39]
> "It is thus clear that Exhibit B was executed *pendente lite* and that the 1st defendant was a *pendente lite* purchaser, buying at his own risk. The doctrine of *lis pendens* will thus automatically apply to nullify the conveyance to the 1st defendant (Exhibit B).[40]

Professor Chianu[41] presented the correct position of the matter when he admirably commented as follows;

> There is inconsistency in saying that a purchaser *pendente lite* takes a risk and at the same time saying that his purchase is a nullity. A risky transaction has a chance of success; (or) it may not turn out to be a nullity. Maybe it is more cautious to speak of a risky transaction rather than an "automatic" nullity since there is a possibility that the vendor would succeed in an action against a third party claimant. If he does, he or his privy would be unable to turn around to ask that the sale is a nullity as he would be barred from derogating from his grant.

This, in our view represents the correct view of the effect of the doctrine. It is therefore not surprising that the Court of Appeal in *Ogunsola v NICON*[42] stated that if a purchaser chose to purchase a property subject to litigation from one of the litigants during the

[39] Ibid@239
[40] Ibid@240-241
[41] Chianu, E. op.cit p. 248
[42] Ibid p. 771

currency of the litigation he does so at his own risk and if it turns out that the person from whom he bought has no title or was adjudged at the end of the pending action not to be the owner, he takes it as he finds it.

In a nutshell it can just be stated that the effect of the doctrine is to render the transaction conducted *pendente lite* voidable but not completely void *ab initio*. This is more in consonance with the expression to the effect that the purchaser of the property *pendente lite* does so at his own risk. The risk crystalises negatively if the vendor from whom he purchased is vanquished at the end of the case whereas it crystalises positively if the vendor turns out to be the victor.

The Purchaser *Pendente Lite* as the Consumer

The objective of this piece is to establish if and to what extent the purchaser of the property *pendente lite* as the consumer in the transaction is afforded protection under the law, having regard to the effect of the doctrine in the worst scenario where the transaction turns out to be caught by the doctrine and is consequently rendered null and void. Of some worry is also the extent, if any, to which the law contemplates the effect of the doctrine and pre-empts it by providing some measure to protect and shield the consumer from stepping into the pitfall presented by the doctrine so as to ensure that he does not even get caught. Unarguably, the consumer in the sense in which it is used here is the person who acquires the proprietary interest in the property subject matter of the litigation while the litigation is ongoing. This is so going by the general, broad or functional definition of the consumer under the law of consumer protection[43]. In the proper legal context which fits into the way and manner in which the word consumer is used in this piece, the consumer is that juristic legal persona, natural or artificial, who purchases the property subject matter of litigation while the litigation is on course and therefore whose interest in the subject property is liable to be affected by the effect of the application of the doctrine of *lis pendens* depending on the outcome of the case. He is that person whether a natural human being or a company or statutory corporation described as the purchaser *pendente lite* who purchases at risk as has been seen

[43] For the functional approach to the legal definition of consumer see: Obumneme-Okafor; Dr. Mrs. N.J *"Understanding the Consumer in Proper Perspective" (2012) ESUT Law Journal* Vol. 1, No. 1 p. 77.

in the cases already examined. Statutorily, consumer is defined by the Consumer Protection Council Act[44] which is the principal statute on the subject of consumer protection as an individual who purchases, uses, maintains or disposes of products or services. A similar definition is given by the Black's Law Dictionary[45]. Extrapolating from this, it is clear that the consumer is an individual or a person, either natural or artificial, a living person whether in the sense of a physical natural person as a man or woman, or a corporate legal entity or association or body of persons and indeed any such characterization of persons to which the law ascribes juristic personality[46]. Such a juristic personality must be one capable under the law of acquiring or holding interest or estate in land so as to be in the position to purchase the property subject to litigation, or otherwise in any other way or manner acquire proprietary interest in the land *pendent lite*.

Consumer Protection and the Raison D' etre

Consumer protection has been defined or described in various ways by various authors, as legislation which protects the interest of the consumers[47] and as the act of safeguarding the interest of the consumer in matters relating to the supply of goods and services[48]. It should thus be understood to mean the prevention or reduction or mitigation of or shielding the consumer from injuries, losses, wrongs and damages from occurring or happening to the users of goods and services and the provision of remedies to the consumer in a situation where he suffers such injuries. Thus, within the context of our subject matter, consumer protection would boil down to the shoring up of the person who is affected by the consequences of the effect of the application of the doctrine of *lis pendens* by reason of his having bought property *pendente lite*.

Part of the reasons for consumer protection is located within the exploitation theory which rationalizes the protection with the

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[44] Cap C 25 LFN 2004, Sec 32

[45] Op. Cit p. 358. See also the Fair Trading Act 1973 (UK) Sec 137 (2)

[46] Obumneme-Okafor, Dr. NJ. "*The Legal Regime for Consumer Protection in Nigeria and the Consumer of Conveyancing Services: The Registration of Instruments Affecting Land in Focus"**: (2014) Vol. 10 NJI Law Journal p209@ 217***

[47] Bird, R. *Osborn's Concise Law Dictionary* 7th Ed. London, Sweet & Maxwell,1983 p90

[48] Monye F. *Law of Consumer Protection*, Ibadan, Spectrum Books 2003 p.20

vulnerability of the consumer to exploitation by the providers of goods and services[49]. This is consistent with the practice by which an unsuspecting intending purchaser of land is lured into buying a land subject to litigation by one of the parties to the suit without disclosing to him that there is a raging controversy over the land before the court between him and another party. The unsuspecting purchaser goes ahead and buys the property without realizing that he had bought a law suit. Again, the paternalistic approach to the protection of the consumer advocates for state intervention to protect the consumer even against himself or to exercise the discretion which it is felt that the consumer is not equipped enough by way of proper education to exercise so as to protect himself[50] or where he is even enlightened enough he may still lack the requisite orientation to exercise due care and circumspection in engaging the services from which he may suffer avoidable injury. The moral angle to consumer protection is based on the need to protect the consumer against fraudulent and dangerous practices[51], which may adversely affect him or his interest in property. Thus, within the context of the issue at stake in this discourse, the interest acquired by the purchaser *pendente lite* who is the consumer in focus is the subject of the requisite protection.

Does the Law afford any protection to the Purchaser *Pendente Lite qua* Consumer?

Having seen that the consumer within the context of the subject matter of this discourse is the purchaser of land *pendente lite*, it remains to find out if and to what extent he is afforded protection under the law having regard to the precarious nature of the transaction under which he derives title to the land.

From the basic statement of the doctrine and its rationale, it is clear that its objective is to prevent the effective transfer of rights in any property which is the subject matter of an action pending in court during the pendency of the action. Thus, where the doctrine applies in the real sense of its application, the effect will be to nullify the transaction under which the purchaser bought the

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[49] Kanyip, B.B. *Consumer Protection in Nigeria, Theory and Practice*, FCT Abuja, Reckon Books ltd 2005 pp. 11-12

[50] Ajai, O. "Caveat_Venditor! Consumer Protection Decree No. 66 of 1992 Arrives in the Nigerian Market Place" *(1992/93) Nigerian Current Law Review* p. 23

[51] Kanyip,B.B, op cit p. 30

property just as happened in the cases already examined including *Ogundiani v Araba, Barclays Bank of Nig Ltd v Ashiru, Agusiobo v Okagbue, Bua v Dauda and Osagie v Oyeyinka* just to mention a few and he would thus lose the property. The scenario here applies based on what is the outcome of the suit to which the land was subject when he bought. That is why it was stated in *Ogunsola v NICON* and approvingly adopted by the Supreme Court in *Oronti v Onigbanjo* to the effect that a purchaser of land *pendente lite* does so at his own risk and if it turns out that the person has no title or was adjudged at the end of the pending action not to be the owner, he takes it as he finds it, that is to say, he stands to lose the property.

Admittedly where the doctrine is held applicable, it means that the requisite conditions for its applicability have been satisfied and which includes the requirement that the vendor from whom he purchased the land came out of the litigation the loser, the vanquished. However, what poses the real problem of consumer protection arises where the vendor *pendente lite* turns out the vanquished at the end of the litigation and the transaction is consequently nullified thereby. The purchaser *pendente lite* qua consumer is totally bereft of any form of protection and the title purportedly acquired thereby is easily defeated. His chances are made all the more hopeless as he is not even afforded the opportunity of attempting to establish lack of notice of the pending litigation when he undertook the purchase as a lee-way. This is because by the nature of the application of the doctrine, it is not founded on the equitable doctrine of notice, actual or constructive [52] and as such he cannot successfully set up the defence of being a bona fide purchaser for value without notice and as stated by *Agbaje JCA in Osagie v Oyeyinka*[53] in the application of the doctrine no consideration could be given to the fact whether the purchase was real and fair or to the fact whether the purchaser had no notice of the equitable interest involved. There lies the nightmare of the consumer! He loses the property and if care is not taken, the chances of recovering the sum paid for the aborted purchase may not be readily available!!

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[52] *Ogundiani v Araba, Barclays Bank of Nig. Ltd v Ashiu, Bua v Dauda,Oronti v Onigbanjo, Ogunsola v. NICON, Osagie* v Oyeyinka and other cases on the doctrine

[53] Supra @ 68

The remedy of the consumer will readily lie in contract since he entered into a contract for the purchase of the property which unfortunately turned out to be a *nudum pactum* which creates no rights or obligations for, *ex nihilo nihil fit* (out of nothing, nothing flows). However, the law of contract provides the purchaser *pendente lite* qua consumer the opportunity to recover the purchase price he paid to the vendor in an action for money had and received for a consideration that has failed. In point of fact, the Supreme Court stated that much in *Osagie v Oyeyinka*[54] per Obaseki JSC to the effect that the purchaser *pendente lite*

> is left defencelesss against the fraud of the vendor as he must in law lose the property bought with the money surrendered to the fraudulent vendor. He can however, get back his money from the vendor.

Action for money had and received is the only means for the recovery meant by His Lordship. This sounds good to the ear and highly comforting to the consumer but the rigours of litigation for the recovery of the purchase money is a sure source of discouragement, what with the possibility of his not having the means with which to fund the litigation for the recovery of the money. As rightly observed by Chianu [55] the availability of the action for money had and received *"is cold comfort as the vendor may no longer be in funds to pay him or that the vendor may have gone beyond the reach of the purchaser."* There lies the real problem for it, is one thing for the law to afford the consumer some form of protection, but quite another for the logistics for realizing the protection to be consumer friendly and capable of convenient exploitation or appropriation by or in favour or for the benefit of the affected consumer. Another likely problem in the way to the recovery of the money had and received is the possible successful raising of the principle of c*aveat emptor* by the vendor *pendente lite* as the principle casts the duty upon the purchaser to exercise such diligence as will ensure that he obtains what he intends to bargain for.[56] There lies another dilemma for the consumer even though it is doubtful whether the court of equity will allow the

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[54] Ibid p. 210
[55] Ibid p. 251
[56] See for example sec 151 of the Contract Law Cap 26 of the Revised Laws of Enugu State 2004.

vendor *pendente lite* to benefit from his own fraud or use the law as engine of fraud having regard to the stance of the Supreme Court on such matters as established by the case of *Bucknor – Maclean & Anor v Inlaks Ltd*.[57]

Extending the Frontiers of *Lis Pendens*?

It is perhaps in due recognition of the hazard and risk of mellowing or toning down the strict effect of the doctrine that there is a marked current trend by the courts in attempting to enlarge the scope of the doctrine beyond real property to extend to other matters than real property by characterizing it as a doctrine universally applicable to achieve the preservation of the ***res*** in an action so as to forestall the foisting on the court of a situation of helplessness or hopelessness. Thus, the Supreme Court recently in *Gwede v INEC & Ors*[58] applied the doctrine to sustain a pre-election matter over which a suits were already pending before the election subject matter of the pre-election matter was conducted. The court stated per Onnoghen JSC as follows;

> It is settled law that a pre-election matter instituted prior to the conduct of an election subsists and the High Court in which it was instituted continues to have jurisdiction to hear and determine same even after the conduct of the election. See Amaechi v INEC (2008) 10 WRN 164. The above principle is founded on the principle of *lis pendens* which prevents any transfer of right or the taking of any step capable of foisting a state of complete helplessness/hopelessness on the parties or the court during the pendency of an action in a court of law. See Dan-Jumbo v Dan-Jumbo (1999) 11 NWLR (part 627) 445. (underlining supplied)

In the case of *Amaechi v INEC*[59] on which reliance was placed in *Gwede v INEC* and also in *Odedo v INEC & 2 ors*[60], the Supreme Court applied the doctrine of *lis pendens* to preserve the res in the suits which were already pending before the elections which were

[57] (1980) All NLR 184
[58] (2015) 9 WRN 1 @ 50. This case was actually decided on 24th October 2014.
[59] (2008) 10 WRN 1 @ 258
[60] (2008) 7SC 25@107

aimed at overreaching the res in the pending suits were conducted. According to the Supreme Court in *Amaechi v INEC*[61]

> By that doctrine, the law does not allow to litigant parties or give to them during the currency of the litigation involving the rights in it so as to prejudice any of the litigating parties. The doctrine negates and disallows any transfer of rights or interest in any subject-matter that is being litigated upon during the pendency of litigation in respect of the said subject-matter: The well-known maxim is 'pendente lite nihil innovetur' meaning; during a litigation, nothing new should be introduced.

Similar approach was also adopted by the Supreme Court in *Andy Uba v Dame Virgy Etiaba & ors*[62] holding that following the application of the doctrine of *lis pendens*, parties to proceedings pending in Court ought not to do anything which may have the effect of rendering nugatory the judgement of the court and that a party may not alter to his advantage and to the disadvantage of his opponent issues in contest in a pending suit.

Seeing that the courts are not about to attempt a whittling down of the purport and application of the doctrine of *lis pendens* so as to protect the innocent purchaser *pendente lite* qua consumer but are instead expanding its frontiers, so as not to continue to restrict its application to real property only, but to the generic *res*, in any pending litigation, it needs to be seen in what way and manner in which the consumer could be afforded a measure of protection within the context of the application of the doctrine.

Protecting the Consumer under the Law: Any Remedies?

As has become clear no conscious effort has been made to ensure the protection of the consumer in the sense of the purchaser *pendente lite* where the effect of the doctrine is brought to bear upon the transaction under which he purported to have derived title to the property affected by the doctrine. The aversion of the courts to the need to provide a measure of protection for the purchaser coupled with the obvious legislative inattention to the need to find a solution have made the position of the purchaser all the more

[61] Op Cit
[62] (2008) 6 NWLR (Part 1082) p154

precarious and without any visible hope glistering in the distant horizon. The total lack of positive approach in this regard would appear to be a signal that total abstinence from purchasing *pendente lite* is and should the best approach and not for one to purchase and turn round to expect a measure of protection whether by default or otherwise.

However, since it appears clear that phenomenally, there is no way and no time such vagaries of human conduct would be totally stamped out or eradicated notwithstanding how abhorrent it may be, the reality of the matter as a fact of life has moved the authorities in some jurisdictions to attempt to devise means of protecting an intending innocent purchaser *pendente lite* so as to succeed in warning him off by ensuring that express notice thereof is achieved or by some other measure which will ensure some protection for the purchaser qua, consumer.

Registration of Lis Pendens

Appreciating the harshness and hardship of the uncompromising effect of the doctrine when in full application, the statutory requirement of the registration of *lis pendens* has been introduced in some jurisdictions. Statutory intervention in this regard became necessary because at common law, it was not compulsory to register a *lis pendens* and yet the pendency of the suit was nevertheless regarded as constituting a notice by which the prospective purchaser was forbidden from purchasing the subject property or he had himself to blame. The basis for this notice was stated in *Wersely v Earl of Scarborough*[63] per Lord Hardwicke to the affect that it is the pending of the suit that creates notice for as it is a transaction in a sovereign court of justice, it is supposed that all people are attentive to what passes there and it is to prevent a greater mischief that would arise by people's purchasing a right under litigation and then in contest. Even though this statement of the position of the doctrine and the issue of notice was severely criticized in *Bellamy v Sabine*[64] by Lord Granworth who contended that it was not perfectly correct to say that a *lis pendens* is a notice to the whole world, yet it continued to apply in that way and was introduced into the Nigerian *corpus juris* in that state and till date instead of being watered down or protective measures being taken,

[63] 3 Atk 392
[64] supra

the courts have moved to enlarge its scope to ensure its application not only to real property but to the generic res as the subject matter of litigation. This explains its application to pre-election litigations and the res subject matter of such suits.

In England, the Judgement Act of 1839 introduced compulsory registration of *lis pendens* by providing in section 7 that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof unless a memorandum giving a description of the person whose estate is intended to be affected thereby and particulars of the suit, is registered in the Land Registry as a land charge. The Land Charges Act 1925 in section 53(1) made a similar provision.

Realising the unjustness of the application of the doctrine to an innocent purchaser *pendente lite* the Canadian Judicature Act[65] provides inter alia, that commencing an action or taking a proceeding in which *any title or interest in land* is brought into question is not deemed notice of the action to any person not a party to it until either a caution has been registered under the Land Titles Act where appropriate or a certificate signed by a court officer has been registered in the Land Registry Office of the Registry Division in which the land is situate.[66]

In Nigeria, there does not yet appear to be any local legislative intervention by which the registration of *lis pendens* is made statutorily imperative or mandatory and the possibility of importing the English statues under which the registration of *lis pendens* has been made compulsory in the sense of statutes of general application appears far-fetched as the existing judicial opinion is to the effect that those are not statutes of general application and cannot be extended to Nigeria under that thesis. In *Ogundiani v Araba* and *Osagie v Oyeyinka* this question arose and the Supreme Court answered the same in the negative.

It was thus held in the two cases that the pending suits subject matters of the two suits required no registration so as to bind the purchasers of the land to which they were related. Although reservations have been expressed on the correctness of the two decisions regarding the non-applicability of the English Judgement

[65] R.S.O. 1980 C. 223, Sec 38

[66] See also Gulmour, J.M. *"The Right to A Certificate of Lis Pendens" (1977) Canadian Bar Review 280.*

Act as a statute of general application to the two cases,[67] yet they remain the state of the law on the subject.

Even though people who are well informed or have the benefit of superior legal counsel would usually enter a caveat or caution at the Lands Registry over their interests when it is suspected that someone is making attempt to alienate the same, yet it has not become a matter of statutory compulsion to do so particularly when a suit is pending over a parcel of land. It is therefore recommended that for the purpose of affording the consumer adequate protection in the sense and within the context of a bona fide purchaser of property *pendente lite*, legislative intervention is long overdue so as to make it compulsory for litigations over land to be registered so as to afford intending purchasers the opportunity of discovering the presence of such encumbrance. The position in the United States of America exemplified by the practice in the State of Delaware is a good guide for us.[68] The statute abolished the common law doctrine of *lis pendens*, providing that no action shall constitute constructive or imputed notice to any person unless notice of such action complies with the statutory provisions which inter alia run thus;

> In any action instituted in any court of this state having civil jurisdiction or in the United States District of Delaware any party asserting a claim, the object of which is to affect the title to, or enforce an equitable lien on real estate may, after filing of such claim file in the office of the Recorder of Deeds of any County in which all or any part of the affected real estate is situate, a written notice of the pendency of the action which shall be under oath, and shall set forth;
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> (1) The court in which the action was brought, the caption of the action and the civil action number.
> (2) The object of the action or the affirmative relief sought.

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[67] See Ogunniran, H. op cit. pp 58-60, Obilade, A.O. *Nigerian Legal System*, London, Sweet & Maxwell p. 76-77, Ezejiofor, G. (ed) *Introduction to Nigerian Law*, London, Sweet and Maxwell 1980 pp. 6-7

[68] See Chianu, E. Ibid p. 251-252 and also Akintola, S.O. & Taiwo, E.A. "The Purchaser Pendente Lite and the Issue of Notice: The Modern Approach" *(2003-2006) 7 Nigerian Law and Practice Journal*, 87.

(3) A legal description sufficient to identify the property affected.
(4) A designation of the names of each party against whom notice is directed to be indexed.

The adoption of the above statutory model by every state of the Federation as part of their High Court Law or Land Instruments Registration statute particularly with respect to the segments dealing with the registration of caveats or cautions will be highly beneficial to the consumer within the applicable context, so that in that way, as correctly posited by Chianu,[69] prospective purchasers can with diligence search the registry to inform themselves of any property that is subject of litigation.

Most Judgment Settlement or Compromising the Judgment: The Alternative Dispute Resolution Approach

Another way by which protection could be afforded the consumer is through post judgment arrangement. The state of the authorities on the doctrine is clear on the bindingness of the decision of the court on all the parties involved whether directly or those deriving title through the direct parties. The position of the law as stated by the Supreme Court in *Bua v Dauda*[70] is that where a litigation is pending between a plaintiff and the defendant as to the right to a particular estate, the decision of the court in the suit shall be building not only on the litigation parties but also upon those who derive title under them by the alienation of the property made pending the suit. It is immaterial whether the alienee had or had no notice of the pending suit. In the same line of reasoning it was held in *Oyegbemi v Aromire*[71] that the principle is settled that the court cannot be hamstrung by a party who changes the status quo during litigation. This is reinforced by the dictum of Nnaemeka-Agu JSC in *Registered Trustees of Apostolic Church v Olowoleni*[72], to the effect that once parties have turned their dispute over to the courts for determination the right to resort to self-help ends. So, it is not permissible for one of the parties to take any step during the

[69] Op. cit
[70] Op. Cit p. 668, see also; *Barclays Bank Nig Ltd v Ashiru Supra, Oil Fields Corp v Bashko* 173 ARK 533 (US), *Adjarho v Agbanelo* supra, p 183.
[71] Op. Cit p. 173 - 174
[72] (1990) 6 NWLR (Part 158) 514 @ 537

pendency of the suit which may have the effect of fostering upon a court a situation of complete helplessness or which may give the impression that the court is being used as a mere subterfuge to tie the hands of one party while the other party helps himself extra judicially. Therefore, where one of the parties disposes of or alienates the property subject matter of the suit during the pendency of the litigation, the purchaser is bound by the outcome of the suit and if the suit happens to end against the vendor his right in the property fizzles out in consequence. Faced with this state of helplessness, what with the uncertainty of the recovery of his money from the vendor whether via litigation or otherwise the purchaser *pendente lite* may seize any window of opportunity to save his money and interest.

Thus, consent judgment which results from the ADR mechanism, in the words of Muntaka-Coomassie JSC in *Star Paper Mile Ltd v Adetunji*[73] is a contract between the parties whereby rights are created between them in substitution for order of consideration for the abandonment of the claim or claims pending before the courts. This is intended to put a stop to litigation between the parties just as a judgment which results from the decision of the court. Thus even at the Court of Appeal level, Order 16 of the Court of Appeal Rules makes provision allowing the court to promote and encourage the resort to the ADR mechanism in matters pending before it.

Thus a purchaser *pendente lite* whose interest in the property is imperilled by the doctrine of *lis pendens* can secure protection through the ADR mechanism which may at the end of the day seal up every month of outrage and secure a lasting protection to his otherwise endangered proprietary interest. Oguntade JSC in *Star Paper Mill Ltd v Adetunji*[74] admirably dealt with the situation when he held that a judgment of court often settles the issues in dispute between the parties and makes a pronouncement on the rights and entitlements of the parties. There is nothing stopping parties after the judgment of a court from changing their position from what it was in court in order to compromise the terms of the judgment of the High Court. By this very means the victorious party could be made to cede his rights and compromise the

[73] Supra p-659
[74] Supra @ 663

judgment which gave him victory. This must admittedly be on terms as to valuable consideration arrived at through the negotiated settlement.

Statutory Intervention in favour of a Bona Fide Purchaser for Value without Notice

Since the application of the doctrine operates without due regard to the question as to whether or not the purchaser *pendent lite* had notice of the pending litigation, there is need for statutory intervention. This is to water down the effect of the application of the doctrine against the interest of the purchaser who in all honesty did not have notice and could not have had notice of the pending suit when he undertook the purchase. The non-applicability of the principle of notice already fully acknowledged and applied by the courts in Nigeria is seen to be the position even in Canada as clearly captured by the view expressed by Dicastri[75] as follows;

> It may be noted that the doctrine as to the effect of a *lis pendens* on the title of a lienee is not founded on the principles of the court of equity with regard to notice but on the ground that it is necessary to administration of justice that the decision of a court in a suit should be binding not only on the litigant parties but on those who derive title from them *pendente lite* whether with notice of the suit or not[76].

It was the jurist's view that to ensure this result and to limit and control the application of the doctrine in its common law texture, it is necessary that the plaintiff registers a certificate of *lis pendens* under the statutory provision. Extrapolating from this, it is desirable that there be statutory intervention to provide a soft landing for a purchaser *pendente lite* who is honestly a bona fide purchaser for value without notice. The rigidity with which the doctrine insists on the non-applicability of the principle of notice needs to be whittled down to accommodate the interest of a true *bona fide* purchaser for value without notice of the pending suit. Equity needs to be granted a lee-way to come into play and attempt to balance up the contending interests of the parties with that of the

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[75] Dicastri, V. Thorn's Canadian Torrens 2nd Ed p. 674

[76] See also Bua v Dauda, Barclays Bank (Nig) Ltd v Ashiru, Osagie v Oyeyinka and Ogundiani v Araba

true and honest purchaser so as to afford him some protection for it is the view of equity through one of its maxims which has been described as the root of all equitable jurisdictions[77] that equity will not suffer a wrong to be without a remedy. This means that in certain circumstances where the common law failed to recognize a right or to provide a remedy for a wrong, equity would not stand by and see a party suffer an injustice, but would grant a remedy provided it was suitable for judicial enforcement. The skewed position of a *bona fide* purchaser *pendente lite* and the attitude of the doctrine of *lis pendens* to the principle of notice would appear to qualify as one such situation in which equity should be allowed to intervene. This intervention will of course be on the ground that the purchaser *pendente lite* did so *bona fide* to the extent that he can actually be agreed to have demonstrably come to equity with clean hands, meaning that he is impeccably clean and without blemish when every aspect for the transaction is considered and he is not seen to be capable of being regarded as having had notice of the pending litigation in some way no matter how remote that may be. A statutory representation of this enablement by equity could be seen from the provision of Sec 16 (4) of the Trust and Equity Law[78] to the effect that if any equitable interest in land had been granted with a fraudulent purpose the court shall not enforce it in favour of the party tainted with the fraud. Thus, once the purchaser *pendente lite* has been shown not to be fixed with any form of notice of the pending litigation over the land when he purchased it, he would qualify as a party not tainted with the fraud which actuated the vendor *pendente lite* in effecting the sale and therefore able to benefit by taking umbrage under section 16(4) of the Law. Put in another way, the purchaser *pendente lite* would have shown that his conduct in the transaction has been fair, honest and above board in every material particular.

Vigilance and Circumspection

Another way by which the consumer can achieve protection is by being vigilant and circumspect in dealings relating to acquisition of interest in land. As the saying goes, discretion is the better part of valour. Also, equity aids the vigilant and distances itself from the

[77] Kodilinye G. *An Introduction to Equity in Nigeria, Ibadan* , Spectrum Books Limited, 2009 p. 12-13

[78] Cap 153, Revised Laws of Enugu State 2004

indolent. Vigilance in this present context is not that of acting with promptitude but that of being wise as a serpent to ensure that the property is not known to be attended by any vice and therefore good and clean to be purchased. Thus, were the conduct of a search at the lands registry and or other places will be capable of disclosing interest in a party other than the person intending to sell, the purchaser is expected to have undertaken such a search that will in all honesty be able to disclose any competing interest.

In *Chukwuogor v A-G Cross River State*[79] the Court of Appeal stated that the legal maxim of *caveat emptor* may be invoked in appropriate circumstances, because there are many buyers and sellers as there are many goods competing for purchase and sale in the market overt and in his characteristic poetic style, Tobi JCA (as he then was) stated, "*it is a crowded place. Therefore in the commercial practice and process of buying and selling, the law requires or expects the buyer to beware"* This is a way of calling on the intending purchaser *pendente lite* to be open eyed in the transaction so as to be able to detect any possible defect. The Justice of Appeal then continued; *"Related to the maxim is its twin concept of qui ignorare non debit quod jus alienum emit*; meaning, a purchaser must be on his guard, for he has no right to remain in ignorance of the fact that what he is buying belongs to someone other than the seller[80].

And in the more recent case of *Adejumo v Olawaiye*[81] the Supreme Court dealing with the need to for an intending purchaser of land to make a thorough search before purchasing the land stated per Rhodes-Vivour JSC as follows;

> The long arm of the law usually catches up with such people who would rather buy and build quickly instead of making a thorough search before purchasing the land. It usually ends with pain, sorrow and tears, the end of an error with the defaulting party purchasing a law suit.

All the above quoted position of the law shows that it is needful for an intending purchaser to be highly vigilant, diligent and circumspect while taking steps to buy and if he does so, he will

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[79] (1998) 1 NWLR (Part 534) 375 @404
[80] See also Morley v Attenborough (1889) 3 Exh. 500@522
[81] (2014) 31 WRN 1@ 38

avail himself of the protection afforded by due diligence to the purchaser who operates like a wise and cautious traveller who looks ahead and avoids all impending obstacles on his way.

Damages for Disappointment

Another remedy by which the consumer can be afforded protection is the award of damages for the disappointment occasioned against the purchaser *pendente lite* who lost the property to the victorious party upon the completion for the suit. In the United Kingdom, it used to be thought from the case of *Addis v Gramophone Co Ltd*[82] that damages for breach of contract were confined to compensation for financial loss in the sense of loss quantifiable in monetary terms, but several cases commencing with *Jarvis v Swans Tours Ltd*[83] did allow substantial damages in compensation for disappointment and vexation suffered by the innocent party. Surely, for damages to be recoverable for disappointment, the disappointment must have been within the reasonable contemplation of the parties. A transaction under which a purchase of land *pendente lite* was undertaken more than well explains the disappointment being within the contemplation of the parties. In the view of Leder[84], this development has great potential as a weapon for consumers extending as it does to disappointment suffered by members of the consumer's family or by other parties for whose, benefit the consumer made the contract[85]. It would appear that no reason exists why a similar approach should not be adopted by the courts here in Nigeria to award damages in deserving cases for disappointment and in particular a situation where a purchase made *Pendente lite* by an innocent purchaser is nullified by the victory of the other party.

Conclusion

It would appear clear that left as it is at present, the doctrine of *lis pendens* is not applied with human face even though the rationale

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[82] (1909) AC 488 or (1908-10) ALLER 1

[83] (1973) 1 QB 233 or (1973) 1 ALLER 71

[84] Leder, M.J. *Consumer Law,* M & E Handbooks, Macdonald & Evans Ltd Plymouth Great Britain 1980 p77

[85] See also Jackson v Horizon Holidays Ltd (1975) 1 WLR 1468, or (1975) 3 ALLER 92 and Heywood v Wellers (1976) 2 WLR 101

for its application is quite plausible. The need for legislative intervention to introduce the practice and requirement of registration *of lis pendens* is long overdue as it is not safe to leave the same to the uncertainty of speculation as to whether the English Judgment Act of 1839 is a status of general application or not and if it is, whether it is of nationwide application or restricted to certain areas only. Surely, the purchaser *pendente lite* who is truly proved to be a bona fide purchaser for value without notice of the pending litigation qua consumer indeed requires protection from the harshness and rigid application of the doctrine and if such places as England, USA and Canada had since introduced the requirement of registration of *lis pendens* when they did, there appears to be no reason why such steps should not have been taken in Nigeria.