

## Comparative Study Between Malaysia and Nigeria's Easement Law in Land Policy

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**Abstract:** Malaysia National Land Code 1965 (NLC) provides several provisions to allow landowners to use other people's land, especially neighboring land, for specific routes, such as obtaining access to public places. Nigeria's Land Use Act, originally known as the Land Use Decree, was enacted on March 29, 1978, and is the primary legislation governing all existing land tenure. Both countries have a particular legal provision to cater to implementing an easement. An easement is listed as one of the land dealing mentioned in Section 282, NLC, Land Use Act and Laws of Federation of Nigeria, (2004), in Malaysia and Nigeria. Yet, only a few understand the easement characteristic and requirements. Thus, the study investigates the difference in easement law requirements between Malaysia and Nigeria and discusses the legal provisions applied in court cases involving easement issues regarding the legal provision, procedure, and court cases. The research employs a qualitative approach and combines content analysis and case study by applying much reading and exploring related acts such as National Land Code 1965 (Act 56), Land Use Act 1978, journals, guidelines, books, and court cases. Findings from the study revealed the importance of easement registration, as both countries agreed that easement should be registered either through a specific form in the land office (Malaysia) or prescription, statutory grant, express grant, express reservation, or implied grant for Nigeria. The study emphasizes the importance of registering an easement and recommends further research in other court cases in both countries for further understanding.

**Keywords:** Easement, Easement Law, Land Policy, Malaysia, Nigeria

### 1. Introduction

Land law in Malaysia started with Islamic and customary law in 15C. The Torren System was introduced during the British intervention, and later it was developed into National Land Code 1965 (Act 56) (NLC). One of the provisions of Section 5 (Division I), NLC, has been interpreted as a dealing

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concerning the land owned must be registered. While Section 205 (1), NLC (National Land Code 1965 (Act 56), 2000) clarified that the dealing could be implemented under this Act in respect of owned lands. This allocation of NLC requires certain transactions on land or interest in it shall be registered. The types of transactions mentioned under KTN are such as transfers (Section 214), leases and tenants (Section 221), mortgages and liens (Section 241), and easements (Section 282). NLC provides several provisions to allow landowners to use other people's land, especially neighboring land, for specific routes, such as obtaining access to public places. This right can be created by mutual agreement, that is, through easement or the force of law by the State Authority, i.e., by imposing the right of passage by the Land Administrator.

Nigeria was previously a colony of Great Britain. As a result, some aspects of British law have been incorporated into the nation's legal framework. The common law, equity doctrines, and general application statutes make up the inherited English laws. These imported English laws, which comprise most of the Nigerian law, served as the framework for that country's legal system. Olamide O. (2016) claims that there is support for this in the Interpretation Act and Supreme Court Ordinance, where S. 32 of the interpretation act stipulates that Nigeria will subsequently be subject to Nigeria's application of the English common law, equity doctrines, and general statutes in effect on January 1, 1900. Nigeria's Land Use Act, originally known as the Land Use Degree, was enacted on March 29, 1978. This has been the comprehensive and primary legislation governing all of Nigeria's existing land tenure.

The Act aims at delivering an effective and sustainable administration of land in Nigeria in such a way as to give government veto powers over the acquisition of land, transfer, or otherwise assignment of land and land resources. In the LUA 1978, Section 51 (1), the easement can utilize other lands in particular manners.

The term 'easement' comes from the Old Latin word 'aisementum' meaning "comfort, convenience or privilege," and it developed into "a legal right or privilege of using something not one's own" from the early 15c (Shiva, 2000). In other words, an easement is put as a right an individual enjoys over another person's property with his consent (an interest owned in land by another party to use, control of the land above or below it for some time or limited time such as to pave the way to cross to a public road. Easement, simply put as a right an individual enjoys over another person's property with his consent (an interest owned in land by another party to use, control of the land above or below it for some time or limited time such as to pave the way to cross a public road. The land suffering from the easement is termed a servient estate (the person that grants the easement or to whom upon which the land is burdening), while the party or land that benefits from the easement is termed as dominant estate. Easement should differ from a lease or license (both have a life span or period of years); unlike easement, it may last forever unless otherwise extinguished (Bright, 2016; Abereton, 2007; & (Aigbokhaevbo, 2011).

However, the objective of the study is twofold; to investigate and compare the difference of requirement in easement law between Malaysia and Nigeria and to discuss the legal provisions applied in court cases involving easement issues. This study compared the easement laws of Malaysia and Nigeria in terms of legal provision, procedure, and court cases.

## **2. Literature Review**

An easement is a right given by one landowner (first) to another (second) to benefit from the land of the first owner. The land of the first owner is known as servient land, while the owner of the second land is known as the dominant land. An easement is classified as a part of the dealings and governed under Section 282(1) in National Land Code 1965. Positive easement (the right way) refers to a right to do something on another person's property, whereas negative easement refers to a right used by the property owner to prohibit another from utilizing his property (right to light). The agreement between

two or more persons gives rise to the right to use another person's land for recreation. It can end if one party breaches the agreement or both parties agree to terminate it, and is sometimes referred to as a personal covenant between the parties.

## 2.1 Legal Provision of Easement

**Table 1: Legal Provision of Easement (NLC & LUA)**

Malaysia	Nigeria
An easement in Malaysia is allowed under the NLC, which is stated under Section 282 until Section 291. This provision touches on the definition of an easement, the creation of an easement, registration of an easement, the effect of an easement, and termination.	The Land Use Act (Laws of Federation of Nigeria), 2004, Section 51, mentions an easement (1). The Act defined an easement as "a right attached to land to employ other and in another holding in a certain manner (without involving the taking of any part of that land's natural produce or any part of the soil) or to restrict the owner of that land from using his land in a particular manner."

Table 1 displayed that in Malaysia and Nigeria, the concept of easements is enshrined in their respective legal frameworks. In Malaysia, easements are regulated by the National Land Code (NLC), specifically from Section 282 to Section 291. These provisions comprehensively address various aspects of easements, including their definition, establishment, registration, effects, and termination.

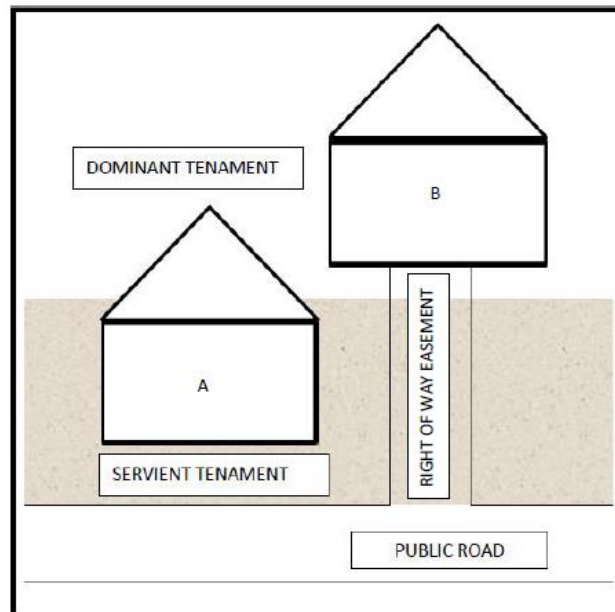
Similarly, in Nigeria, the Land Use Act of 2004, under Section 51, recognizes and defines easements as rights associated with land. An easement is a privilege granted to use another's land in a specific manner without involving the appropriation of the land's natural resources or soil. It can also entail restricting the landowner's use of their property in a particular manner.

Both legal frameworks acknowledge the importance of easements in property law, ensuring that landowners' rights and obligations concerning easements are clearly defined and protected.

## 2.2 Characteristics of the Easement

The basic characteristics of easement are mentioned in a prominent case, the *Re Ellenborough Park* [1955] EWCA Civil 4 (All Answer Ltd, 2018) case, namely:

- (a) There is a dominant and a servient landowner
- (b) The easement must accommodate the dominant landowner
- (c) The dominant and servient landowner must make up of different owners and
- (d) The right granted should be capable of being the subject matter of an easement



**Figure 1: Illustration on easement characteristic**

These characteristics, which have been set as the legal easing criteria for a valid easement under English Law, seem to apply enthusiastically in Malaysia. *Tam Kam Cheong v. Stephen Leong Kan Seng & Anor* followed the requirements of an easement set at *Re Ellenborough Park*. *Salleh Abas FJ* at the time insisted that for a claim of an easement to be set, each easement must have all four of these characteristics. In addition to the above characteristics, several other characteristics determine the form of the easement as adopted in the National Land Code, namely:

- (a) It consists either of a positively shaped right, a right that allows the dominant owner to do something on the land of the serviced owner, or a negative form of right that is a right that forbids the service owner from acting somewhat on the land for the good and interests of the dominant owner (Section 283 (1) NLC 1965).
- (b) The right is subject to restrictions, it does not allow the dominant owner to take anything from the serviced land, nor can it affect the exclusive ownership of the serviced land owner (Section 283 (2) NLC 1965)
- (c) Easement is only provided with the permission of the service owner. The grant must be made explicitly. This means that it cannot exist in the form of long use, no matter how long the period of use has occurred. (Section 284 (1) NLC 1965)
- (d) The giver of Easement, the service owner, must be the registered owner of the servient land. Taxpayers, tenants, and licensees are not eligible to provide Easement. (Section 282 NLC 1965)
- (e) Easement can be given either temporarily or permanently. (Section 286 (2) NLC 1965)
- (f) The right of Easement must be clearly defined. The rights are like the right to pass, the right to allow space on the ground to be used, the prohibition from building any buildings that can block wind flow, and so on. The form of the right is mentioned in Table III, Form 17A.
- (g) In addition, Easement provides additional rights as far as necessary and reasonable to use easement rights effectively (Section 286 NLC 1965).

### 2.3 Types of Easement

There are a few types of easement under the NLC:

- (a) Acquired right – An easement created of the award by the proprietor of the servient land.
- (b) Natural right- An easement made because of a vital episode of the proprietorship of the dominant land.

(c) Imposed right – Land administration of right of way.

Under the NLC, the creation of an easement must be registered and follows the procedures set in.

2.4 Easement Registration Process

**Table 2: Easement registration process (NLC & LUA)**

Malaysia	Nigeria
<ul style="list-style-type: none"> <li>• Each easement must be registered under Section 286 as stated in National Land Code 1965.</li> <li>• There are two easement registration forms, Form 17A for ordinary and Form 17B for an easement in return for the shared wall support. It can also contain an agreement to charge a certain fee in return for the right of easement.</li> <li>• Unregistered amendments are invalid even if there is an agreement between the two parties. Provision Section 206 (3) cannot help to enforce the unregistered easement. Thus, the National Land Code does not recognize easement in equity. As in the case of "Datin Siti Hajar v. Murugasu [1070] 2 MLJ 153(DATIN SITI HAJAR v MURUGASU, 2020)." Judge Syed Agil Barakbah ruled that the National Land Code 1965 does not recognize unregistered easements even though they are made in a written agreement and have been practiced for a long time by both parties. Both parties are responsible for any cost upon the creation of the easement depending on the agreement. The registration process also depends on each state's provision.</li> </ul>	<ul style="list-style-type: none"> <li>• An easement can be created through prescription: This occurs when someone exercises an act (capable of being an easement), and the use is continuous in a certain way for a period of years (typically between 5-30 years).</li> <li>• Statutory Grant: This is a statutory provision made possible under Section 5(1) of the land use Act to public utility bodies that supply gas, electricity, and water. Thus, this provision allows such utility bodies to benefit from another land (to run materials via the land of another, e.g., an electric pole).</li> <li>• By Express Grant: Express easements are created via a written agreement between parties. This is done during the conveyance of land to another (such should be included in the deed of conveyance).</li> <li>• Express Reservation: This easement occurs when the vendor sells part of his land, reserving a piece of the land as an easement right over the land sold.</li> <li>• Implied Grant: This is the one that involves a grantor haven given a thing with one hand. It is bonded upon him. Thus, he will not take away that means of an easement with the other hand. This can be created in favor of the grantee by Necessity, where the dominant property will be inaccessible or unusable without the easement, except if both parties accept to the contrary.</li> </ul>

Table 2 clearly shows that in Malaysia, the establishment and regulation of easements are governed by the National Land Code 1965. Easements must be registered under Section 286, with distinct forms for ordinary and shared wall-related easements. Unregistered changes are considered invalid, regardless of mutual agreements. The code doesn't recognize easements in equity, as affirmed by court cases like "Datin Siti Hajar v. Murugasu." Both parties share the costs of creating easements, subject to state-specific procedures. In Nigeria, easements can be established through prescription, statutory grant (per Section 5(1) of the Land Use Act), express grant (noted in conveyance deeds), express reservation (when a vendor retains an easement over sold land), and implied grant based on necessity. These mechanisms delineate the legal landscape for easements in both countries.

2.5 Easement Effect on Interest

Easement binds the party who took over the land (servient). As if the servient landowner sells the land to a third party and the third party is bound by the existing easement. In Section 286 (NLC), the easement right will remain until it is cancelled or revoked under the law. Even the lessee, tenants, and charges can enjoy the easement right and have the right to take necessary action to enforce the easement.

## 2.6 Violation of Easement

According to Fathi Yusof, (2002), once the easement had been registered, the servient landowner was responsible for allowing the dominant landowner/tenant/lessee/mortgagee to use the land. If the servient landowner fails to execute the easement, the dominant landowner has the right to:

- The dominant owner can stop the breach by acting to prevent restrictions that hinder the enjoyment of the easement. This action can be done to the extent necessary for implementing the easement only.
- The dominant owner can claim compensation.
- The dominant owner can apply for an injunction from the court to ban the servient owner from committing an easement breach.

## 2.7 Termination of Easement

In Table 3, Easements can be released or terminated in Malaysia and Nigeria following specific procedures. In Malaysia, Section 289 of the National Land Code allows the dominant landowner or Registrar to release an easement. Easements in Malaysia may also end if their period expires, they're abandoned, or they become obsolete, which can be formalized using Form 17C. If a single owner controls both dominant and servient lands (Section 290), the Registrar can create or terminate the easement (Section 291).

**Table 3: Termination of easement (NLC & LUA)**

Malaysia	Nigeria
<ul style="list-style-type: none"> <li>• The dominant landowner or the Registrar can release an easement with the provisions under Section 289 NLC.</li> <li>• Easement may be terminated at any time when the period expires, it is abandoned, or it has become obsolete. Such relief shall be impacted by Form 17C.</li> <li>• Other than that, an easement may be provided if the dominating and servient land is established under one owner (Section 290).</li> <li>• Or it may cease if the Registrar, under Section 291, revokes the easement for a specified cause, the easement is no longer relevant, the easement can distress one of the parties, or the easement is expired.</li> </ul>	<ul style="list-style-type: none"> <li>• Express Release or Agreement: Easement might be precisely cancelled much as the manner it is created expressly. The dominant estate (owner) can cancel the easement by deed, thereby extinguishing it; otherwise, the dominant estate may want to transfer the easement agreement to the servient estate. Whereby release implied that there is clear evidence of abandonment.</li> <li>• Through Merger: An easement may be extinguished and comes via merging. Thus, this occurs when interest is merged in the hands of one person. That is if the same person acquires both the dominant and servient estate.</li> <li>• By Abandoning: Although the proprietor of title to real property can't easily relinquish possession, the proprietor of an easement might cease his easement by deserting it. Dissimilar to vacant possessions, a relinquished easement doesn't carry on existing, sitting tight for another individual to discover and claim it. It basically closes. They are contained in English law.</li> </ul>

In Nigeria, easements can be released by express agreements where the dominant owner cancels it by deed or transfers it to the servient estate, implying abandonment. Easements can also end through a merger when one person owns both dominant and servient estates. Abandonment is another way an easement might cease, unlike physical property, where an abandoned easement stops existing. These principles are derived from English law and outline procedures for releasing or ending easements in both countries.

### 3. Research Methodology

The research study adopted a qualitative research approach through a document analysis and case studies, while triangulation was used to develop a comprehensive understanding. Qualitative research, as described by Creswell (2009), is an effective approach that occurs in a natural context and allows the researcher to generate a degree of depth through great involvement in real-life circumstances. Similarly, Chinyere & Val's (2023) study states that it is the study of the nature of phenomena that includes quality, different manifestations, the context in which they appear, or the perspectives from which they can be perceived, but excludes their range, frequency, and place in an objectively determined chain of cause and effect.

The data were collected through document analysis and case studies to achieve the result for the purpose and scope of this study. Thus, document analysis is a systematic process for reviewing or evaluating documents (printed and electronically) materials which are examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge (Bowen, Glenn, 2009), while case studies as reported by Personal & Archive, (2018) as a process where a researcher inquires in-depth about a program, activity, process where the case study represents the problem, context, the issues and the lessons learned. Hence, in this study, secondary data are used to enrich the article. The secondary data collection was collected from published data sources from various research publications, court cases, Nigeria Land Law, Nigeria Federal Government Law, and Malaysia Land Code.

In addition, the two approaches (document analysis and case study) are subjected to triangulation. Triangulation is an approach of using more than one data source or method in qualitative research to develop a better understanding of the phenomena (Carter *et al.*, 2014); it attempts to explain more fully the richness and complexity of human behaviour by studying it from more than one standpoint (Chako, 2017) and as well it helps the researcher guard against the accusation that a study's findings are simply an artefact of a single method, a single source, or a single investigator's bias (Bowen, Glenn, 2009).

#### 3.1. Data Collection

This research relies on secondary sources which are related to the research topic. The data collection involves a lot of reading and exploring related acts such as National Land Code 1965 (Act 56), Land Use Act 1978, journals, guidelines, books, court cases, and online inputs.

### 4. Data Analysis

This research is exploratory in comparing the easement law between Malaysia and Nigeria. The most suitable research method is by using content analysis and case studies.

- (a) The content analysis is helpful in finding the answer for objective 1 (To investigate and compare the difference of requirements in easement law between Malaysia and Nigeria) and
- (b) Case study analysis to answer objective 2 (To discuss the legal provisions on court cases involving easement).

#### 4.1. Case Study

#### 4.2. Malaysia Court Case 1: Datin Siti Hajar V Murugasu, [1970] 2 MLJ 153



**Table 4: Malaysia court case 1 (NLC)**

Court	OCJ SEREMBAN		
Judges	SYED AGIL BARAKBAH J		
Judgement Date	6 May 1970		
The Plaintiff	Datin Siti Hajar		
The Defendant	Murugasu		
Legislation Considered	National Land Code: Section 282, Section 283 & Section 286		
Fact Case	Issue	Judgment Justification	Result
The defendant had built a road across the Plaintiff's land to access the main road. The Plaintiff was dissatisfied and thus sued the defendant because of trespass and damages.	In this case, either common law (Land Code, 1926) or National Land Code (1965) is applied to determine the right of easement.	The Plaintiff inherited the land from her late husband, while the defendant bought the land from the previous owner, Tunku Syed Abd Rahman. Before this, Plaintiff's husband and the landowner of the defendant used their land as an access road to the main road. After the plaintiff's husband passed away and the defendant bought the land, a dispute arose between the plaintiff. The defendant had sent a letter but was not responded to by the plaintiff, and no permission was given. The defendant still uses the road until the plaintiff brings the issue to the court. Court judges in his jurisdiction conclude that Common Law regarding easement is not applicable due to the duration of this case being from 1964 until 1969. The gazette of had National Land Code 1965 took place when the case was undergoing. In conclusion, by referring to National Land Code 1965 in Section 286, the right of easement is applicable if there is legal registration using Form 17A or 17B by both parties and either one, depending on the agreement.	Allow the plaintiff entitled to claim a fee of RM15,000 to the defendant because of trespass and damages. The defendant was directed to pay the rental rate of land use from the year 1964 to 1969.

In Table 4 the legal case held in the OCJ Seremban in 1970, plaintiff Datin Siti Hajar sued defendant Murugasu for trespass and damages arising from the defendant's construction of a road across her land. The court presided over by Judge Syed Agil Barakbah J, considered the application of the National Land Code of 1965, specifically Section 286, in determining the right of easement, as the case spanned from 1964 to 1969, overlapping with the introduction of this legislation. The judgment favored the plaintiff, awarding her RM15,000 in compensation from the defendant for trespass and damages and requiring the defendant to pay the rental rate for land use from 1964 to 1969.

4.3. Malaysia Court Case 2: Cottage Home Sdn Bhd V Wong Kau @ Wong Kon Lin & Anor, [2014] MLJ 580(Cottage Home Sdn Bhd v Wong Kau @ Wong Kon Lin & Anor, 2013)



**Table 5: Malaysia court case 2 (NLC)**

Court	COURT OF APPEAL		
Judges	ABU SAMAH, ALIZATUL KHAIR AND MOHTARUDIN BAKI JJCA		
Judgement Date	21 September 2013		
The Appellant	Wong Kau @ Wong Kon Lin & Anor		
The Defendant	Cottage Home Sdn Bhd		
Legislation Considered	National Land Code: Section 286 & Section 288		
Fact Case	Issue	Judgment Justification	Result
The appellants blocked the valid access right and refused the right of way of the respondent with a 10-foot high metal gate.	Whether the respondents were legally entitled and lawfully gained a right of way to utilize the access road located on the appellant's land.	The appellant and the respondents owned lands next to each other, and the only admission to their land was a 12-foot wide laterite road over the appellant's land. With the consent of the former owner as a right of way, respondents and the "public" had been using the access thru the appellant's land for about two decades. The respondents claim that when the appellants became an owner of the land, the access road used by respondents was blocked by a 10-foot high metal gate and obstructed their right of way. The respondents also claim that the appellants had trespassed on their land by digging a deep trench and fencing up their land over the respondent's land. With a declaration, the high court granted the respondents a reasonable right of way over the appellant's land. The appellant was directed to remove the metal gate and provide respondents access.	The appellant is requested to execute the registration of easement thru Form 17A, granting the respondent right of the easement under Section 286(1) of the National Land Code (NLC) coupled with a right to access the appellant's land under Section 288 of the NLC. The court also awarded the respondents RM150,000 as special damages, RM100,000 as general damages, and RM50,000 as exemplary damages. The High Court also declined the appellant's counterclaim for a declaration that the respondents had no right to access its land.

In Table 5 is a case at the Court of Appeal in September 2013, the appellants blocked the respondent's access to an access road on their land with a 10-foot high gate. The central issue was whether the respondents had a legal right to use this access road, which had been in use for approximately two decades with the consent of the previous landowner. The High Court had previously ruled in favor of the respondents, ordering the removal of the gate and requiring the appellant to register an easement under the National Land Code. The court also awarded the respondents RM150,000 in special damages, RM100,000 in general damages, and RM50,000 in exemplary damages. The appellant's counterclaim was dismissed, seeking a declaration that the respondents had no right to access their land.

#### 4.4. Nigeria Court Case 1: De Facto Bakeries & Catering Ltd v. Mrs. A. Ajilore & Anor (1974)

(*De Factor Ba V. Ajilore & Anor 1974 SC. 297/1973, 1973*)

**Table 6: Nigeria court case 1 (Court of Appeal SC 297/1973)**

Court	Court of Appeal
Judges	George Baptist Ayodola Coker, Atanda Fatayi-Williams & Daniel O. Ibekwe, Justice of Supreme Court of Nigeria
Judgement Date	28 November 1974
The Appellant	De Facto Bakeries and Catering Ltd
The Respondent(s)	Mrs. A. Ajilore & Anor
Suit No.	SC 297/1973
The Summary of the case	Findings
<p>The summary of the case study is about a Shomolu-Ilupeju Lagos housing project scheme, where the plaintiff (De Factor Bakeries and Catering LTD) in action instituted and tried in the High Court of Justice in Lagos for which they sought action against the defendants (Ajilore and Anors). In the case in contention, one of the parties, contrary to the building plan approved by the planning authority, leaves 5 feet of space for easement of light, air and maintenance (to allow for all services within the land). The plaintiff sought an action against the defendant who has built up her building by leaving a required space of 4 feet (as stated by the Chartered Architect, that the building plan is designed on a party wall basis with a set-back of 4 feet to Mrs William building) which blocked the other's door and windows. The planning authority gave the defendant a condition that it will be necessary to provide an easement in reverence of light, air and right of maintenance and services to the defendant plot (Mrs Ajilore Anor).</p> <p>It was made available that easement is subject to negotiation between both parties and at cost. However, this case was first dismissed at the High Court of Justice; the learned counsel looked upon the following matters:</p> <ul style="list-style-type: none"> <li>• The agreement contained in the lease stated that the lease should comply with the terms and conditions of the Shomolu-Housing project.</li> <li>• That the offer did not state any provision of easement or any other suck-like rights inter se the lessees (certain limited rights among the parties).</li> <li>• It was also not argued that an express grant of easement was created to the plaintiff's land to pave the way for their ancient light, and there was no time the Housing scheme was amended to expressly or by statute grant the plaintiff such right.</li> <li>• The plaintiff also argued that the defendant should give an easement in reverence of light, air and right of maintenance, which shall be based upon private negotiations, to which the defendant already signified his intention to be out in the arrangement for creating such "easement" at a cost.</li> </ul>	<p>Based on the summary of the case, the following findings were drawn up from it:</p> <ul style="list-style-type: none"> <li>• The appeal failed and was dismissed, thereby upholding the High court Judgement.</li> <li>• The plaintiff will pay the defendants each the sum of N165 (equivalent to RM 385.44) as of then, fixed to the appeal cost.</li> <li>• It was clearly shown that there was no easement in any form, and the easement was not formed by either grant (express or implied), presumed or statute.</li> <li>• The court demarcated an easement as "a right enjoyed over another person's property and must be created by a grant (express, implied, or presumed or by statute).</li> </ul>

In Table 6 is a case before the Court of Appeal in Nigeria in November 1974, De Facto Bakeries and Catering Ltd (the appellant) took legal action against Mrs. A. Ajilore and another (the respondents) regarding a housing project in Shomolu-Ilupeju, Lagos. The dispute centered around building plans and easements, particularly the space required for light, air, and maintenance. The plaintiff alleged that the defendant's construction deviated from approved plans and blocked their access to doors and windows.

The planning authority had stipulated the need for an easement, but it was subject to negotiation and cost. The case had initially been dismissed at the High Court, with arguments about the lease terms and the absence of an express grant of easement. The Court of Appeal upheld the High Court's judgment, ruling that no easement existed, whether express, implied, presumed, or by statute and ordered the appellant to pay the respondents a specific sum each for appeal costs.

#### 4.5 Nigeria Court Case 2: (*Olusanya v. Osineye* 2013 SC. 150/2002, 2013)

**Table 7: Nigeria court case 2 (Court of Appeal SC 150/2002)**

Court	Court of Appeal
Judges	Ibrahim Tanko Muhammad, Christopher Mitchell Chukwuma-Eneh, Suleiman Galadima, Clara Bata Ogumbiyi & Stanley Shenko Alagoa Justice of the Supreme Court of Nigeria
Judgement Date	24th March, 2013
The Appellant	Olusanya
The Respondent(s)	Osineye
Suit No.	SC 150/2002.
The Summary of the case	Findings
In this case of an easement, the plaintiff (Olusanya) claimed against the defendant (Osineye). It's about a statement that the defendant has no right to erect a wall blocking access to the plaintiff's residence in Nomegun Quarters, Ogun State, Nigeria.	<p>Based on the summary of the case, the following findings were drawn up from it:</p> <ul style="list-style-type: none"> <li>• The plaintiff (Olusanya) claimed a sum of N50, 000 (equivalent to RM 2,517.5) as damages for the erection of the said wall on the said access road by the defendant, which made it impossible for the plaintiff to gain access to the highway.</li> <li>• Again, the plaintiff demanded a sum of N100, 000 (equivalent to RM 5,035) for a nuisance created by the defendant through a discharge of rainwater from the defendant's roof, which is adjacent to the plaintiff's land.</li> <li>• The case shows no evidence or grant of easement in what so ever forms were granted (in writing or otherwise) y the plaintiff. Furthermore, the plaintiff also testified before the court that at the time of purchasing the land via his vendor, the said access road was blocked.</li> <li>• The respondent argued that the plaintiff solely relied on ipsi dixit (a dogmatic and unproven statement), where the plaintiff proved that no access road was captured in the survey plans presented at the court as an exhibit at the time the land was purchased in 1960. v. The respondent maintained that the plaintiff was not entitled to an easement, as he did not tender any evidence of easement by prescription.</li> <li>• The land in dispute is not appendant to the plaintiff's land; as such, the plaintiff has no right to an easement over the land.</li> <li>• The plaintiff claims the right to the exclusive and restrictive use of a piece of land, which is not an easement. In this instant, the court held that what the plaintiff claims is an exclusive right, demanding to possess a driveway for which the court described that it could not be an easement.</li> <li>• In the end, the Appeal case was dismissed based on the reason that for an easement to exist, it must have been created expressly, impliedly or by presumption. At the same time, the other method was by special grant, evidenced in writing that the plaintiff failed to establish the easement by a preponderance of the evidence of probability and a cost of N5,000 (equivalent to RM 253.8).</li> </ul>

Table 7 is a case before the Court of Appeal in Nigeria in March 2013, the appellant, Olusanya, brought a claim against the respondent, Osineye, related to an easement dispute. The issue revolved

around the defendant's construction of a wall that blocked access to the plaintiff's residence in Nomegun Quarters, Ogun State. The plaintiff sought damages for this obstruction and for nuisance caused by rainwater runoff from the defendant's roof. However, the court found that there was no evidence or grant of easement in favor of the plaintiff, and the access road was already blocked at the time of land purchase. The respondent argued that the plaintiff failed to prove an easement by prescription and that the disputed land was not appendant to the plaintiff's land, negating his right to an easement. The court ultimately dismissed the appeal, ruling that for an easement to exist, it must be expressly, impliedly, or presumptively created or by special written grant, which the plaintiff had failed to establish, and imposed a cost of N5,000 (equivalent to RM 253.8) on the plaintiff.

## 5. Discussion and Findings

### 5.1 Objective 1

In order to answer objective 1: To investigate the difference of requirements in easement law between Malaysia and Nigeria, a content analysis of NLC, Land Act 1978, books, online references, court cases and journals was carried out. The aspects of the requirement and procedure of both countries in easement law are tabulated below for further understanding:

**Table 8: The aspects of the requirement and procedure of both countries in easement law (NLC & LUA)**

Aspects	Malaysia	Nigeria
Legal Provision	National Land Code 1965 (Act 56) Sec. 282- Easement Definition Sec. 283-Rights under Easement Sec. 284- Need of access award Sec. 285-Restriction of power of grant Sec. 286 – Effect of Easement Sec. 287 – Enjoyment of Easement Sec. 288 – Right of way Sec. 289 – Release of Easement by the dominant owner Sec. 290 – Termination of Easement because of amalgamation Sec. 291 – Termination of Easement by the Registrar	Land Act 1978 (2004)  Sec. 5 (1) – Easement definition.
Easement Characteristic	Based on Re Ellenborough Park Case, there is a: <ul style="list-style-type: none"> <li>• A dominant and a servient landowner</li> <li>• Must accommodate the dominant landowner</li> <li>• The dominant and servient landowner must make up of different owners and</li> <li>• The right granted should be capable of being the subject matter of an easement</li> </ul>	Also referred to Re Ellenborough Park Case
Registration Process	The easement right must be registered. (Section 286)	An easement can be created through the following: <ul style="list-style-type: none"> <li>• Prescription: which is continuously used for a certain period.</li> <li>• Express Grant: a written agreement between parties</li> </ul>

		<ul style="list-style-type: none"> <li>Express Reservation: After some of the lands are sold for easement use.</li> <li>Implied grant</li> </ul>
<b>Effect to Interest</b>	The easement will remain until it is cancelled or revoked. It also applies to the tenant, lessee and mortgagee of the dominant land. (Section 286)	The land Use Act (LUA) does not clearly state such a provision but refers to common law and related court cases
<b>Violation of Easement</b>	The servient owner has to be obliged with the easement in line with the agreement. The dominant has the right to take action to ensure the easement is allowed. (Section 287)	The land Use Act (LUA) does not clearly state such a provision.
<b>Termination of Easement</b>	An easement can be terminated by the dominant owner, because of land amalgamation or by the Registrar.	Can be terminate with: <ul style="list-style-type: none"> <li>By Express Release or Agreement</li> <li>Through merger</li> <li>By abandoning</li> </ul>

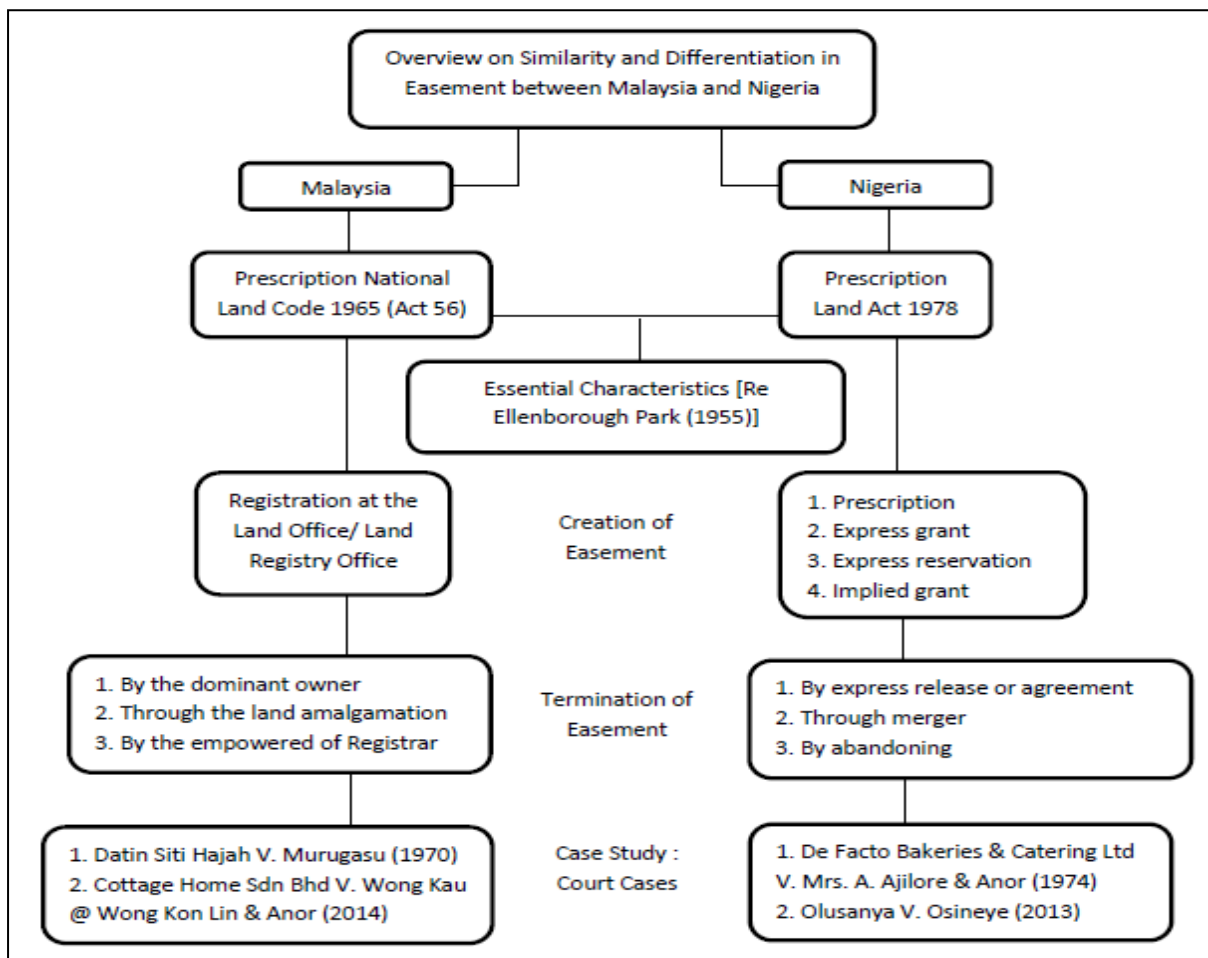


Figure 2: Overview of easement law in Malaysia and Nigeria

## 5.2 Objective 2

To answer objective 2: The legal provisions applied in court cases involving easement issues. A case study analysis examined the court cases involving easement in Malaysia and Nigeria. The court cases are listed below:

**Table 9: The legal provisions applied in court cases involving easement issues**

Malaysia			
Case 1: <u>Case 1: Datin Siti Hajar V Murugasu, [1970] 2 MLJ 153</u>			
Issue	Judgement	Provision Applied	Result
<p>In this case, either common law (Land Code, 1926) or National Land Code (1965) is applied to determine the right of easement.</p> <p><b>Fact Case</b> The defendant had built a road across the plaintiff's land to access the main road. The plaintiff was dissatisfied and thus sued the defendant because of trespass and damages.</p>	<p>Court judges in his jurisdiction conclude that Common Law regarding easement is not applicable due to the duration of this case from 1964 until 1969.</p> <p>The gazette National Land Code 1965 regarding easement take in action and applicable to this case. The registration must be done according to Section 286, NLC, to legalize it.</p>	<p>National Land Code: Section 282, Section 283 and Section 286</p>	<p>Allow the plaintiff to claim a fine amount of RM15,000 to the defendant because of trespass and damages. The defendant was directed to pay the rental rate of land use from the year 1964 to 1969.</p>
<p>Both previous owners mutually agreed that they could use the access. But due to no registration on the previous easement, it took more work for the respondent to prove that the previous owner did consent to use the access road.</p> <p>This court case shows how NLC easement needs to be registered before both parties can benefit from the land. If the easement is not registered, the dominant owner is not legally allowed to use the benefit. It also shows that written or verbal agreement on the easement does not apply under NLC.</p>			
Case 2: <u>Cottage Home SdnBhd V Wong Kau @ Wong Kon Lin &amp; Anor, [2014] 3 MLJ 580</u>			
Issue	Judgement	Provision Applied	Result
<p>Whether the respondents were legally entitled and attained a good right of way to use the admission road located on the appellant's land.</p> <p><b>Fact Case</b> The appellants blocked the valid access right and refused the right of way of the respondent with a 10-foot high metal gate.</p>	<p>The high court, with a declaration, granted the respondents that they were entitled to a reasonable right of way over the appellant's land. The appellant was directed to remove the metal gate and provide respondents access.</p>	<p>National Land Code: Section 286 &amp; Section 288</p>	<p>The high court, with a declaration, granted the respondents that they were entitled to a reasonable right of way over the appellant's land. The appellant was directed to remove the metal gate and provide respondents access.</p>
<p>In this case, it shows that the consent from the previous owner is valid, especially since that's the only road for the respondent access and was used by the public for about two decades. The appellant, as the new owner, should consider not blocking the access and making it difficult for their neighbour to cross the main road, as it is the only way to do that. It shows how the court settles the case through NLC easement by ordering the servient owner to register the easement, and the dominant owner can benefit from the access. This also portrays a special provision on the Easement of Way in the NLC, where applicable.</p>			

Nigeria			
Case 1: De Facto Bakeries & Catering Ltd v. Mrs. A. Ajilore& Anor			
Issue	Judgment	Provision Applied	Result
Whether an easement is formed after the planning authority approves development on the defended plot. The planning authority gave a condition to give an easement for light, air and space for the plaintiff's usage.	The Supreme court upholds the High court's judgement, where the case was first dismissed. This is because there is no evidence for the right of easement of light claimed either by grant, implied, expressed or by statute. The Appeal was dismissed, too, with the attached cost.	The case refers to the Building Adoptive Bye-laws Order 1960 and the Agreement in the offer/building plan for Shomulo Project Scheme. Where Section 8 of the Building Adoptive Bye-laws prohibited part-walls. Contrary to this Bye-law, the Shomulo Project Scheme was in the area where buildings are to be built on the party-walls system pattern, which runs counter to the provision of section 8 of the Building Adoptive Bye-laws order 1960(W.R.L.N. No. 171 of 1960)	It was clearly shown that there was no easement in any form, and the easement was not created by either grant, presumed or statute.
From this case, we learn that an easement is only created if an express, implied, or presumed or by statute grant is applied. The easement must be agreed upon by both parties and is not applicable if no such grant exists.			
Case 2: Olusanya V. Osineye			
Issue	Judgment	Provision Applied	Result
This is a case of easement claimed by the plaintiff (Olusanya) against the defendant (Osineye). It's about a statement that the defendant has no right to erect a wall blocking access to the plaintiff's residence in Nomegun Quarters, Ogun State, Nigeria.	This case was dismissed at the appeal court because there was no expressly, impliedly, presumption or special grant to prove the easement existed.	The court referred to Section 167 of the Evidence Act 2011, which states that "The Court may presume the existence of any fact which it deems likely to have happened regard shall be had to the common course of natural events, human conduct and public and private business" as such, the court refers to the case in Obianwuna Ogbuanyinya&Ors V. Obi Okudo&Ors (1990) 7 Sc (Part 1) 66.	In the end, the Appeal case was dismissed because the plaintiff failed to establish the easement by a preponderance of the evidence of probability and a cost of N5,000 (equivalent to RM 251,750).
Again, the gees from this case, the easement only exists if it is created expressly, implied or by presumption. Both parties must agree with the existing easement.			



## 6. Conclusion

From the analysis, the study found that, the similarity and differences in easement law in Malaysia and Nigeria. Easement from both countries does imply the same purpose, to put right an individual enjoy over another person's property with his consent (an interest owned in land by another party to use, control of the land above or below it for some time or limited time such as to pave the way to cross to a public road. Each country has a particular legal provision to cater for implementing an easement. As for Malaysia, National Land Code 1965 (NLC) is the primary reference which consists of provisions on easement definition, rights under easement, restriction of the power of grant, the effect of the easement, enjoyment of easement, right of way, the release of easement and termination. As for Nigeria, the easement is implemented by referring to the Land Use Act 1978, Common Law, Doctrines of Equity, Statutes, and court cases. The Land Use Act does not detail the easement provisions such as NLC, but it does have another reference.

Both countries agree on the same thing regarding the characteristics of the easement. Both countries applied the court ruling on *Re Ellenborough Park Case*. The characteristic of an easement must consist of dominant and a servient landowner, the easement must put up the dominant landowner, the dominant and servient landowner must be made up of different owners, and the right granted should be capable of being the subject matter of an easement.

In Malaysia, the creation of an easement is only acknowledged if there is a registration using Form 17A or 17B at the land office or Land Registry Office. The law does not recognize it if such registration is not carried out, and the easement may be challenged. This is mentioned in Section 286, NLC. As for Nigeria, the easement must be created through Prescription, Statutory Grant, Express Grant, Express Reservation, or Implied Grant. An easement would be recognized with this method, and a few court cases had proven it.

NLC states the easement effect to interests other than the dominant owner. The lessee, tenant and mortgagee on the dominant land have a right to enjoy the easement. Nigeria Land Use Act (LUA) does not clearly state such a provision.

In Malaysia, the servient must oblige to the easement once the easement is registered. The dominant owner is entitled to take action to ensure the easement is allowed by the servient owner. This is stated in Section 287, NLC. Nigeria Land Use Act (LUA) does not clearly state such a provision.

Termination of Easement in Malaysia is stated in Sections 289, 290 and 291. The dominant landowner or registrar can terminate an easement, or the easement is expired, abandoned, or obsolete. In Nigeria, the termination can be done in a few ways, such as express release or agreement, through merger, or by abandoning it.

Four court cases have been discussed in the chapter Discussion and Findings for both countries. The court cases mainly touched on the importance of registration of easement. Both countries agree the easement should be registered either through a specific form in the land office (Malaysia) stated in Section 286, NLC or through Prescription, Statutory Grant, Express Grant or Express Reservation or Implied Grant for Nigeria. These methods are necessary for the easement to be recognized and shall be challenged legally. From this study, we also learn that it is essential for the public to be aware of this dealing as a precautionary measure in the future. Land or property is unique; their owners might change sometimes. Cases 1 and 2 in Malaysia both cases have an issue when the landowners have changed. As a responsible neighbour, registering an easement is advisable to avoid future arguments. As a buyer, it is essential to check the land thoroughly to see if an easement is possible to avoid the problem in the future.

It is recommended to further research other court cases of easement in both countries for further understanding of court decisions in implementing easement. Other than that, it is interesting to know about other dealings on land from both countries.

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