



HUMAN RIGHTS REVIEW

An International Human Rights Journal

An Annual Publication of the Department of Public Law, Ahmadu Bello University, Zaria, Nigeria

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**RIGHT TO PROPERTY IN NIGERIA AND POWER OF
REVOCATION UNDER THE LAND USE ACT
BY**

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ABSTRACT

The importance of land/immovable property is considered very fundamental to the existence of mankind. Apart from being used for shelter, it is also a significant factor of production. Its ownership in most societies, symbolizes power and affluence. This natural resources is however limited in supply since by its nature fixed, though its value unquantifiable. The demand for land exceeds its availability (supply), hence the need for government intervention for the purpose of redistribution among individuals who desire it for various purposes. The need to avoid conflicts and protect the weak in the society made government to enact laws to protect such ownership/occupancy. This paper examines in some depth the fundamental right to property, its enforcement and the state power of compulsory acquisition through revocation of right of occupancy. How has the laws, such as the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Africa Charter on Human and Peoples' Rights been able to guarantee the fundamental right to property. The paper further takes a cursory look at the procedure for revocation of right

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of occupancy, compulsory acquisition, compensation and judicial intervention.

Keywords: Right to property, power of revocation, compulsory acquisition, compensation, judicial process, law reform.

1.1 INTRODUCTION

Law of real property, also known as land law, is concerned, basically with rights, interests and obligations which exist over land and buildings and how such are created, enforced, assigned and extinguished.¹

Individuals and legal personalities have rights in immovable property, which could either be, possessory, ownership or both, but which law is bound to protect against trespassers and strangers. Nigeria has a unique land tenure system which is largely shaped by its history, namely; (i) the pre-colonial (ii) colonial (iii) post-independence and (iv) Post-land Use Act (1978) era. The pre-colonial era witnessed land tenure system governed predominantly by customary law and practices peculiar to diverse ethnic groupings, which in substance was not different from what obtained during the colonial era but the latter was influenced by the contact with the English Common Law. At independence, governments of three regions in existence, namely: the Northern, Western and Eastern regions enacted various legislations to effectively administer land usage and management in their respective region. Such laws include: (i) Land Instrument Registration Law, 1963, (ii) Land Instruments Preparation Law, 1963 (Eastern Nigeria), (iii) Land Instruments Registration Law,² (iv) Property and Conveyancing Law,³ (v) Native Lands Acquisition Law,⁴ (vi) The Land Tenure Law, 1962, (vii) The Land Registration Law, 1963 (Northern Nigeria).

Nigeria witnesses its first military regime in January 1966 and thereafter experienced many years of military rule, which also made a number of decrees and edicts for land administration and management. Notable among these decrees and edicts were: (i) the State Lands

¹ Henderson, N. (1988) *Green and Henderson: Land Law*, 5th ed. London. Sweet and Maxwell, p. 1

² Cap 55 laws of Western Nigeria (LWN).

³ Cap 100 LWN.

⁴ Cap 80 LWN.

(Compensation) Decree No. 38, 1968, (ii) the Public Land Acquisition Decree,⁵ and (iii) the Land Perpetual Succession Decree⁶

However, in an attempt to unify the land tenure system in Nigeria, the military government in 1978 promulgated Land Use Decree.⁷ The decree has since been renamed as an Act and now an existing law under section 315 of the CFRN 1999 (as amended). Significantly, most of the laws regulating land and its usage in Nigeria affirmed the right of every citizen to acquire and own immovable property in Nigeria.

The emergence of the Land Use Act, 1978 (LUA) changed the sphere of land management, usage and administration in Nigeria. It is a radical departure from other extant laws on real property. This Act makes government the principal stakeholder in land management, distribution and usage in Nigeria, though for the benefits of the citizens.

LUA in its preamble states *inter-alia*:

WHEREAS it is in the Public interest that the rights of all Nigerians to the land be asserted and preserved by law.

AND WHEREAS it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be asserted, protected and preserved.⁸

Government's involvement in land administration and implementation has received global recognition. This is evident from the declaration made by various countries at the United Nations⁹ to promote optimal use of productive land in urban and rural areas, and protecting fragile ecosystems and environmentally vulnerable areas from the negative impacts of human settlements. This, among other things, through developing and supporting the implementation of improved land

⁵ No. 33 of 1976.

⁶ No. 30 of 1970.

⁷ No. 6 of 1978.

⁸ Land Use Act, (1978) Cap. L5 LFN 2004

⁹ Declaration of United nations Conference on Human Settlement. Retrieved October 16, 2015 from www.un.org/conference/habitat

management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs.

It is therefore not surprising that government interest sometime conflicts with the individual right to acquire immovable property, that is, private ownership.

1.2 Conceptual Clarifications

It is essential that we delimit the meanings of the basic concepts that constitute the title of this work and other fundamental concepts mentioned therein, in order to pave way for a robust discourse. The concepts are therefore explained below seriatim.

1.2.1 Land

Generally, land includes not only the surface of the earth or permanently attached to it. These include buildings, trees, streams and ponds. Land is a free gift universal to mankind and a factor of production. Property and Conveyancing Law of Western Nigeria defines land as:

Land includes any tenure, buildings or parts of buildings (whether the division is horizontal or vertical or made in any other way) and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land.¹⁰

According to Utuama, land may be defined as "the earth surface, subsoil, the air space above it, as well as things that are permanently attached to it".¹¹ Land or real property as conceived consists of natural and artificial elements. The legal concept of land goes beyond the ground and its subsoil, but also includes all structures and objects, like buildings and trees standing on it.¹² Land, therefore includes not only the surface of the earth but also, the soil beneath the surface and the right to the air

¹⁰ Section 2 Cap 100.

¹¹ Utuama, A. A. (1989). *Nigerian Law of Real Property*. Ibadan, Shaneson C. I. Limited, p.4.

¹² Nwabueze, B.O., (1974) *Nigerian Land Law*, Enugu, Nwamife Publishers Ltd. p.3.

space above the surface; buildings and any channels which have sufficient attachment to the soil or to buildings, become fixtures.

But, in a lengthy definition of what is land gave a comprehensive description as follows:

In its legal significance, 'land' is not restricted to the earth surface, but extends below and above the surface. Nor is it confined to solids, but may encompass within its bounds such things as gases and liquids. A definition of 'land' along the lines of 'a mass of physical matter occupying space' also is not sufficient, for an owner of land may remove part or all of that physical matter, as by digging up and carrying away the soil, but would nevertheless retain as part of his 'land' the space that remains. Ultimately, as a juristic concept, 'land' is simply an area of three-dimensional space, its position being identified by natural or imaginary points located by reference to the earth's surface. 'Land' is not the fixed contents of that space, although, as we shall see, the owner of that space may well own those fixed contents. Land is immovable; it is also, in its legal significance, indestructible. The contents of the space may be physically severed, destroyed, consumed, but the space itself, and so the 'land', remains immutable.¹³

All the definitions as aforesaid pointed to the fact that the English Common law maxim of "*quic quid platantur solo solo cedit*", which literarily means that "whatever is affixed to the soil belongs to the soil" is not only applicable in Nigeria but has a universal appeal.

¹³ Butt, P. (1988), *Land Law* 2nd ed. Sydney. Sydney Law Book Company. p.9.

The word 'land' and 'property' are often used interchangeably, however 'property' in this context means 'real property' which by its general nature is immovable and fixed. This is in contradistinction from 'personal property' which are chattels or moveable objects.

Property signifies dominion or right of use, control, and disposition which one may lawfully exercise over things, objects, or land. One of the basic dividing in property is that between real property and personal property.

Generally, the term real property refers to land. Land, in its general usage, includes not only the face of the earth but everything of a permanent nature under it. This includes structures and minerals.¹⁴

1.2.2 Right of Occupancy

Occupancy is a mode of acquiring property by which a thing which belongs to nobody becomes the property of the person who took possession of it, with the intention of acquiring a right of ownership in it.¹⁵ Webster,¹⁶ explains that 'title by occupancy' as a legal right of property acquired by taking the first possession of a thing or possession of a thing which belonged to nobody and appropriating it. The right of occupancy is a right that accrues to an occupier of land not necessarily the owner of land.

A holder of a right of occupancy has right to exclusive possession and bound by certain restrictions such as easement. When a right of occupancy is granted, a certificate is issued evidencing such grant, the certificate is usually referred to as 'certificate of occupancy'. The Act regulating land use and management in every country spells out how the right and certificate are applied for and granted.

1.2.3 Revocation

Revocation is one of the many ways by which a right of occupancy can be determined or terminated. The other modes or methods are forfeiture, surrender and effluxion of time. Once a right of occupancy is terminated, the owner has no right whatsoever on the land again. Simply put, revocation of right of occupancy extinguishes the right of occupancy. In Nigeria, the power to revoke the right of occupancy is

¹⁴ See Real Property – Legal information institute- Cornell University. Retrieved October 18, 2015 from <https://www.law.cornel.edu/wex/real-property>

¹⁵ See The Law Dictionary, retrieved October 18, 2015 from the lawdictionary.org/occupancy/

¹⁶ Merriam-Webster retrieved October 18, 2015 from www.merriam-webster.com/dictionary/titlebyoccupancy

exercisable in respect of right of occupancy granted or deemed granted by the government.¹⁷

Revocation, even though can be traced to the pre-colonial times when lands of many communities were oftentimes required for public purposes such as burial grounds, fetish or worship grounds, playing field etc. however in the post – LUA Nigeria, the trend has increased tremendously with obvious defects in the process and beset with manipulations. The courts in Nigeria have held that the mere grant of a right of occupancy over an existing right of occupancy or interest, does not amount to the revocation of such existing interest as was being suggested in various arguments behind section 5(2) LUA.¹⁸

1.2.4 Compulsory Acquisition

Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. It is a power possessed in one form or another by governments of all modern nations. This, however requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. Land may be acquired in part or wholly.¹⁹

Otubu²⁰ recognizes the above power of the state but was quick to add that “there are instances under the Act where the law deviates from the golden rule of procedure by denying land owners any compensation at all or paying what amounts to inadequate compensation for the loss occasioned by the acquisition.”

The formal land acquisition policy provides for compulsory acquisition of land by the government for public interest. Even though, compulsory acquisition is a power of government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government’s exercise is to be

¹⁷ See *Lagos State Development and property Corporation & ors. V. Foreign Finance Corporation* [1987] 1 NWLR pt. 50 at pp. 564-577

¹⁸ See *Bookshops Ltd v. Rivers State & Ors.*[2006] 6 SCM p.61

¹⁹ FAO: Land Tenure Studies 10, p.1 retrieved October 18, 2015 from http://www.fao.org/nr/item_en.htm

²⁰ Otubu, A.K., (2014) Compulsory acquisition without compensation and the Land Use Act. Retrieved October 18, 2015 from papers.ssrn.com/sol3/papers.cfm?abstract_id=2420039

efficient, fair and legitimate.²¹ It is simply a means by which the government divest a rightful holder of either Customary Right of Occupancy or Statutory Right of Occupancy of his possessory right over a parcel of land.

1.2.5 Overriding Public Interest

This term is not defined in LUA 1978, however it depicts, 'for public purpose,' 'public benefits,' 'public interest' or 'for public good/advantage'. In this context, LUA provides that right of occupancy or part thereof may be revoked by the government for public purpose: requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith; and requirement of the land for the extraction of building materials.²²

However, section 28(2) of LUA in paragraphs (a)-(d) states extensively situations that constitute 'overriding Public Interest. Oftentimes, this term is construed by government to suit its action. However, courts usually intervene to ensure fairness, equity and justice.

For instance, the court in *Joshua Oto v. J.M. Adojo*²³ construed the concept of public interest as follows:

It was not in the public interest for a man to wake up one morning only to find out that someone else has acquired title over his house without his knowledge. I do not see how this can be justified except in a situation of anarchy . . . Under the Land Use Act, the Governor of a state has extensive powers to compulsorily acquire land situate within the state for overriding public interest... Any revocation for purposes outside this, even though ostensibly for purposes connected to the one prescribed by the Land Use Act is against the policy and intention of the Land

²¹ FAO, *ibid.* p.15.

²² See Section 28 LUA 1978.

²³ (2003) 7 N.W.L.R pt 820 p. 636.

Use Act, and can be declared invalid and null and void by a competent court of law.

1.2.6 Compensation

This simply refers to something, typically money awarded to someone as a recompense for loss, injury or suffering. West's Encyclopedia of American Law²⁴ defines 'compensation' as 'a pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by such injury. Also, the payment a landowner is given to make up for injury suffered as a result of the seizure when his or her land is taken by the government through the instrument of state.

The Land Use Act provides that if a right of occupancy is revoked for reasons stated in the Act, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.

In conformity with Section 44 of the CFRN 1999 (as amended) which guarantees the payment of compensation for expropriation of the individual's property, the Act prescribes the payment of compensation upon the revocation of a right of occupancy.

All the terms defined, will later in this work be discussed in some depth as they apply to the subject of discourse respectively.

1.3 Right of Occupancy under LUA

Land Use Act vests land comprised in the territory of each state of the Federation in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of Nigerians in accordance with what the law says.²⁵

Although the main object of LUA is to assert government powers and rights over land in Nigeria, the individual rights on land are preserved in the nature of a right of occupancy. There are two types of rights of occupancy namely, statutory and customary. It is the duty of the governor to grant a statutory right of occupancy under the Act while the customary right of occupancy is defined as the right of a person or community.

²⁴ West's Encyclopedia of American Law. (2008). 2nd Ed. The Gale Group Inc. Retrieved October 20, 2015 from legal-dictionary.thefreedictionary.com/compensation

²⁵ Section 1 LUA 1978.

lawfully using or occupying land in accordance with customary law which the local government is empowered to grant.

Section 5 of the Act spelt out the powers of the Governor in relation to land as follows:

- (1) It shall be lawful for the governor in respect of land, whether or not in an urban area to-
 - (a) grant statutory rights of occupancy to any person for all purposes;
 - (b) grant easements appurtenant to statutory rights of occupancy;
 - (c) demand rental for any such land granted to any person;
 - (d) revise the said rental-
 - (i) at such intervals as may be specified in the certificate of occupancy; or
 - (ii) where no intervals as may be specified in the certificate of occupancy at any time during the term of the statutory right of occupancy;
 - (e) impose a penal rent for a breach of any covenant in a certificate of occupancy requiring the holder to develop or effect improvements on the land, the subject of the certificate of occupancy, and to revise such penal rent as provided in section 19 of this Act.
 - (f) impose a penal rent for a breach of any condition, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part thereof by sale, mortgage,

transfer of possession, sublease or bequest or otherwise howsoever without prior consent of the Governor.

These powers which include right to waive, wholly or in part any of the covenants to which such statutory right of occupancy is subject and also, extension of time within which the holder of a statutory right of occupancy is required to perform any of the conditions of the grant, however upon such terms and conditions as the governor may think fit. The Supreme Court of Nigeria in its plethora of judgments validates the powers vested on the governor by the LUA.²⁶

Similarly, lands in non-urban areas are under the control and management of the local governments. Existing rights in land, situated in a non-urban area, which was used at the date of commencement of the Act for agricultural purposes, are protected as if a customary right was granted by the appropriate local government.²⁷ The Act empowers the Local Government to grant a customary right of occupancy may be acquired expressly or by operation of Law otherwise known as deemed grant.

Section 6(1) LUA empowers the Local Government to grant a customary right of occupancy to any person or organisation for residential and agricultural purposes, and for grazing purposes. Sub-section (2) of the provision is equally significant because it limits the extent of the area of land over which a customary right of occupancy may be granted. No customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted, for agricultural purposes and 5,000 hectares if granted for grazing purposes except with the prior consent of the Governor.²⁸

It is clear from the foregoing that the right of occupancy under LUA is divided into two, namely: (i) Statutory and (ii) Customary rights of occupancy. However, each of this division is further divided into: (i) Express and (ii) Deemed Grants.

²⁶ See *Dabo v. Abdullahi* (2005) 29 WRN; *Anthony v. Governor of Lagos State & Anor.* [2003] 10 NWLR (pt 822) p. 288 at 304.

²⁷ James, R.W., (1987). *Nigerian Land Use Act: Policy and Principles*. Ile-Ife, University of Ife Press Ltd. p. 108

²⁸ Smith, I.O., (1999) *Practical Approach to Law of Real Property in Nigeria*. Lagos, Ecowatch Publications (Nigeria) Limited, p. 34.

The Governor by virtue of section 5(1) LUA has the power to grant a statutory right of occupancy to any person for all purposes including other interests like easements, appurtenants, etc. whether or not it is an urban area. Such express grant is obviously discretionary as he cannot be compelled to make such grant.²⁹

The Act³⁰ appears to make the power of the governor in this regard absolute, as the exercise of his discretionary powers cannot be inquired into. The novel provision states *inter-alia*:

- (1) The Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federal Republic of Nigeria 1999 and without prejudice to the generality of the foregoing, no court shall have jurisdiction to enquire into-
- (a) any question concerning or pertaining to the vesting of all land in Governor in accordance with the provisions of this Act; or
 - (b) any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or
 - (c) any question concerning or pertaining to the right of a local government to grant a customary right of occupancy under this Act.

Finally the Act emphasized with a tone of finality thus-

²⁹ Smith, I.O. *ibid.* p. 307.

³⁰ See section 47.

- (2) No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.³¹

This assertion is a sharp contrast to the intendment of this Act as could be gleaned from its preamble. It is clearly an 'ouster clause' which is most undesirable, particularly regarding; allocation, revocation and compensation on right of occupancy.

It is therefore cheering and commendable that the courts in Nigeria have established in plethora of authorities its undesirability in view of its inconsistency with the provision of the CFRN 1999 (as amended).³² Thus, notwithstanding the express provision of section 47 of the Land Use Act, an action will lie at the instance of any person whose proprietary interest on land has been expropriated by the state for the purpose of making a grant to another person and the High Court shall have the jurisdiction to hear the matter on the strength of the combined effect of sections 2(1) and 272 CFRN-1999.

What is a Deemed Grant?

By virtue of Section 34(1) LUA, land in urban areas vested in any person prior to the commencement of the Act shall, subject to the provisions of the said law, continue to be held by such person as if a statutory right of occupancy had been issued by the Governor. Such lands are usually classified into 'developed' and 'undeveloped' land for purposes of the section.

In *Salami & Ors. v. Oke*,³³ the court held that under the LUA anyone may be granted in an urban area, a statutory right of occupancy by the Governor or a customary right of occupancy in a non-urban area by a Local Government Council. As earlier noted, customary right of occupancy is described as the title of a native or native community using or occupying native land in accordance with the native law and custom.

³¹ Emphasis Supplied.

³² See sections 2(1) and 272 CFRN 1999 (as amended); *Nkwocha v. Governor of Anambra State* (1984) NSCC vol. 15; *Kanada v. Governor of Kaduna State* (1986) 4 NWLR (pt.35); *Lemboye v. Ogunsiji* (1990) 6 NWLR pt. 155.

³³ (1987) 4 N.W.L.R. (pt.63) 1.

It is clear from this definition that a non-native cannot hold a customary right of occupancy. It may however be sublet to a non-native.

One major feature of a statutory right of occupancy is that the grantee pays rent to the Governor. However, the Governor has the power to grant right of occupancy free of rent or at a reduced rate.

Upon the granting of rights of occupancy, the Governor is under obligation to issue certificate of occupancy evidencing such grant. Section 9 LUA provides thus:

(1) It shall be lawful for the Governor-

(a) when granting a statutory right of occupancy to any person; or

(b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or

(c) when any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy.

(2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefor, by the person in whose name it is issued, such fee (if any) as may be prescribed.

1.4 Right to Own Property

The Universal Declaration of Human Rights provides that: 'everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his property.'³⁴

Several regional conventions on human rights also protect rights to property. Such laws/legal instrument include: the American Convention on Human Rights³⁵ which provides that-

³⁴ See Article 17 Universal Declaration of Human Rights (UDHR).

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

Similarly, the African Charter on Human and Peoples' Rights³⁶ provides that the right to property shall be guaranteed. Such right may be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of the appropriate laws. This law is applicable to Nigeria, by virtue of it being a signatory to the law.

The International Labour Organisation's Convention concerning Indigenous and Tribal Peoples in Independent Countries³⁷ provides that:

The rights of ownership and possession of [indigenous people] over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities.

It appears that this right is not only universal but also natural on the basis that secured rights to land and other natural resources are essential for the livelihoods of indigenous peoples. These rights are the

³⁵ This convention was adopted at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica in 1969. See Article 21.

³⁶ See Article 14 Cap. L5 LFN 2004.

³⁷ No. 169. See Article 14(1) thereof.

basis of their economy and are often the foundation of their spiritual, cultural and social identity.³⁸

In Nigeria, the CFRN 1999 (as amended) provides for the right of citizens to immovable property anywhere within its territory.³⁹ Section 44 of the Act further protects the right to immovable property when it provides *inter-alia* that-

- (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for purposes prescribed by a law that, among other things-
 - (a) requires the prompt payment of compensation therefore; and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

This provision of law, like others before it prohibits forceful take-over or deprivation of a citizen, his right to property, and where sometimes such land is required for public purpose or in the interest of the state, the right to compensation shall immediately accrue to the holder of such right.

However, it becomes imperative to state that virtually all the legislations in this area curtail the scope of this right by adding provisions which often limit the fundamental right to own property without undue interference by the state or individuals. In other words,

³⁸ FAO doc. *Ibid.* at p. 10.

³⁹ Section 43 CFRN 1999 (as amended).

what is given on the one hand is taken away by the other. An example of such provision is section 44(2) which provides extensively thus:

- (2) Nothing in subsection(1) of this section shall be construed as affecting any general law-
- (a) for the imposition or enforcement of any tax, rate or duty;
 - (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
 - (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
 - (d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
 - (e) relating to the execution of judgments or orders of court;
 - (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
 - (g) relating to enemy property;
 - (h) relating to trusts and trustees. . .

Subsection (3) thereof, provides for automatic acquisition/take-over of the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria. Such property is deemed to be vested in the Government of the federation and shall be managed in such manner as may be prescribed by the National Assembly.⁴⁰

The Land Use Act does not employ the word 'compulsory acquisition' rather it uses the word 'revocation of occupancy' which in substance has similar, if not the same effect on the right of occupancy and its holder.

However, it appears that the Act deliberately adopts the word 'revocation' instead of 'compulsory acquisition' so as to have a citizen's friendly outlook and to avoid suspicion that the Act sets out to deprive the citizens of their immovable property rather than protecting it, in accordance with the spirit of its preamble.

1.5 Revocation of Occupancy

Black's Law Dictionary defines 'revocation' as an annulment, cancellation, or reversal, usually of an act or power.⁴¹ It could also be defined as an act by which one annuls something that was done.⁴² It could sometimes denote declaring something void or a nullity. However, LUA does not specifically define revocation in its interpretation section.

Revocation of occupancy simply means withdrawal or termination of holder's right to possession and use of land. Revocation could also take place by way of forfeiture, surrender or effluxion of time. The implication of such withdrawal or termination is that the holder is stripped of his right in part or the allocated parcel of land, depending on the scope of revocation order.

Section 28 of the Act provides that a right of occupancy may be revoked by the governor for overriding public interest.⁴³

⁴⁰ See generally Section 44 LUA 1978.

⁴¹ Garner, B.A., *Black's Law Dictionary*, 3rd Pocket edition, Minn. West Publishing Co. p. 623

⁴² Curzon, I.B., *The Dictionary of Law*, 6th edition, p.372

⁴³ See generally, *The Administrators/Executors the Estate of General Sani Abacha v. Samuel David Eke-Spiff & 3 ors.* [2009] 7 NWLR (pt. 1139) p. 97 at pp. 130, 131 & 132; *CSS Bookshops Ltd. v. Registered Trustees of Muslim Community in Rivers State & 3 ors*[2006] 11 NWLR 530 at pp. 564 & 577.

Revocation applies to both the statutory and customary right of occupancy, whether granted or deemed granted by the government.⁴⁴ Section 28 LUA provides *inter alia* that 'it shall be lawful for the Governor to revoke a right of occupancy . . .'

1.6 Procedure for Revocation

The Land Use Act has laid down certain regulations as conditions precedent for a valid revocation of occupancy, any deviation from any or all of such regulation(s) shall render the exercise a nullity. This position was stressed by court in *Osho v. F.F.C*⁴⁵ where it was held that:

. . . to revoke a statutory right of occupancy for public purposes, the letter and spirit of the law must be adhered to since revocation of a grant deprives the holder of his proprietary rights. The terms must be strictly complied with and strict constructions of the provisions made.

Revocation of a right of occupancy can be made at any time for strictly the reasons spelt out by the Act as follows:

Section 28(4)-

The Governor shall revoke a statutory right of occupancy in the event of the issue of a note by or on behalf of the Head of the Federal Government if such notice declares such land to be required by Government for public purposes.

In the same vein, sub-sections (6) and (7) provide that-

The revocation of a right of occupancy shall officer duly authorized in that behalf

⁴⁴ See Section 38 LUA; *Lagos State Development and Property Corporation & Ors v. Foreign Finance Corporation (supra)*.

⁴⁵ (1919) 4 N.W.L.R pt. 184 p.at 192

by the Governor and NOTICE THEREOF SHALL BE GIVEN TO THE HOLDER.⁴⁶

(7) The title of the holder of a right of occupancy shall be extinguished on receipt by him of a notice given under subsection (6) or on such later date as may be stated in the notice.

It is evident from the above that for a revocation order to be operative, a valid notice as prescribed by the Act shall be issued and served on the holder in accordance with the dictates of the law.

Notice of revocation is very important under the Land Use Act. The governor is empowered to revoke a right of occupancy only after issuance of notice to that effect. Such notice must state the particular public purpose for which the land is required.⁴⁷ The mode of service must comply with provisions of the Act, otherwise the notice would be void.⁴⁸ For instance, the court in *Odowu v. Ilombu*⁴⁹ stated that the notice of revocation must be served on the holder personally. The primary purpose for serving notice of revocation is to formally inform the holder of rights of occupancy of infraction of his constitutional right to acquire and own immovable property, on legal ground(s) which must be clearly spelt out.

The Court of Appeal was direct on point in *Dumez (Nig.) Plc. v. Ademoye*⁵⁰ when it held thus: . . . for there to be a valid acquisition by government, the right holder (deemed or granted) must first be divested of his right by means of revocation and acquisition, notice of which must be duly served on the rightful holder. . .

⁴⁶ Emphasis mine.

⁴⁷ Taiwo, A. (2011) *The Nigerian Land law*, Ibadan, Ababa Press Ltd. p. 241

⁴⁸ Section 44 LUA provides for mode of service of notices under the Act. See also *Boye Industrial Limited v. Sowemimo* (2009) 10 N.W.L.R (pt. 1148) p. 136

⁴⁹ (2007) 8 N.W.L.R (pt. 1037) p. 488

⁵⁰ [2005] All FWLR (pt. 791) p. 1470 paras. C-D; See generally *N.E.W. Ltd. v. Denap Ltd.* (1997) 10 NWLR (pt. 525) p. 481; *Haruna v. Ojukwu* (1991) 7 NWLR (pt. 202) p. 207; *Adole v. Gwar* (2008) All FWLR (pt. 423) p. 1217; *Ogboni v. Ojar* (1996) 36 LRCN

It is a fundamental principle that mere publication of revocation of occupancy in a state gazette without a prior issuance and service of notice thereof on the holder in an exercise in futility.⁵¹

The court in *Olatunji v. Military Governor of Oyo State*⁵² summed-up the importance of notice and the procedure for its service thus:

The failure to effect personal service of the notice on the appellant in accordance to the manner set out in sections 28 and 44 of the Land Use Act is a gross violation of, or serious departure from the set out procedure.

Service personally on the appellant is a sine qua non of the revocation of his interest in the land in dispute and cannot be dispensed with . . . the publication in a gazette is a constructive notice to the whole world and not a substitute for personal service enjoined by the Land Use Act. . .

The acquiring authority cannot be vested with any interest in the land until the subsisting interest is revoked because there can be no concurrent possession by two parties claiming adversely.

Section 44 LUA provides comprehensively and spelt-out how the notice of revocation of occupancy could be effected thus:

Any notice required by this Act to be served on any person shall be effectively served on him-

- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode of that person; or

⁵¹ *C.S.S Bookshops Ltd. v. R.T.M.C.R.S* (supra)

⁵² (1995) 5 N.W.L.R (pt. 397) p. 586

- (c) by sending it in a prepaid registered letter addressed to the person at his usual or last known place of abode; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates, and by delivering it to some person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

It is instructive to note that the Governor may delegate to the State Commissioner all or any of the powers conferred on the Governor by this Act, subject to such restrictions, conditions and qualifications, not being inconsistent with the provisions, or general intentment, of this Act as the Governor may specify.⁵³

The holder or occupier cannot be deprived of his right to possess and use his immovable property except same is compulsorily acquired by way of revocation in accordance with the Land Use Act and CFRN 1999 (as amended). This powers are only exercisable in the 'public interest' or for 'overriding public interest'.

As noted above, what the LUA 1978 referred to as 'revocation of occupancy' has the same effect as 'compulsory acquisition' on the holder or occupier.

1.7 Compulsory Acquisition of Land

⁵³ See generally section 45 LUA 1978

Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and restoration of the natural environment. The land may not be on sale at the time it is required. In order to obtain land when and where it is needed, governments have the power of compulsory acquisition of land: they can compel owners to sell their land in order for it to be used for specific purposes. This power is sometimes referred to as expropriation, eminent domain, compulsory purchase, land acquisition and resumption.⁵⁴

Iluyomade⁵⁵ justifying the above position expressed his view thus-

It is not only in the agricultural sector that land is of importance in Nigeria. The discovery of mineral oil and other useful minerals has quickened the pace of explorations for more deposits on land belonging to indigenes and usually held under customary tenure. Government has a deliberate industrialization policy. Land must be acquired for the sites of factories, . . . hospitals, schools, better recreational facilities, and these and many other facilities have to be provided; BUT FIRST, THERE MUST BE LAND⁵⁶

Before the enactment of LUA 1978, other extant laws provide for public lands acquisition, otherwise known as compulsory acquisition. A good example of such laws, is the Public Lands Acquisition Law of Western Nigeria which spelt out 'public purposes' for which land might be compulsorily acquired thus-

⁵⁴ F.A.O. doc. *Ibid.* p. 1

⁵⁵ Iluyomade, T., *Towards economic development: meaningful Land Reform for Southern Nigeria. An unpublished paper delivered at the Faculty of Law, University of Ife, May 11, 1970.*

⁵⁶ Emphasis mine.

1. For example government use or for general public use;
2. For or in connection with sanitary improvements of any land, including reclamations;
3. For or in connection with the laying out of any new township or government station;
4. For obtaining control over any land contiguous to any port;
5. For obtaining control over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government;
6. For obtaining control over land required for or in connection with mining purposes; and
7. For obtaining control over land required for or in connection with planned rural development or settlement.
8. For or in connection with housing estate, economic, industrial, or agricultural development and for obtaining control over land required for or in connection with such purposes.⁵⁷

In some cases, the acquisition of portion of a land parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes.

The process of compulsory acquisition is substantially the same with the revocation of rights of occupancy explained above. Holder or

⁵⁷ Section 2 of the Public Lands Acquisition law Cap 105, Western Nigeria.

Occupier's right cannot be compulsorily acquired except for reasons clearly enumerated in the CFRN 1999 (as amended) and LUA 1978, with a condition that compensation be paid to the holder.⁵⁸

In *Goldmark Nig. Ltd. & Ors v. Ibafor Co. Ltd & Ors*⁵⁹ the Supreme Court of Nigeria confirming the above position held that-

This court had always emphasized that government has the right to compulsorily acquire property on payment of compensation. There is no argument about such constitutional power. There are statutes which provide for the procedure of acquiring property by the government. Government is expected to comply with those statutes which it has enacted. Where government disobeys its own statutes by not complying with the laid down procedure for acquisition of property it is the duty of the courts to intervene between the government and the private citizen. . .

The compulsory acquisition of land has always been a delicate issue and is increasingly so nowadays in the context of rapid growth and changes in land use. This process usually brings tension for people who are threatened with dispossession. Even though, compulsory acquisition in most cases bring benefits to society but it is disruptive to people whose land is acquired, particularly when the acquisition is done poorly.⁶⁰

Most governments, particularly in the developing countries abuse the power, and acquire lands for reasons, other than what the laws stipulate.

The problems of obtaining lands by compulsory means have always centred on the questions of the proposed purpose of the acquisition, that is whether it satisfied the test of public interest, and what constituted an appropriate compensation for the taking.⁶¹

⁵⁸ See generally section 44 CFRN 1999 (as amended) and sections 28 & 29 LUA 1978.

⁵⁹ [2012] 5 SCM p. 156 paras F-H per Adekeye, JSC

⁶⁰ *Ibid.* p. 1

⁶¹ James, R.W. *Ibid.* p. 44

It is sometimes problematic to determine whether the notice and service of same have satisfied the process as prescribed by the law, particularly when the situation is a complex one. The notice is expected to describe the land, states the measurements and boundaries as clear as possible. The term or duration for which the property is to be acquired should also be spelt out in the notice.

Also, the holder, occupier or any person claiming to have any right, in the said land will be required within six weeks from the date of the notice to send to the Governor, a statement of his/her/their right and interest and of the evidence thereof. However, the notice contains a warning that if no notice is received by the Governor or anyone so delegated by him, such land will be dealt with as unoccupied, for the purpose of acquisition.

The notice informs the holder of the date or period when Governor intends to enter and take possession and that any form of resistance shall be treated as a crime which shall be penalized on conviction to a fine or imprisonment as the court may decide.

There is valuation and submission of claims, payment of compensation and ultimately, the government takes ownership and physical possession of the land for the intended.⁶²

Where the government fails one or more of this tests, the holder or occupier has the right to challenge the order of compulsory acquisition praying the court of a competent jurisdiction to set it aside or declare same a nullity. Statutes relating to compulsory acquisition of property are construed strictly against the acquiring authority. The Supreme Court in *Bookshop Ltd. v. Rivers State & Ors.*⁶³ held that:

Any provision of law which gives or governs compulsory acquisition of a person's property must be construed by the court fortissimo contra preferentes. Such a statute should be construed by the court strictly against the acquiring authority and sympathetically in favour of the complainant or the owner or possessor of the property against any irregularity in the

⁶² See generally F.A.O. doc. *Ibid* p. 16

⁶³ *Supra*. See p. 69

procedure for acquisition as laid down by the enabling status.

1.8 Purview of Overriding Public Interests

For a revocation of occupancy to be valid in Nigeria, the Act states that such exercise shall be for the public benefits or for overriding public interest. It is therefore necessary to consider the purview of the 'overriding public interest' as provides for in the Act *vis-à-vis* the problematic nature of its interpretations in plethora of judicial decisions.

Section 28 of the Act extensively provides that:

- (1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
- (2) Overriding public interest in the case of a statutory right of occupancy means-
 - (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;
 - (b) the requirement of the land by the Government of the state or by a Local Government in the state, in either cases for public purposes within the state, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
 - (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
- (3) Overriding public interest in the case of a customary right of occupancy means-
 - (a) the requirement of the land by the Government of the State or by a

Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation:

- (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
- (c) the requirement of the land for the extraction of building materials;
- (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

The question as to how a parcel of land required for overriding public interest by the Federal Government could be acquired is also accommodated by the Act. Since the power to grant and revoke rights of occupancy is vested in the State Governor and no other authority, the Act provides that the Governor issue or cause to be issued notice of revocation on behalf of the President.⁶⁴

However, there are other grounds for revocation of right of occupancy, outside the purview of 'overriding public interest.' Sub-section (5) of the Act provides thus:

The Governor may revoke a statutory right of occupancy on the ground of-

- (a) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain;⁶⁵

⁶⁴ See Section 28 (4).

⁶⁵ Section 10 provides *inter alia* that the holder shall pay to the Governor, amount payable on any unexhausted improvements existing on the land at the date of his entering into occupation. Similarly, the holder shall pay agreed rent to the Governor, which is subject to review in accordance with the letter and spirit of section 16 of the Act.

- (b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of the Act;⁶⁶
- (c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under subsection (3) of section 9 of this Act.⁶⁷

It should be noted that revocation of a statutory right of occupancy in connection with economic, industrial or agricultural development of a private company or of an individual is not for overriding public interest within the meaning of the Act.⁶⁸

Thus, in *The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v. Samuel David Eke-Spiff & 3 ors*,⁶⁹ the Supreme Court observed that the 1st respondent's right of occupancy was revoked and the same land was re-allocated to Major General Sani Abacha. The apex court held that such revocation did not come within the purview of the overriding public interest. It held further that it is unconscionable, unlawful and unconstitutional to take away a piece of land already allocated and reallocate same to someone else without serving a notice of revocation on the earlier allottee and not paying that person compensation.⁷⁰ Acquisition of land has to follow due process

⁶⁶ Section 8 provides for statutory right of occupancy granted subject to the terms of the contract between the holder and the Governor. This usually applies to holders spelt out in section 5(1) (a) of the Act.

⁶⁷ The Act in its subsection (3) of section 9 provides that if a person in whose name a certificate of occupancy is issued without lawful excuse, refuses or neglects to accept and pay for the certificate, the Governor may cancel the certificate and recover from such person any expenses incidental thereto and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) of this section, the Governor may revoke the statutory right of occupancy.

⁶⁸ See *Lagos State Dev. & Property Corporation v. F.F.C.* (supra); *Ereku & Ors. V. Military Governor of Mid-Western State* (1974) 1 All NLR 163.

⁶⁹ Supra. See *Ononuju & Anor v. A.G. Anambra State* (supra) per Chukwuma-Eneh, p. 185

⁷⁰ See particularly p. 132.

and procedures especially where it involve the infraction of individual constitutional rights.⁷¹

The acquisition must be for *bona-fide* public purpose. It is suggested that for a particular purpose to qualify as public purpose or public interest it must not be vague and the way it benefits the public at large must be capable of proof. The test is whether or not the purpose is meant to benefit the public and not just to aid the commercial transaction of a company or a group of people for their own selfish or financial purposes.⁷²

Similarly, the Court held in *Dumez (Nig.) Plc. v. Ademoye*⁷³ that a land compulsorily acquired for public purpose cannot be granted for the use and occupation of a private firm or enterprise like the appellant. No, that cannot amount to public purpose. The provisions of section 28 (1) of the Land Use Act. is very clear that revocation and compulsory acquisition can only be valid when it is done for public purpose.

To avoid any form of ambiguity or vagueness of what amounts to public purposes, the Act enumerates category of activities that qualify as such: in its interpretation section. Section 51(1) provides *inter alia* that “public purposes” include-

- (a) for exclusive Government use or for general public use;
- (b) for use by anybody corporate directly established by law or by anybody corporate registered under the Companies and Allied Matters Act as respects which the government owns shares, stocks or debentures;
- (c) for or in connection with sanitary improvements of any kind;
- (d) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or

⁷¹ See *Edebiri v. Daniel & Anor* [2009] 8 NWLR (pt. 1142) p. 15 at 32.

⁷² See *Goldmark Nig. Ltd & Ors. V. Ibafor Co. Ltd. & Ors.* (Supra); *Alhaji Bello v. The Diocesan Synod of Lagos & Ors.*

⁷³ Supra.

- other public work or convenience about to be undertaken or provided by the Government;
- (e) for obtaining control over land required for or in connection with development of telecommunications or provision of electricity;
 - (f) for obtaining control over land required for or in connection with mining purposes;
 - (g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;
 - (h) for obtaining control over land required for or in connection with economic, industrial or agricultural development;
 - (i) for educational and other social services.

It is imperative to note that where a revocation of occupancy is held to be invalid, all subsequent grants for whatever purpose: private or public is null and void. There is no doubt that the combined effect of sections 28 and 51 of the Act should be a sufficient guide for the Governor to exercise his power of revocation of occupancy except where he has an ulterior motive.

Where a right of occupancy is slated to be revoked for public purposes, there is the need to spell out the public purpose in the notice of revocation. . . . There is no ground for withholding information as to the public purpose for which the land is acquired from the holder of the right of occupancy and the public if there is no secrecy about the public purpose. Public purposes defined in section 51 of the Act does not include the revocation of the right of occupancy of a grantee for the purpose of vesting it in another grantee.⁷⁴

Plethora of judicial decisions have revealed that governors often revoke or acquire compulsorily right of occupancy with a view to re-allocate same to private individuals or corporate bodies of which government is not the owner. However, this act often generates tension

⁷⁴ See *Oto v. Adajo* (supra).

between the government and the individual or community holder of this rights of occupancy.⁷⁵

In *Guinness (Nig.) Ltd. v. Udeani*,⁷⁶ the Old Anambra State Government by Notice No. 284 at page 346 Gazette No. 28 Vol. 6 dated October 15, 1981 purportedly revoked existing rights of occupancy over 153 hectares of land in Udi Local Government Area of the State. These rights were enjoyed by the *Ngwo* and *Nsudo* communities. The revocation was stated to be for overriding public interest. Out of the land compulsorily acquired, the appellant a public liability company was allotted 30 hectares in respect of which right of occupancy was issued. The appellant was to build a brewery on the allotted parcel of land. However, the respondent irked by this action initiated an action at the trial court, where the court ordered that the respondent be given an alternative land. Dissatisfied, the respondent appealed to the Court of Appeal, the appellate court held thus:

. . . it is an undisputed fact that the appellant is a public liability company. There has not been the slightest suggestion that the Anambra State government owned in full or in substantial part the holdings in the said company. The land allotted to the appellant was to be used for the erection of a brewery. What availed before the trial court and by extension is the fact of an acquisition ostensibly made for overriding public interest but same land ending up for a use not provided for by the enabling statute as the basis for the initial revocation of rights which but for the fact of acquisition would have continued to exist . . . any revocation done not in compliance

⁷⁵ See *Okafor v. A.G. Anambra State* (2005) 14 NWLR (pr. 945) p. 210; *CSS Bookshop Ltd. v. Registered Trustees of the Muslim Community in Rivers State* (supra); *Edebiri v. Daniel* (2009) 8 NWLR (pt. 1142) p. 15; *Lawson v. Ajibulu* (1991) 6 NWLR; *Olatunji v. Military Governor Oyo-State* (supra).

⁷⁶ (2000) 14 NWLR pt. 687 p. 367

with s. 28(2) & (3) as in the instant case is undeniably illegal.⁷⁷

Recently, an attempt by the Lagos State Government to acquire lands in Ikoyi (Osborne Road) and parts of Lekki, ended in tragedy when the Managing Director, Lekki Free Zone was murdered. It was reported sometime in October 2015 that the villagers led by some of their leaders went on a protest against an alleged forceful take-over of their land by the Lagos State Government allegedly on behalf of a Nigerian businessman who is also a renowned global industrialist.⁷⁸

It is instructive to note that even where the Governor compulsorily acquire or revoke rights of occupancy for overriding public purpose as spelt out in section 28, such exercise of power of revocation will not be operative where another major component, that is "compensation" is absent.

1.9 Right to Compensation⁷⁹

Compensation whether in financial form or as replacement land or structures, is at the heart of compulsory acquisition. As a direct result of government action, people lose their homes, their land, and at times their means of livelihood. Compensation is to repay them for these losses.⁸⁰

The constitution provides among other things that no property should be compulsorily acquired in any part of Nigeria except upon PROMPT⁸¹ payment of compensation therefor. The holder shall also have the right of access to court of competent jurisdiction to challenge the adequacy of the compensation.

Although the provisions of section 29 of the Act provides comprehensively for compensation, however it will not apply to non-penal revocation of occupancy. For example, revocation of a right of

⁷⁷ Per Muhammed JCA at p. 388 paras D-H

⁷⁸ See "Lekki Free Zone MD killed in Land fracas" retrieved October 12, 2015 from nigeriancurrent.com/2015/10/12breaking/lekk-free-zone-md-killed-in-land-fracas-ambode-orders-police-to-get-killers/

⁷⁹ The right to compensation is a constitutional right available to all citizens. See section 44(1) of CFRN 1999 (as amended).

⁸⁰ FAO Doc. *Ibid* p. 23.

⁸¹ Emphasis mine.

occupancy on the grounds of unlawful alienation.⁸² breach of express or implied covenants in a certificate of occupancy⁸³ will not attract compensation.

The Act provides that where a right of occupancy is revoked for the public purpose, the holder or the occupier shall be entitled to compensation for the value of the land at the date of revocation of their un-exhausted improvement.⁸⁴

Where the right of occupancy is revoked in respect of any developed land on which residential building has been erected, the government may offer, in lieu of pecuniary compensation, resettlement in any other place by way of reasonable alternative accommodation where the circumstances permit.⁸⁵ The Act provides that any dispute as to the amount of compensation calculated in accordance with the Act shall be referred to the appropriate Land Use and Allocation Committee. However, it is my submission that this provision of law does not oust the jurisdiction of a competent court of law; it could at best serve as a condition precedent before approaching the court.⁸⁶

The issue of compensation, though very vital could be as problematic as revocation of occupancy both in theory and in practice. There are four defined circumstances where, upon revocation of a right of occupancy, the rights holder and occupier (if any) are given an entitlement to compensation for the value of the unexhausted improvements existing on the land.

These are set out as follows:

- (i) On the requirement of the land by the federal, state or local government for a public purpose;⁸⁷
- (ii) On the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;⁸⁸
- (iii) On the resumption of non-urban land by the local government for public purposes⁸⁹ and;

⁸² An example is where the Governor's consent was not sought and obtained before alienation.

⁸³ Section 10 provides for covenants implied in Certificates of Occupancy.

⁸⁴ See section 29(1) of the Act.

⁸⁵ Section 33 of the Act.

⁸⁶ See section 6 (6)(b) CFRN 1999 (as amended).

⁸⁷ Section 29(1) LUA 1978.

⁸⁸ Section 29(2).

- (iv) On the deprivation of the deemed statutory rights holder of undeveloped lands in excess of the permitted holding.⁹⁰

As noted earlier, compensation is payable for the improvement on land. Ironically, the loss of the land is not a compensable interest. Nor is there any payment for disturbance. As regards the loss of the use of the land, however, the rights holder is allowed an amount equal to the rent, if any, to be paid during the year the right of occupancy was revoked.⁹¹

It is remarkable to note that there is nowhere the Act uses the word 'valuation' with regard to provisions relating to payment of compensation, rather the Act finds it convenient employing the word 'assessment'. This appears to be a deliberate act of avoiding the technical interpretation of 'valuation' and the attached weight. Under the Act, assessment is not based on open market value. It is based on cost. Whether or not the property is of special suitability, it will be taken care of in the depreciated cost of replacement.⁹² The method of assessment of compensation under the Land Use Act is a total departure from the open market concept inherited from the English Common Law.

1.9.1 Judicial Intervention

The court pronounced on section 28(4) of the Act where it held that payment of compensation is also a condition precedent to the validity of such acquisition.⁹³

Owners of land who yielded up possession of their land without alternative accommodation provided for them are entitled to compensation with interest on the value acquired since the entry on the land until payment.⁹⁴

In that case, the Supreme Court, per Ngwuta, JSC held as follows:

The appropriate section of the Act applicable to the appellants' case in s. 6 which provides as follows: 'where an

⁸⁹ Section 6(3) and (5).

⁹⁰ Sections 34 and 35.

⁹¹ See generally James, R.W. *ibid.* at pp. 149-150.

⁹² Udehi, G.O. (1987). *Public Acquisition and Compensation Practice in Nigeria*. Ikeja. John West Publication Ltd. p. 42.

⁹³ *Ononuju & Anor v. A.G. Anambra State & Ors.* (supra) at p. 163, paras D-F.

⁹⁴ *Akere & Ors. v. Governor of Oyo State & Ors.* [2012] 7 SCM p. 28 paras. E-H

owner of an estate or interest in land compulsorily acquired is required to yield up possession of his estate or interest in land prior to the payment of compensation or provision of alternative accommodation as the case may be, interest at the bank rate shall be payable on the value of the estate or interest acquired (as determined pursuant to this Decree) for the period between the entry on the land and the payment of compensation . . .”

At the acquisition of their land by the respondents, the appellants yielded possession without alternative accommodation provided for them. In my view, they are entitled to compensation as stipulated in section 6 of the Act. . .

It is significant to note that the provision of section 6 of the Act only operates in theory in Nigeria but in practice a mirage. People whose rights of occupancy are revoked usually dissipates so much energy in a bid to access compensation and often they have to deal with the issues of delay in payment and inadequate compensation.

In *Dumez (Nig.) Plc. v. Ademoye*⁹⁵ the court held that compensation is a necessary incident of valid acquisition by government. In the instant case, where there was no evidence that compensation was paid to the respondents, the trial court rightly held that the land in dispute was never acquired.

Similarly, in the unreported case of *Hassan Doma Bosso v. Commissioner of Lands and Anor*.⁹⁶ The court further validates the principle that non-payment of compensation to the holder and occupier will render the revocation/compulsory acquisition a nullity.

⁹⁵ *Supra*, P. 1474, paras. G.

⁹⁶ NSHC/MN/101/2002; See also *Elf Petroleum Nigeria Ltd. v. Umah* (2007) 1 NWLR pt. 1014 p. 44.

Failure to pay compensation upon acquisition is unconstitutional and a breach of fundamental human rights of the person entitled to such compensation, whether the holder or occupier of the occupancy or both.⁹⁷

The court usually lean sympathetically towards the citizen whose right is being invaded while construing provisions of Land Use Act on land acquisition. The Supreme Court of Nigeria demonstrated this position where it held *inter alia* that: “where there is a subsisting right of occupancy, it is good against any other rights. The grant of another right of occupancy over the same piece of land will therefore be invalid”.⁹⁸

In *Kano v. Govt., Adamawa State*⁹⁹ the Court of Appeal upheld the principle of compulsion in payment of compensation for properties compulsorily acquired by the Government and the statutory requirement of prompt and timely payment of same to the owner of the land. The Court held that thus:

Clearly, both the Constitution and the Land Use Act make the payment of compensation upon compulsory acquisition mandatory and as of right. The only issue in contention in this case has been the modality at arriving at the amount of compensation to be paid, and this quandary is exclusively and essentially due to the laxity, sloppiness and negligence of the 1st respondent and its agents in promptly calculating the compensation to be paid to the owner of the land in 1985. . . Should the appellant be held responsible for the dereliction of duty and shrinking of responsibilities by the 1st respondent? I think not.

⁹⁷ See Section 44(1)(2) CFRN 1999 (as amended).

⁹⁸ *Gbadamosi v. Akinloye* [2015] All FWLR pt. 786 p. 1918 at 1943, paras. B-C.

⁹⁹ [2015] All FWLR pt. 775 p. 308 at pp. 34 1-343, paras. G-C. see also *Alhaji Tsoho Dan Amale v. Sokoto Local Govt.* (2012) All FWLR pt. 618 p. 833; *Ferguson v. Commissioner for Works and Planning, Lagos State* (1999) LPELR 8131.

An assessment of the compensation payable for a property compulsorily acquired by the Government should be based on a written report by a public officer who with the knowledge of the affected parties inspected the property for the purpose of its valuation. Such a public officer, who must be a professionally qualified valuer, may be called as a witness by any of the affected parties.

It is worthy of note that the assessment of compensation payable should equally be based on the actual value of the landed property at the time the notice of acquisition was served.

Osamolu, et.al¹⁰⁰ alluded to the above position and further listed the 3 major forms of compensation prescribed by the Act. They stated thus:

Suffice to say therefore that the compulsory acquisition (revocation) of land for overriding public purpose must be accompanied by a prompt and adequate compensation by the appropriate tier of government to the holder and occupier of the land. . . the types of compensation prescribed by the Act in the event of a revocation: (a) Monetary compensation to individuals or communities (b) Compensation under the Minerals Act (c) Resettlement in lieu of compensation.

The courts had in a modest manner tried to update the laws by judicial decisions but it was not without setbacks. Unaided by professional valuers, the law courts, no doubt had the unenviable role of grappling with the onerous responsibility for the interpretation of the law of compulsory acquisition and compensation with all its attendant technicalities.¹⁰¹

¹⁰⁰ Osamolu, S.A., Oduwale, O.T and Oba, C.O. (2008) *Real Property Law and Conveyancing Practice in Nigeria*. Abuja. LawLords Publication, p. 97.

¹⁰¹ *Ibid*. Uduehi at p. 104.

1.10 Conclusion and Recommendations

Land, as stated above has always been so important to mankind that it has become more of a status-symbol in Nigeria and elsewhere. Land ownership attracts social recognition apart from the social security it provides.

Often, it is difficult to reconcile the provision of section 29 of LUA with section 44(1) of CFRN 1999 (as amended) which provides that no movable property or any interest in an immovable property shall be acquired compulsorily in any part of Nigeria without payment of compensation, since the LUA extinguishes all rights of compensation for undeveloped land (bare site) irrespective of the fact that the owner had paid money to purchase it. Compensation is only paid on the value of an unexhausted improvements on such land. This section of the LUA deserves a serious review *vis-à-vis* Section 44 of CFRN 1999 (as amended).

In the process of revocation of certificate of occupancy or compulsory acquisition of land, some fundamental issues do arise whether from the wordings of the LUA or its implementation which technically violates the rights of owner/occupier. Such issues, together with recommendations thereon are highlighted below:

i. Method of Payments of Compensation

It is argued that the current method of paying a unit rate of compensation for crops and economic trees does not lead to adequate compensation, this is because the yield from economic trees of the same specie cannot exactly be the same.¹⁰²

For example, one orange tree or an orchard may yield more than the other, depending on so many factors such as the fertility of the soil, maintenance of the plantation and the breed. There is no reason, therefore why the value should not be based on yield or investment method as with buildings or real estate.

ii. Time of Payment of Compensation

It is strongly suggested that unless fund is available to settle compensation, properties should not be expropriated. The bureaucratic system of delaying settlement of claims should be drastically minimized. Prompt settlement is surely a relief to dispossessed holders although it offers no complete satisfaction for their losses. Prompt action also prevents claiming of interest on delayed payment of compensation, in

¹⁰² *Ibid.* Uduchi at p. 104.

order to reduce to some barest level of tolerance the delay of payment, and litigations that might be one of the consequences, stricter implementation of the period of claim should be observed.

iii. Proper Implementation of the Law

The establishment of the Land Use and Allocation Committee made up of at least two estate surveyors or land officers who have had such qualifications for not less than 5 years and a legal practitioner under Section 2(2) of the Land Use Act, 1978 vested with the powers to advise the State Governor on the resettlement of displaced persons and the quantum of compensation, if judiciously implemented, is intended to remove the previous technical constraints. This, it is submitted is a step in the right direction.

However, it is important to state that this suggestion should not be construed as ouster of jurisdiction of the High Court (in case of statutory right of occupancy) and Area Court, Customary Court or other court of equivalent in a state (in case of customary right of occupancy).

iv. Establishment of Special Courts.

In addition to the courts mentioned above, it is suggested that a special court or Lands Tribunal be established to specifically look into the issue of valuation and compensation.

The issue of compensation sometimes requires technical knowhow of the experts in the area of valuation, therefore it is suggested that such a special court will inquire into the dispute arising from adequacy of compensation or otherwise and appeal may lie to a higher court of competent jurisdiction.

For instance, in *S. O. Williams, Permanent Secretary, Ministry of Works and Housing v. Joseph Folarin Kamson*,¹⁰³ the trial court expressing his frustration stated that the case presented some difficulties because there were different valuation, by the plaintiff, and two different ones by the defendant. He went on to state that: “. . . to a person not initiated in the art of valuation, this could obviously pose a serious problem whereas to a Professional Estate Surveyor and valuer it constitutes no such difficulty”.¹⁰⁴

¹⁰³ (Unreported) Supreme Court No. SC.67/1968.

¹⁰⁴ *Ibid.* p. 145

v. **Incidental Compensation for Compulsory Acquisition.**

Unlike in other jurisdictions¹⁰⁵ LUA does not make provision for items such as claims for disturbance, abortive expenditure (not same as unexpected improvements) and incidental expenses. This, it is submitted is a grave omission.

vi. **Clarity on who is to be paid Compensation**

Payment of compensation to the holder and occupier as suggested by the Act is confusing. The puzzle is that: does the provision refer to a holder in physical occupation of the land or two different persons entitled to compensation perhaps in equal shares. It is my view that the correct interpretation appears to follow from the general tenor of the Act. Presumption that occupier is more likely to be the owner of such unexhausted improvements. The word 'and' between the holder and occupier may be conjunctive or disjunctive.¹⁰⁶

However, in *Onwuka v. Ediala*¹⁰⁷ the Supreme Court construed the words 'holder' and 'occupier' to mean customary landowner as opposed to the customary tenant in occupation for purposes of compensation.

It is my humble view that this decision did not take cognizance of the fundamental objective of the institution of customary tenancy which is basically the provision of land for sustenance which necessarily entails working unexhausted improvements on the land by the tenant-occupier in question. In the event of revocation, it is only fair and just the owner of the improvements that is the customary tenant be compensated.

vii. **Resettlement in lieu of Compensation**

Section 33(1) LUA provides inter-alia empowers the Governor to offer another place of abode to the holder/occupier in the event of revocation of right of occupancy of any developed land on which a residential building has been erected. However, this is seldom practiced. Subsection 2 of the above provision states that where the value of the alternative accommodation provided is higher than the compensation payable, the excess shall constitute a loan repayable to the Government in the prescribed manner. It is our submission that this *proviso* be reviewed since the holder/occupier might not be able to afford repayment

¹⁰⁵ Countries such as United Kingdom, United States of America (USA) and Canada consider other claims in addition to compensation usually paid the holder.

¹⁰⁶ This is also the view of Smith (1999) *ibid.* p. 332 and we fully agree with him.

¹⁰⁷ (1989) 1 NWLR pt. 96 p. 182

of the said loan, which in itself constitutes added burden to the emotional and psychological effects on the occupier's loss of right of occupancy. viii. Finally, section 6(7) LUA should be readily enforceable by the state Government to compel the Local Government to pay compensation. A similar provision should be enacted to enable the Federal Government compel the State Government to pay compensation without delay in compliance with the fundamental rights in the Constitution.

Similarly, the question as to the appropriate authority to pay compensation where the Federal Government acquire through the State Government and the procedure for the payment of such claim should be clearly spelt out.

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