

Law, Democratisation and Social Change



Edited by:
Prof. Oyelowo Oyewo
Ms. Edefe Ojomo

2012 NALT CONFERENCE

NIGERIAN ASSOCIATION OF LAW TEACHERS

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LAND ADMINISTRATION AND ECONOMIC DEVELOPMENT IN NIGERIA*

A.A. AINA | E.A. TAIWO | O.O. ONAKOYA

"Land is central to everyone's lives. We all have to live somewhere, even if it is not a permanent home."⁴⁹⁰

"It is evident that land occupies a central position in economic development in developing countries."⁴⁹¹

1. Introduction

Land is the source of all material wealth,⁴⁹² and a crucial factor of production.⁴⁹³ Economics and management studies have long established that production is dependent on four factors, out of which land is one, along with labour, capital and machinery. Land is central to everyone's lives.⁴⁹⁴ From it we get everything that we use or value: food, clothing, fuel, shelter, metal, or precious stones. We live on the land and from the land, and to the land our bodies are committed when we die.⁴⁹⁵

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⁴⁹⁰ Bray, J., *Unlocking Land Law* (Hodder & Stoughton, London, 2004) 1.

⁴⁹¹ Nwabueze, B.O., *Nigerian Land Law* (Nwamife Publishers Ltd, Enugu, 1972) 619.

⁴⁹² Barnsley, D.G., *Barnsley's Conveyancing Law and Practice*, 3rd ed. (Butterworths, London, 1988) 3.

⁴⁹³ Okany, M.C., *Nigerian Law of Property*, 2nd ed., (Fourth Dimension Publishers, Enugu, 2000) 693.

⁴⁹⁴ Bray, *op. cit.*, at 1. See also, Yakubu, M.G., "Principles of Property Law" in Ajomo, M.A. (ed.), *Fundamentals of Nigerian Law* (Nigerian Institute of Advanced Legal Studies, Lagos, 1989) 63.

⁴⁹⁵ See Simpson, S.R., *Land Law and Registration* (Cambridge University Press: Cambridge/London/New York/Melbourne, 1976) 3. In this regard, Olagbaiye also posits: "[a]ll life depends on land, for people are born in hospitals, and homes are constructed on land. The only means of subsistence, namely food, is cultivated on land. When people ultimately die, their remains are committed to land. Usually, life's basic needs are expressed to be food, clothing and shelter but it is true to assert that there is only one essential or basic need of life and that is land because food, clothing and shelter are entirely derived from land." See Olagbaiye, T., "Statutory Regulations of the Environment- An Appraisal of the Lagos State Environmental Sanitation Edit, 1985" in Omotola, J.A. (ed.), *Environmental Laws in Nigeria Including Compensation* (Faculty of Law, University of Lagos, 1990) 1. The biblical account also attests to the importance of land. For instance, Genesis 1:11-12 states: "[t]hen God said, 'let the land produce

Since time immemorial, people depended on property asset for survival and social status,⁴⁹⁶ and these are gotten from land. Land is a class of property categorised as real property.⁴⁹⁷ The centrality of land to human society is indisputable.⁴⁹⁸ Land, down the ages has been the greatest asset in many African societies, especially in Nigeria.⁴⁹⁹ Given that land resources have major historical, cultural and spiritual significance, it always generates a source of conflict and contestation in any society.⁵⁰⁰

It is not a coincidence that food, shelter and clothing believed to be the three essentials that sustain mankind, also have some linkage to land. Food grows out of land while shelter is affixed to it, and man's clothing is made largely from what grows out of land. Indeed, whether in ancient times or today's modern system, land constitutes a significant index for human's wealth, and as economic activities have assumed more sophistication over time, land has continued to play a central role in their development.⁵⁰¹ Without land, one cannot have access to adequate housing.⁵⁰² Land is intrinsically connected to the economic development and well-being of any nation.⁵⁰³ No government can engage on any developmental project without land and very few people can claim to have nothing to do with land.⁵⁰⁴ Land also provides a sense of security in contexts where formal employment opportunities and access to resources are limited.

vegetation: seed-bearing plants and trees on the land that bear fruit with seed in it, according to their various kinds.' And it was so. The land produced vegetation: plants bearing seed according to their kinds and trees bearing fruit with seed in it according to their kinds. And God saw that it was good." Also, in Gen. 1:24, it states further, "[a]nd God said, 'let the land produce living creatures according to their kinds: livestock, creatures that move along the ground, and wild animals, each according to their kinds.' And it was so." (NIV).

⁴⁹⁶ de Bois, F. et al., *Wille's Principles of South African Law*, 9th ed., (Juta & Co., Cape Town, 2007) 408.

⁴⁹⁷ See Taiwo, E.A., *The Nigerian Land Law* (Ababa Press Ltd, Ibadan, 2011) 6; see also, Megarry, R. & Wade, H.W.R., *The Law of Real Property*, 5th ed., (Stevens & Sons, Ltd., London, 1984) 10. The word "property" includes any asset with a monetary value in an estate or patrimony. It thus comprises both corporeal, or material, objects like land, houses and motor vehicles and incorporeal, or immaterial, object like personal rights, shares in a company and patent rights. In this sense, patrimonial law comprises not only the law relating to corporeal things, but also the law of succession, the law of immaterial or industrial property and the law of obligation. See de Bois, et al., *op. cit.*, at 409.

⁴⁹⁸ See Banire, M.A., *Land Management in Nigeria: Towards a New Legal Framework* (Ecowatch Publications (Nig) Ltd, Lagos, 2006) 1.

⁴⁹⁹ Oluyede, P.A.O., *Nigerian Conveyancing Practice, Drafting and Precedents* (Heinemann Educational Books (Nig.) Plc, Ibadan, 1994) 247.

⁵⁰⁰ In this regards, Johnson submits, "[t]here is no subject in which man is more sensitive than in that of land. Those normally quiet and submissive people can be roused into violent action of desperation if they perceived that it is intended to deprive them of their land." See Johnson, S., *The History of the Yorubas* (CSS Ltd, Lagos, 2001) 96.

⁵⁰¹ Babalakin & Co., "Key Constraints to Real Estate Development in Nigeria" Available at <http://www.babalakinandco.com> (accessed on 24/05/2012) 1-9 at 1.

⁵⁰² See Holness, W., "The Right to Property" in Govindjee, A. & Vrancken, P. (eds.), *Introduction to Human Rights Law* (LexisNexis, Durban, 2009) 217-229 at 217.

⁵⁰³ Babalakin & Co., *op. cit.*, at 1.

⁵⁰⁴ Oluyede, *op. cit.*, at 247.

Thus, the availability of land is the key to human existence, and its distribution and use are, therefore, of vital importance.

Access to, and availability of land resources is critical to ensuring real and long-lasting improvement in social, economic and political well-being of a person. With Nigeria land area of about 923,768 Km² (over 92 million hectares), land is of immense importance in the country as a source of wealth and power.⁵⁰⁵ In Nigeria, just like any other country, the amount and type of land available to households and communities are critical to food production, development, social security and stability. Given the above, the question of the use and ownership of, and access to land and related resources has always been at the centre of festering conflicts between ethnic groups and communities in Nigeria.

This paper is divided into seven parts. Following this introduction is the second part which defines the major terms namely, "land" and "economic development." Part three examines land Management and Administration in Nigeria while part four examines Nigeria's Economic Index. In part five, the paper examines the impacts of land management on Nigeria's Economic Development as well as the challenging issues. Part six discusses corruption as a major impediment to economic development in Nigeria while conclusion forms the last part.

2. Concepts and Definitions

Before embarking on the analysis of the main theme of this paper, it is apposite to define certain key terms and concepts. It is essential, however, to state categorically that precise definition of any legal concept is always an herculean task. Given that meanings or definitions of most legal terminologies always prove difficult and controversial, precise definition may, therefore, not be feasible in this paper. The problem of lack of accurate definition of any legal concept is generally acknowledged.⁵⁰⁶ As Okunniga rightly pointed out, in the nature of law, when the question of definition of any legal concept is posed, fundamental differences of opinions

⁵⁰⁵ See Bello, N.A., *Land Law and Conveyancing* (De Nab Publications, Abeokuta, 2007) iii.

⁵⁰⁶ In this regard, Okunniga once submitted as follows: "Nobody, including the Lawyer, has offered, nobody, including the lawyer is offering, nobody, including the lawyer, will ever be able to offer a definition of law to end all definition. This is not advocating pessimism. It is because the nature of law makes it very pliable when it comes to the problem of definitions." See Okunniga, A.A.O., *Transplants and Mongrels and the Law: The Nigerian Experiment* (Inaugural Lecture Series 62 delivered at University of Ife, Nigeria on 17 May 1983) 1.

are bound to come into focus.⁵⁰⁷ Meanings of the major terms namely, "land" and "economic development" as used in this paper are considered in the light of the above observation.

2.1. The Concept of Land

The natural division of physical property is into *land* or *immovable* and other objects known as *chattels* or *movables*. Property may also be classified as *real property* (land) and *personal property* (other types of property).⁵⁰⁸ The pertinent question one may, therefore, pose at this stage is what is land? It should be stated categorically that the term "land", as conceived by law, is fraught with controversies.⁵⁰⁹ As such, the definition of "land" has long troubled lawyers and other academic writers.⁵¹⁰ Thus, a precise or an all-encompassing definition of the term may not be possible. In ordinary dictionary meaning, the word "land" means "the solid part of the earth surface, the ground."⁵¹¹ In legal parlance, meaning of land goes beyond this simple definition. In order to arrive at somewhat acceptable definition for our purpose, an examination of the various definitions of land as propounded by legal writers and scholars is necessary.

According to Burn, the term "land" includes the surface of the earth, together with all the subjacent and superjacent things of a physical nature such as buildings, trees and minerals."⁵¹² It is, at times, used to denote "corporeal and incorporeal hereditaments."⁵¹³ The Law of Property Act, 1925 (England) gives a very wide definition to the concept "land". In terms of this Act, "land" includes:

"Land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or part of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a

⁵⁰⁷*Ibid.*

⁵⁰⁸Taiwo, *op. cit.*, at 6; see also, Okany, *op. cit.*, at 37-38; de Bois, *et.al., op. cit.*, at 419-420.

⁵⁰⁹Utuma, A.A., *Nigerian Law of Real Property* (Shaneson C. I. Ltd: Ibadan, 1989) 4.

⁵¹⁰Bray, *op. cit.*, at 1.

⁵¹¹See *Oxford Advanced Learner's Dictionary*, 7th ed. (Oxford University Press, 2006) 827; see also, Lloyd, P.C., *Yoruba Land Law* (Oxford University Press: London/New York/Ibadan, 1964) 13; *Salami v Gbodoolu* [1997] 4 NWLR (pt 499) 277 at 287, *per Adio, JSC*.

⁵¹²See Burn, E.H., *Cheshire's Modern Law of Real Property* 12th ed. (Butterworths: London, 1976) 136; see also, Oluyede, *op. cit.*, at 247.

⁵¹³Hereditaments signify a right that is heritable, i.e. capable of passing by way of descent to heirs; it means every kind of property that can be inherited. Corporeal hereditaments are visible and tangible objects such as lands and houses while incorporeal hereditaments are intangible (e.g. easements, *profit a prendre*), which may be enjoyed over or in respect of land. See Gray, K., *Elements of Land Law* (Butterworths & Co. (Publishers) Ltd, London, 1987) 16; see also, Simpson, *op. cit.*, at xlii; Burn, *op cit*, 136-137.

rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land..."⁵¹⁴

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."⁵¹⁵ 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.⁵¹⁶ This includes even abstract and incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another person.⁵¹⁷ Thus, the term "land" includes not only the surface of the earth but also, the soil beneath the surface and the right to the air space above the surface; buildings and any chattels which have by sufficient attachment to the soil or to buildings, become fixtures;⁵¹⁸ natural crops (*fructus naturales*),⁵¹⁹ but not industrial growing crops (*fructus industriales*).⁵²⁰

The Nigerian Interpretation Act states that land includes "any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals."⁵²¹ In *Unilife Dev. Co. Ltd v Adeshigbin*,⁵²² the Supreme Court, per Achike, JSC, held that this "statutory definition is all embracing." It should be noted also that in terms of the provisions of the Nigerian Constitution, the Land Use Act, and the

⁵¹⁴ S 205(l) (ix). The Property and Conveyancing Law, Cap 100 LWN also follows this definition as in its section 2, defines land in the following words: "Land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, 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."

⁵¹⁵ Utuama, *op. cit.*, 4.

⁵¹⁶ See Nwabueze (1972), *op. cit.*, at 3.

⁵¹⁷ *Ibid.*

⁵¹⁸ "Fixtures" is chattels which have been attached to the land or to a building in such a way as to be regarded by the law as part of the land. If a chattel becomes a fixture, it becomes the property of the land-owner and, in the absence of express exclusion; it passes on any transfer of the land. This rule applies even if the chattel was affixed by someone other than its owner or if it was affixed by one person on another's land. Chattels affixed to the land lose the character of chattels and pass with the ownership of the land on the maxim *quicquid plantatur solo, solo cedit*. See Burn, *op. cit.*, 138.

⁵¹⁹ *Fructus naturales* means the natural products of the soil, such as grass, timber, fruit from fruit trees, which do not require annual labour to produce a crop.

⁵²⁰ Industrial growing crops (*fructus industriales*) on the other hand means such crops as corn and potatoes, requiring annual labour for their production are not regarded as part of the land. See Harwood, M., *English Land Law* (Sweet & Maxwell, 1975) 22-23; see also, Okany, *op. cit.*, at 75-76.

⁵²¹ Sec. 18 of the Interpretation Act, Cap 123, LFN, 2004 (Nigeria); see also, sec. 2 of the Property and Conveyancing Law, Cap 100, Laws of Western Nigeria, 1959 which defined land to include "...land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any 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."

⁵²² [2001] 4 NWLR (pt. 704) 609 at 625.

Petroleum Act, the ownership of mineral deposits in or over land is vested in the Federal Government of Nigeria.⁵²³ Nigerian legal scholars such as Olowoye and Nwabueze also defined land in the context defined by the Interpretation Act. According to Olowoye, "land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds..."⁵²⁴

In its section 2, the Property and Conveyancing Law⁵²⁵ defines land to include "...land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any 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." In the same vein, the Land Development (Provision for Roads) Law of Lagos State⁵²⁶ defines land as including "any estate or interest in land."

Going by the various definitions of land considered above, the maxim of the English Common Law of "*quicquid plantatur solo solo cedit*" which literally means that "whatever is affixed to the soil belongs to the soil" is applicable to the definition of land in Nigeria.⁵²⁷ By this maxim, both the natural contents which include the surface of the earth and the subsoil and things which grow on it, as well as the artificial contents in the form of buildings and other permanent fixtures, will generally belong to the owner of the land.⁵²⁸

Writing on the Yoruba Family Property, Coker submits that "[l]and in any application of the term includes buildings thereon. The maxim *quicquid plantatur solo solo, cedit* which is a maxim of most legal systems, is also a part of Yoruba native law and custom."⁵²⁹ In contrast, Lloyd posits that Yoruba customary law has no concept of the distinction, known to English law, between real and personal property or between movable and

⁵²³ See sec. 1, of the Petroleum Act, Cap P10, LFN, 2004; see also, sec 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides: "[n]otwithstanding the foregoing provisions of this section, 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 shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly." See also, section 28(2)(c) & (3)(b) of the Land Use Act, 1978.

⁵²⁴ See Olowoye, C.O., *Title to Land in Nigeria* (Evans Brothers Ltd, 1974) 9; Nwabueze (1972), *op. cit.*, 3.

⁵²⁵ Cap 100, Laws of Western Nigeria, 1959.

⁵²⁶ Cap L.57, Laws of Lagos State, 2003.

⁵²⁷ See *Otogbolu v Okeluwa & Others* (1981) 6-7 S.C. 99, where the Supreme Court affirmed it that the structure constructed on the plaintiff's land by a trespasser belonged to the owner of the land on the principle of *quicquid plantatur solo solo, cedit*. See also, Nwabueze, *op. cit.*, at 4.

⁵²⁸ See Tobi, N., *Cases and Materials on Nigerian Land Law* (Mabrochi Books: Lagos & Azigbo, 1997) 9.

⁵²⁹ See Coker, G.B.A., *Family Property among the Yorubas* (Sweet & Maxwell, 1966) 45 & 46.

immovable property.⁵³⁰ He asserts that the Yorubas do not recognize a legal distinction, for instance, in the sense that different rules of inheritance apply to different types of object.⁵³¹ According to him. "[t]hey [Yorubas] are of course conscious that the physical nature of objects will always affect the manner in which they are shared in inheritance—land is permanent, money is easily divisible, while a gown or the right to a title is not."⁵³²

The above view, Obi also shared with Lloyd, according to Obi, land under African customary law does not include things standing on it, whether they are houses or economic trees.⁵³³ However, this view is not applicable in our context as it does not represent the legal meanings of land. Lloyd himself admits that his writing was as an anthropologist. He submits: "...I write as an anthropologist and not as a lawyer. My research methods have been those of the anthropologist..."⁵³⁴ As earlier pointed out, in its original definition under the English law, land is not regarded as comprising merely the surface; it is deemed to include everything which is fixed to it, and also the air which lies above it, right up into the sky, and whatever lies below it, right down into the centre of the earth.⁵³⁵

It is submitted that the above attempt at considering the various definitions of land by legal writers and scholars is necessary and not just an academic exercise given that the distinction between *what is* and *what is not* land is always significant because a number of important rules and rights depend on this classification. They include the following: (a) any contract for the sale of land needs to be evidenced in writing; (b) a contract for the sale of land and conveyance of land will automatically include everything which is part of the land unless expressly excluded; (c) the person who owns the surface of the land is presumed to own also whatever in law is part of the land; (d) where a person attaches a chattel to the land so that it becomes a fixture, it automatically becomes the property of the landowner and passes with the land.⁵³⁶

Although land is regarded as a commodity capable of being owned, bought and sold like any other commodities, however, two main characteristics distinguish it from all other commodities known to commerce.⁵³⁷ The first and the most obvious one is that it is immovable, and as such, it cannot be physically transferred from one person to another. It cannot be possessed in the same way as something that can be actually handled and

⁵³⁰Lloyd, *op cit*, 13.

⁵³¹*ibid*.

⁵³²*ibid*.

⁵³³ See Obi, C., *The Ibo Law of Property* (Butterworths, London, 1963) 32.

⁵³⁴ See Lloyd, *op cit*, at 8.

⁵³⁵ This is expressed in the legal maxim, "*cujus est solum ejus usque ad coelum et ad inferos*." See Simpson, *op. cit.*, 5.

⁵³⁶ See Harwood, *op. cit*, 21-22.

⁵³⁷ See Simpson, *op. cit*, 5.

moved about.⁵³⁸ Secondly, it is everlasting. This means that it is permanent; it cannot be increased, decreased or destroyed (in the real sense of these words) as can all other forms of wealth.⁵³⁹ Having defined land, the next important thing is to examine, howbeit, briefly, the words "economic development" as used in this paper.

2.2. Economic Development

Development means different things to different people; it is also described as a problematic concept.⁵⁴⁰ Development has been used in many different ways including political, economic and social. In other words, development is a construct of many applications.⁵⁴¹ It involves harnessing of the resources for the realization of their major objectives, solving their major problems.⁵⁴² This means that development consists of activities required in improving the attitudes and potentials of people. In this context, it is described as the process aimed at improving the living conditions and circumstances of human beings both directly and indirectly.⁵⁴³

The term "development" also means growth, that is, the situation when something grows or changes and becomes more advanced.⁵⁴⁴ Development also encompass carrying out of any building, engineering, mining or other operations in, or over or under any land, or the making of any environmentally significant change in the use of any land or demolition of buildings including the felling of trees and the placing of free standing erections used for the display of advertisements on the land. Talking of national development in the light of the various ways in which the term development may be put, national development encompasses social, economic, cultural and political development. In other words, the components of national development include social

⁵³⁸*ibid.*

⁵³⁹*ibid.* In this regards, Green posits: [e]xcept in the rare cases of land falling into or being thrown up by the sea, it is geographically fixed (you cannot move it about) it is also, ultimately indestructible." See Green, K., *Land Law* (Macmillan, London, 1993) 6; see also, Banire, M.A., *Land Management in Nigeria: Towards a New Legal Framework* (Ecowatch Publications (Nig) Ltd, Lagos, 2006) 7.

⁵⁴⁰Abdul-Raheem, Y., "Globalization and Nigerian Economic development" Being the text of a paper presented at the 4th Annual National Conference of the Social Studies Association of Nigeria (SOSAN) (Held at the Faculty of Education, University of Ibadan, Ibadan, 2003) 1-11 at 5.

⁵⁴¹*ibid.*

⁵⁴²*ibid.*

⁵⁴³*ibid.*

⁵⁴⁴ See *Cambridge Advanced Learner's Dictionary*, 3rd ed., (Cambridge University Press, Cambridge, 2008) 385.

development, *economic development*, political development and cultural development.⁵⁴⁵

In this paper, we are concerned with economic development. The word "economic" relates to trade, industry and money.⁵⁴⁶ Juxtaposing the two words "economic" and "development", the term "economic development", therefore, refers to the improvement in the general standard of living of the people of the society. It refers to the attainment of ideals of modernization such as the rise in productivity, social and economic equity, improved institution and values. This means that economic development is concerned with the improvement in the quality of life of the people.⁵⁴⁷ In the ordinary sense of the word, "economic development" refers to the quantum of growth in the country; it also embraces the impact of economic activities on the quality of life of the people. It refers to trade, industry and commercial growth in a particular country.

It should be noted that growth and prosperity of an economy are central to the long-term reduction in poverty for both economic and environmental sustainability. For Nigeria to attain socio-economic development, her land resources must be well managed and put into full utilization. Every Nigerian must ensure that his or her landed property is judiciously used for the purpose of wealth creation and empowerment. The next issue that calls for our consideration is how does the land administration impacts (either negatively or positively) on the economic development in Nigeria? But, before making this assessment, it would be necessary to examine land management, control and administration in Nigeria. By land administration, we mean the process of determining, recording and disseminating information about ownership, value and use of land. A good land administration system aims at equitable distribution of wealth to encourage economic growth and development.

3. Control, Management and Administration of Land in Nigeria

In legal jurisprudence, an owner of property has the right of its possession, use and enjoyment, management and control, among others.⁵⁴⁸ The history of Nigerian land tenure system is that of a mixed story, however, the nature of the topic at hand will only permit a brief analysis of the history of the Nigerian land tenure system. Suffice it to say

⁵⁴⁵Abdul-Raheem, *op. cit.*, at 5. Emphasis added.

⁵⁴⁶ See *Cambridge Advanced Learner's Dictionary, op. cit.*, at 447.

⁵⁴⁷Abdul-Raheem, *op. cit.*, at 5.

⁵⁴⁸ See Utuama, A.A., "The Use of Trusts in the Management of Property: problem and Prospects" in Utuama, A.A. & Ibru, G.M., (eds.), *The Law of Trusts and their Uses in Nigeria* (Malthouse Press Ltd, Lagos, 2004) 37-49 at 37.

that in Southern Nigeria, under customary law, land was organized largely around the community and the family. The individual could rarely lay claim to any part of it as owner and, therefore, could not alienate it without the consent of the community or family head.⁵⁴⁹ This land tenure system was, however, whittled down following the introduction of received common law principles during the colonial period.⁵⁵⁰ In Northern Nigeria the situation was a bit different as land was held and administered for the use and common benefit of the people who held a right of occupancy over it and such rights were subject to the control and disposition of the native authority.⁵⁵¹

The history of State ownership of land in Nigeria can be traced to the 1861 Treaty of Cession which ceded the Colony of Lagos to the British Crown, subject to the customary rights of the local people. Consistent with the economies of industrialised nations, the colonial government in Nigeria needed land for developmental purposes, specifically for agriculture and industrialization. As land at that time was vested in the communities and families, government was forced to compulsorily acquire the lands from them and today we have a rash of acquisition statutes in Nigeria beginning with the Public Land Acquisition Act, 1917 through to the Public Land Acquisition Act, 1976. The various Region/States also have their separate Public Land Acquisition Laws.⁵⁵²

Nominally, during the colonial time up till the 1963, land was vested in the Queen, and when Nigeria became a Republic in 1963, it was vested in the Federal Government. In actual sense, land was generally vested in communities and families in the South, while in the North, land was vested in native authorities for the use and benefit of the people.⁵⁵³ This was the position with the Nigerian land tenure system up till March, 1978 when the Land Use Act was promulgated. The Act is a major and radical piece of legislation that governs title, ownership and enjoyment of land in Nigeria.⁵⁵⁴

The Act was enacted to bring about uniformity in Nigeria's land tenure system, ensuring that land is available for agricultural and industrial development, and importantly, addressing the country's socio-economic problems. In this regard, Yakubu observed, the

⁵⁴⁹ See *Amodu Tijani v. Secretary Southern Nigeria* (1921) the court held that "the notion of individual ownership is quite foreign to native law. Land belongs to the community, village, or family, never to the individual owners; this is again due to introduction of English law."

⁵⁵⁰ *Babalakin & Co., op. cit.* at 1-2.

⁵⁵¹ *Ibid* at 2.

⁵⁵² See in this regard, the Public Land Acquisition Law, Cap 105 of Western Region, 1959; see also, *Babalakin & Co., op. cit.* at 2.

⁵⁵³ See generally, James, R.W., *Nigerian Land Use Act: Policy and Principles* (University of Ife Press, Ile-Ife, 1987) 7-13; Owolabi, K.A., "Land Use Act: Why Does a Therapy Become a Pathology?" (2011) 1(1) *University of Ibadan law Journal* 257- 282 at 262.

⁵⁵⁴ Nwabueze, Remigius, N., "Equitable Bases of the Nigerian Land Use Act" (2010) 54(1) *Journal of African Law* 119-142 at 119.

consequences of the population pressure, urbanisation and socio-economic growth had great social and economic impact on land issues in Nigeria.⁵⁵⁵ Modernisation saw people moving from rural areas into urban centres where modern facilities are available. Population pressure in cities and towns made residential accommodation in particular, a problem in those centres.⁵⁵⁶ The congested urban areas were in need of expansion but land where this expansion was to be made was scarce.⁵⁵⁷ Also, the growth of Nigerian economy due to the discovery of oil made a large number of people rich enough to build better houses and maintain large farms and contributed to high demand for land in urban areas.

Due to robust economy with oil boom in the 70s, heavy and large industries were established and thus, bringing about more demand for land and increased the exodus of people from rural to urban areas.⁵⁵⁸ The guarantee of a piece of land to everyone was a problem.⁵⁵⁹ For government as well, land became so expensive and acquiring land for public purposes became very difficult and sometimes even impossible because of the high cost of compensation.⁵⁶⁰

Given these problems, it then became apparent that the Government had to do something about land distribution in the country.⁵⁶¹ Thus, the Rent Control Panel appointed in 1976 to study the system of land distribution and speculation recommended, *inter alia*, that the Federal Military Government should take over all undeveloped land in the country.⁵⁶² Similarly, the Constitution Drafting Committee (CDC) set up in January, 1976 to prepare the 1979 Nigerian Constitution strongly recommended the nationalisation of all undeveloped lands in Nigeria to allow the landless a land for shelter and sustenance.⁵⁶³

Consequently, the Federal Government decided to act by looking into the land problem in the country. Thus, in June 1977, the Government set up the Land Use Decree Panel with the following terms of reference: (i) to undertake an in-depth study of the various land tenure, land use, and land conservation practices in the country and recommend steps to be taken to streamline them; (ii) to study and analyse all the implications of a

⁵⁵⁵ Yakubu, M.G., *Notes on the Land Use Act* (A.B.U. Press Ltd, Zaria, 1986) 9.

⁵⁵⁶ *Ibid*.

⁵⁵⁷ *Ibid* at 9; see also, Nuhu, M.B., "Public Land Policy, New Trends: Challenges in Nigerian Institutional Frameworks for State and Public Sector Land Management" FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, (September 9-10, 2008) 1-23 at 3.

⁵⁵⁸ Yakubu, *op. cit.*, at 9.

⁵⁵⁹ Yakubu, *op. cit.*, at 9.

⁵⁶⁰ *Ibid*; see also, Oluyede, *op. cit.*, at 324.

⁵⁶¹ See Oluyede, *op. cit.*, at 324.

⁵⁶² Yakubu, *op. cit.*, at 10.

⁵⁶³ *Ibid* at 10.

uniform land policy for the country; (iii) to examine the feasibility of a uniform land policy for the entire country, make necessary recommendations and propose guidelines for implementation; (iv) to examine steps necessary for controlling future land use and also open and develop new land for the needs of government and Nigeria's population in both urban and rural areas, and to make appropriate recommendations.⁵⁶⁴ The reports of the Panel culminated in the enactment of the Land Use Decree, 1978.⁵⁶⁵

Four main objectives have been identified as the reasons for enacting the Act, and they are: (a) to remove the bitter controversies resulting at times in loss of lives and limbs, which land was known to be generating;⁵⁶⁶ (b) to streamline and simplify the management and ownership of land in the country; (c) to assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life; and (d) to enable the government to bring under control the use to which land can be put in all parts of the country and thus, facilitating planning and zoning programmes for particular uses.⁵⁶⁷ In *Ibrahim v Mohammed*,⁵⁶⁸ the Supreme Court emphasised that the Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live.

The Act nationalises all land in Nigeria;⁵⁶⁹ it sets out a legal framework for a national land policy in the country.⁵⁷⁰ It is submitted that nationalisation is intended to accomplish two purposes namely, state ownership of all land and management and control of land by government.⁵⁷¹ State ownership results from: (i) the vesting of all land in the State and;⁵⁷² (ii) making a right of occupancy the largest interest capable of

⁵⁶⁴ James, *op. cit.*, at 26-27; Oluyede, *op. cit.*, at 324; Okany, *op. cit.*, at 695-698.

⁵⁶⁵ The Act was enacted as a military decree and it came to force on 29 March, 1978. The decree assumed the appellation of an Act in 1980 through the Adaptation of Laws, (Re-designation of Decrees, etc.) Order of 1980. See secs 1 & 13 of the Adaptation of Laws, (Re-designation of Decree, etc.) Order, 1980. The basic philosophy of this Act is evident in its Preamble which states: "WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law: AND WHEREAS it is also in the public interest that the right 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 assured, protected and preserved."

⁵⁶⁶ Land, which is one of the factors of production, has become a factor for constant litigation, bickering, attacks, deaths and violence in different communities in Nigeria.

⁵⁶⁷ See Omotola, J.A., *Essays on the Land Use Act, 1978* (Lagos University Press, 1984) vi.

⁵⁶⁸ (2003) 17 WRN 1.

⁵⁶⁹ Nwabueze, B.O., *Military Rule and Social Justice in Nigeria* (Spectrum Law Publishing, Ibadan, 1993) 274.

⁵⁷⁰ James, *op. cit.*, at 1.

⁵⁷¹ Nwabueze, (1993), *op. cit.*, at 274.

⁵⁷² It vests the management, control and administration of land in Nigeria in the respective States of the Federation and the Local Governments Areas in which the lands are located. Section 2(1) of the Act provides: "[a]s from the commencement of this Act, (a) all land in urban areas shall be under the control

existing in land in favour of a private person or body.⁵⁷³ It should be emphasised that the Land Use Act is a legislation which has come to effect changes mainly in redefining the quantum of interest a person, who hitherto was registered as a *fee simple* owner can hold in land.⁵⁷⁴ The effect of nationalisation under the Act is that all land in the country is now State land.⁵⁷⁵

When the Act was promulgated on 29 March, 1978, it received mixed feelings and reactions from various individuals, organisations and institutions in the country. While many, particularly, Trade Union leaders, workers and other individuals strongly favoured the Act, many others, particularly, the traditional rulers criticised it as depriving them of their tradition and property.⁵⁷⁶ They described the Act as “a powerful instrument aimed at completely abolishing the sacred institution of kingship especially in the southern part of Nigeria where land had been closely associated with the institution from time immemorial.”⁵⁷⁷ They opposed the Act and called for its abrogation.

On the other hand, workers and individuals saw the Act as highly acceptable and believed that with the Act in place, they could now apply for land to build their own houses without having to purchase land at exorbitant prices from land speculators.⁵⁷⁸ For instance, the then President of the Nigerian Labour Congress described the new land policy as “the wisest measure even taken by the Government.”⁵⁷⁹ But the pertinent question is this: how far has the Act achieved its stated objectives? What impact has the Act had on the Nigerian economic development? All these issues, and many more, will be discussed shortly.

Section 1 of the Act vests the title of land comprised in the territory of each State in the Governor of the State to be held in “trust” and be administered for the benefit of every Nigerian. The exact import of the provision of section 1 of the Act has attracted divergent interpretations from judicial authorities and learned writers. It has been suggested that that the word “vest” in the provision implies the vesting of ownership in the State Government.⁵⁸⁰ It is important to note, however, that the provision of section 1 of the Act

and management of the Governor of each State; and (b) all other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.” See also, Okany, *op. cit.*, at 512.

⁵⁷³Nwabueze, (1993), *op. cit.*, at 274.

⁵⁷⁴Omotola, J.A., *Possession of Land* (Florence & Lambard Books, Lagos, 1994) 98; see also, Egwummuo, J.N., *Modern Law and Practice of Conveyancing* (Academic Publishing Co., Enugu, 2005) 241.

⁵⁷⁵Nwabueze, (1993), *op. cit.*, at 275.

⁵⁷⁶Yakubu, *op. cit.*, at 11.

⁵⁷⁷*Ibid*, at 11.

⁵⁷⁸*Ibid*, at 12.

⁵⁷⁹*Ibid*; see also, Taiwo, *op. cit.*, at 204.

⁵⁸⁰Abugu, U., *Principles of the Land Use Act, 1978* (Joyce Graphic Printers & Publishers, Kaduna, 2008) 13.

is prefaced by the expression "subject to the provision of this [Act]..." This qualification indicates that there were some lands in each State which were not intended to be vested in the Governor of the State.⁵⁸¹ One of such exceptions is all land which immediately before the commencement of the Act was vested in the Federal Government and its agencies.⁵⁸²

It should be emphasised that a governor is not beneficially entitled to the land so vested in him, but he is only a "trustee" of the land for the benefit of all Nigerians in that State. In this regards, he holds only nominal ownership of land because a settled principle of law dictates that a trustee is not the real owner of a trust property but only has control and holds nominal title in the land for the purpose of accomplishing the objectives of a particular trust. Thus, the effect of this submission is that Governors are vested with the bare title to land to the extent that may be necessary for them to administer the land within the territories of their respective States for the purpose of achieving the objectives of the Act.⁵⁸³

To ensure an effective control and management of land, the land vested in the Governor is by section 3 of the Act zoned into urban and non-urban lands.⁵⁸⁴ Section 2(2) of the Act establishes in each State, a body known as the "Land Use and Allocation Committee."⁵⁸⁵ The Committee has the responsibilities of: (a) advising the appropriate authority on any matter connected with the management of land to which section 2(1)(a) of the Act relates; (b) advising the appropriate authority on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and (c) determining the disputes as to the amount of compensation payable under this Act for improvement on land.⁵⁸⁶ For each local

⁵⁸¹James, *op. cit.*, at 31.

⁵⁸²In this regard, sec. 49 of the Act provides: "[n]othing in this Act shall affect any title to land whether developed or underdeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned." See also, Abugu, *op. cit.*, at 16.

⁵⁸³See Utuama, *op. cit.*, at 119; Taiwo, *op. cit.*, at 206.

⁵⁸⁴See *Salati v Shehu* [1986] 1 NWLR (pt 15) 210; *Yahaya Yari v Ahmed Shehu Ibrahim* [2002] 5 NWLR (pt 761) 587 at 617; *Chindia v Amadi* (2002) 11 WRN 72 where the Court of Appeal states how the classification of land as urban or rural should be determined.

⁵⁸⁵This Committee consists of such a number of persons as the governor may determine and shall have in its membership: (i) not less than two persons possessing qualifications as estate surveyors or land officers of not less than five years standing, and (ii) a legal practitioner.

⁵⁸⁶It should be pointed out that sec 47(2) of the Act oust the jurisdiction of the court on the issue concerning the amount or adequacy of compensation payable. It provides: "[n]o 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." It is submitted that section 47(2) constitutes an ouster clause which is a derogation of the fundamental right of access to court. In terms of the current Constitution, this provision is void and cannot stand. See ss 1(1) & (3), 6 (6)(b) & 36(1) of the CFRN,

government, the Act also establishes a body to be known as "the Land Allocation Advisory Committee" which shall consist of such persons as may be determined by the Governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land in non-urban area.⁵⁸⁷

To ensure security of title and adequate management and control of land nation-wide, the Act introduces two types of right of occupancy. A right of occupancy granted by the Governor which is called the Statutory Right of Occupancy (SRO) and a right of occupancy granted by the local government called the Customary Right of Occupancy (CRO). The right of occupancy is, therefore, considered next.

3.1. The Right of Occupancy under the Act

Section 50 of the Act defines the statutory right of occupancy as a right of occupancy granted by the governor under the Act while customary right of occupancy is defined as the right of a person or community lawfully using or occupying land in accordance with customary law and, it includes a customary right of occupancy granted by a local government under the Act. However, in terms of section 5(1)(a) of the Act, "[i]t shall be lawful for the Governor in respect of land whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes."⁵⁸⁸

From this provision, the power of the Governor to grant statutory right of occupancy is not limited to land in urban area, he may as well grant a statutory right of occupancy in respect of the land designated as non-urban area. It is submitted that the determining factor as to whether a right is statutory right of occupancy or a customary right of occupancy is not the location of the land (urban or non-urban area), but the *status of the person* who grants the right of occupancy. The Act empowers the local government to grant customary rights of occupancy in respect of land not in an urban area to any person or organisation for agricultural, or for other purposes ancillary to agricultural

1999; see also, *Prince Kolawole Mustapha v the Governor of Lagos State* [1987] 2 NWLR (pt 58) 552; *Garba v Federal Civil Service Commission* [1988] 1 NWLR (pt 71) 449.

⁵⁸⁷ See sec 2(5) of the Act.

⁵⁸⁸ The power of the governor to grant a statutory right of occupancy under s 5(1) of the Act was emphasized by the Supreme Court in its decision in *Dabo v Abdullahi* (2005) 29 WRN 1. See also, *Anthony v Governor of Lagos State & Anor* [2003] 10 NWLR (pt 828) 288 at 304; *Olagunju v Adesoye* [2009] 9 NWLR (pt 1146) 225 at 265 (SC); see also, *Teniola v Olohunkan* [1999] 5 NWLR (pt 602) 280; *Gankon v Ugochukwu Chemical Industries Ltd* [1993] 6 NWLR (pt 297) 55.

purpose such as grazing, residential and other purposes.⁵⁸⁹ A right of occupancy under the Act may either be "granted" or "deemed" issued.⁵⁹⁰

The person entitled to a right of occupancy is called a holder, and a holder may be sole (individual) or group.⁵⁹¹ When a right of occupancy is granted, the occupier or holder of such a right shall have exclusive right to the land against all persons other than the governor.⁵⁹² A right of occupancy may be granted for a definite term in accordance with the provision of section 8 of the Act which states that "[s]tatutory right of occupancy granted under the provisions of section 5(1) (a) of this Act shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of this Act."

3.2. Land Transactions and the Issue of Consent

Another way to ensure security of title and to control the use and manage the land is the requirement of consent of the governor. In this regard, Omotola rightly posited, by requiring the consent of the governor to such transfers, it will be possible to control and regulate them and with proper records of all transfers being kept.⁵⁹³ Section 22 of the

⁵⁸⁹ See s 6(1) of the Act.

⁵⁹⁰ This means that the right may be acquired by express provisions of the Act or by operation of the law. Right of occupancy, either statutory or customary is granted or acquired expressly by virtue of sections 5(1)(a) & 6 (1)(a)&(b) of the Act. S 1(5)(a) states: "[i]t shall be lawful for the governor in respect of land, whether or not in an urban area- (a) to grant statutory rights of occupancy to any person for all purposes." S 6(1)(a) & (b) states: "[i]t shall be lawful for a Local Government in respect of land not in an urban area- (a) to grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural, residential and other purposes; (b) to grant customary rights of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned." A right of occupancy is deemed issued or by operation of the Act by virtue of sections 34 and 36 of the Act among others. Section 34(2) of the Act provides thus: "[w]here the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the holder of a statutory right of occupancy issued by the Governor under this Act." Section 34(5) of the Act contains provision in respect of undeveloped land. This provision is not limited to urban land. Provisions in respect of non-urban area for both developed and undeveloped land are contained in sections 36(4) and section 36(1) & (2) of the Act respectively.

⁵⁹¹ See s 29(3) of the Act; see also, *Ojeme & Ors v Momodu II, Ogirrua of Irrua & Ors* (1983) 3 SC 173 at 187.

⁵⁹² See s 14 of the Act which provides: "[s]ubject to the other provisions of this Act and of any laws relating to way-leaves, to prospecting for minerals or minerals oils or to mining or to oil pipelines and subject to the terms and conditions of any contract made under section 8 of this Act, the occupier shall have exclusive rights to the land the subject of the statutory right of occupancy against all persons other than the Governor."

⁵⁹³ See Omotola (1984), *op. cit.* at 26.

Act provides that "[i]t shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the governor first had and obtained..."⁵⁹⁴

In terms of the Act, both the statutory and customary rights of occupancy are transferable but subject to consent requirement. The provision does not say that right of a right of occupancy is not transferable. It only requires conveyancers to ensure that "both the underlying transaction as well as the instrument" giving effect to it are in accordance with the statutory provision.⁵⁹⁵ It is submitted that the rule that the consent of the governor or that of the local government must be first had and obtained before any transfer of right over land is the most potent provision of the Act which enhances security of title. The issue of consent has received much judicial confirmation.⁵⁹⁶

It should be noted that section 22 of the Act provides for some exceptions namely, (a) the creation of legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the governor; and (b) the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the governor. In the two instances mentioned above, consent of the governor is not necessary. It is important to note also that improvement made on land comprised in a statutory right of occupancy cannot be alienated by a holder without prior consent of the governor.⁵⁹⁷

Lack of the appropriate consent where consent is required may lead to revocation of the right of occupancy.⁵⁹⁸ Lack of consent may also make the transaction unlawful and illegal; it also makes it an offence punishable with fine or imprisonment.⁵⁹⁹ In the same vein, section 26 provides that "[a]ny transactions or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance

⁵⁹⁴ See also, sec 21 which provides as follows: "[i]t shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever - (a) without the consent of the governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable sheriffs and civil process law; or (b) in other cases without the approval of appropriate local government." See further, *Savannah Bank Ltd v Ajilo*, [1987] 2 NWLR (pt 57) 421.

⁵⁹⁵ Oluyede, *op. cit.*, at 2

⁵⁹⁶ See *Federal Mortgage Bank of Nigeria v Dr Elisha Bamidele Babatunde* [1999] 12 NWLR (pt 632) 683 at 689; *Savannah Bank Of Nigeria Ltd v Ajilo* (supra); *Olalomi Industries Ltd v Nigerian Industrial Development Bank Ltd* [2009] 16 NWLR (pt 1167) 266 at 292-293 & 301 (SC); *Union Bank of Nigeria Plc v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567.

⁵⁹⁷ See sec 15(b) of the Act.

⁵⁹⁸ See sec 28 (2)(a) & (3)(d) of the Act.

⁵⁹⁹ See generally, secs 21, 22, 23 34 (5), (6) & (7) (8), and sec 36(2), (4) & (6) of the Act.

with the provisions of this Act shall be null and void.”⁶⁰⁰ Thus, in *Savannah Bank Of Nigeria Ltd v Ajilo*,⁶⁰¹ the Supreme Court held that all transactions under which an interest in land is being transferred require the government’s approval for their validity. The duty to procure consent for the transfer of statutory or customary right of occupancy is that of the holder of such rights.⁶⁰² Before examining the impact of the Land Use Act as well as land management on the Nigeria’s economic development, it would be necessary to first consider Nigeria’s economic index. This is considered in the next part.

4. Nigeria’s Economic Index

It is submitted that government-led-development was the ruling economic development paradigm in Nigeria up to the 1980s. Under this paradigm, the private sector was a passive partner in development while the public sector dominated all other sectors of the economy- agriculture, commerce, services, (especially, transportation) industry, etc.⁶⁰³ This has changed with public-private partnership policy of the federal government. Industrialisation plays a significant role in the Nigeria’s economic development. Industrialisation in the world over acts as a catalyst that accelerates the pace of structural transformation and diversification of economic, enable a country to fully utilize its factor endowment and to depend less on foreign supply of finished goods or raw materials for its economic growth, development and sustainability.⁶⁰⁴

The challenges confronting the Nigerian economy in the current Century are diverse and enormous. The unacceptable state of Nigeria’s economy is most galling given Nigeria’s enormous endowments of natural and human resources.⁶⁰⁵ The major causes of the decline in Nigeria’s economic fortunes have been attributed to political instability and bad governance, most especially in the 1990s. For many decades, military rule in Nigeria led to economic and social stagnation and decline. Similarly, the advent of an

⁶⁰⁰See *Olalomi Industries Ltd v Nigerian Industrial Development Bank Ltd* [2009] 16 NWLR (pt 1167) 266 at 292-293 & 301 (SC); *Union Bank of Nigeria Plc v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567 at 584.

⁶⁰¹*Supra*.

⁶⁰² See secs 14 & 22 of the Land Use Act. See also s 50 of the Act on the definition of holder of right of occupancy.

⁶⁰³ Adegbite, Esther O., “Financial Sector Reforms And Economic Development In Nigeria: The Role Of Management” Being A Paper Delivered At The Inaugural National Conference Of The Academy Of Management Nigeria At Abuja, Nigeria Titled *Management: Key to National Development* (November 22-23, 2005, Rock view Hotel, Abuja) 1.

⁶⁰⁴Obasan, K.A. & Adediran, O.A., “The Role of Industrial Sector in the Economic Development of Nigeria” (2010) 1(2) *Journal of Management and Society* 9-16 at 9.

⁶⁰⁵Matthew-Danial, B.J.St, “The Nigerian Economy in the 21st Century” available at <http://www.onlinenigeria.com/economics/> (accessed on 06/06/2012).

elected government at the dawn of the 21st Century after almost three decades of military rule which should afford Nigeria the opportunity to arrest the decline in her socio-economic development and embark on economic revival has not achieved this.⁶⁰⁶ Nigeria is well endowed with raw materials and natural resources which, with the application of appropriate technology and production processes, will promote linkages between her raw and natural resources, production capability, and industry.

It is submitted that Nigeria is a middle income, mixed economy and an emerging market, with expanding financial service. It is ranked 30th in the world in terms of Gross Domestic Products (GDP) as of 2011, and its emergent manufacturing sector is the third-largest on the African continent, producing a large proportion of goods and services for the West African region.⁶⁰⁷ It is the largest economy in the West Africa Region, 3rd largest economy in Africa coming behind South Africa and Egypt.⁶⁰⁸ As earlier submitted, Nigeria's economy has been hindered by several years of mismanagement, misappropriation and corruption; however, economic reforms in recent times have put Nigeria back on track towards achieving its full economic potential.

It is observed that Nigerian GDP at purchasing power parity more than doubled from \$170.7 billion in 2005 to \$413.4 billion in 2011.⁶⁰⁹ It would be appropriate to consider, though briefly, Nigeria's various economic sectors so as to determine how the country fares in each area.

4.1. Agriculture

In Nigeria, like in most of the Sub-Saharan Africa, a substantial part of the population often rely directly on agriculture for income and employment, while the national government also benefits from this sector for export earnings as sources of revenue.⁶¹⁰ Agriculture has suffered from years of mismanagement, inconsistent and poorly conceived government policies, neglect and the lack of basic infrastructure. Still, the sector accounts for over 26.8 per cent of GDP and two-thirds of employment.⁶¹¹ The largely subsistence agricultural sector has not kept up with rapid population growth, and Nigeria, once a large net exporter of food, now imports a large quantity of its food

⁶⁰⁶*ibid.*

⁶⁰⁷ See "Economy of Nigeria" available at http://en.wikipedia.org/wiki/economy_of_Nigeria (accessed on 06/06/2012).

⁶⁰⁸*ibid.*

⁶⁰⁹*ibid.*

⁶¹⁰Banire, *op. cit.*, at 6.

⁶¹¹ See "Economy of Nigeria" *op. cit.*

products.⁶¹² Nigeria is no longer a major exporter of cocoa, groundnuts (peanuts), rubber, and palm oil. Most critical for the country's future is that Nigeria's land tenure system does not encourage long-term investment in technology or modern production methods and does not inspire the availability of rural credit.⁶¹³ The oil boom of the 1970s led Nigeria to neglect its strong agricultural and light manufacturing bases in favour of an unhealthy dependence on crude oil.

4.2. Industry and Oil Companies

The contribution of the manufacturing industries in the Nigeria's economy cannot be over emphasized when considering its employment potentials and financial impacts on the economy. Apart from its role of building grounds for development by laying solid foundation for the economy, it also serves as import substituting industry and provides ready market for intermediate goods.⁶¹⁴ As noted above, the oil boom of the 1970s led Nigeria to neglect its strong agricultural and light manufacturing bases in favour of an unhealthy dependence on crude oil. Since 2000, oil and gas exports account for more than 98 per cent of export earnings and about 83 per cent of the Federal Government revenue.⁶¹⁵

As earlier stated, the Land Use Act vests all land in the Governor of a State who holds them in trust for all Nigerians. It is submitted that the adoption of the Act has posed a lot of problems for mining companies putting them in dilemma as to who they should pay rent or compensation for use of land on which a mining lease is to be enjoyed or an oil pipeline is to be constructed.⁶¹⁶ Though in terms of provisions of the Land Use Act and the Nigerian Constitution, the Federal Government exercises exclusive control over minerals and owns the land where such minerals are found. However, Government's neglect of environmental problems of the oil producing communities in the Niger Delta has given rise to crises with clamour for resource control by the oil producing States.⁶¹⁷ However, protest over the environmental degradation of the oil communities of the Niger

⁶¹²*ibid.*

⁶¹³*ibid.*

⁶¹⁴Obasan, K.A. & Adediran, O.A. "The Role of Industrial Sector in the Economic Development of Nigeria" (2010) 1(2) *Journal of Management and Society* 9-16 at 12

⁶¹⁵ See "Economy of Nigeria", *op. cit.*

⁶¹⁶ See Atseghua, L., *Oil and Gas in Nigeria: Theory and Practice* (New Era Publishers, Benin, 2004) 5; see also, Idowu, A.A., "Imperatives of Agricultural Land Rights, Ownership and Management Reforms in Nigeria" (A Paper delivered at the Stakeholders' Workshop on the National Agricultural Cadastre Programme organised by the Federal Ministry of Agriculture and water Resources, at the International Conference centre, Abuja, 28-30 July, 2009) at 13.

⁶¹⁷Idowu, *op. cit.*, at 13.

Delta had been met with gross violation of human rights by the government. Several lives have been lost in clashes between the communities and security agencies.⁶¹⁸

4.3. Banking Services

Since undergoing severe distress in the mid-1990s, Nigeria's banking sector has witnessed significant growth over the last few years as new banks enter the financial market following liquidation, mergers and acquisition and other reforms. Private sector-led economic growth remains stymied by the high cost of doing business in Nigeria, including the need to duplicate essential infrastructure, the threat of crime and associated need for security counter measures, the lack of effective due process, and non-transparent economic decision making, especially in government. Also, harsh monetary policies implemented by the Central Bank of Nigeria to absorb excess Naira liquidity in the economy in recent times have made life more difficult for banks, some of which engage in currency arbitrage (round-tripping) activities that generally fall outside legal banking mechanisms.

4.4. Human Capital

A country's potential for economic growth is greatly influenced by its endowments in terms of physical and human resources.⁶¹⁹ Human capital is an important factor for the wealth of a nation due to its influence on the overall production of the country. Technological progress can provide more efficient production-methods like machines and computers, but skilled labour is necessary to manage and develop them as well as to improve the quality and productivity of the existing labour. Nigeria is having a problem with its human capital.⁶²⁰ The Human Development Index (HDI) provides a measure of human capital development in three dimensions: income, health, and education. The latest value of HDI shows that Nigeria is ranked 156 with the value of 0.459 among 187 countries.⁶²¹ The value places Nigeria in the bottom, meaning that Nigeria is considered

⁶¹⁸ See Olayiwola, L.M. & Adeleye, O., "Land Reform- Experience from Nigeria" Promoting Land Administration and Good Governance, (5th FIG Regional Conference, Accra, Ghana, 8-11 March, 2006) 8.

⁶¹⁹ Ogunleye-Adetona, C.I., "Human Resources and Economic Development in Nigeria" (2010) 12(3) *Journal of Sustainable Development in Africa* 204-211 at 204.

⁶²⁰ See "Economy of Nigeria", *op. cit.*

⁶²¹ *ibid.*

to have low level of human development.⁶²² The formation of Nigeria's human capital is, therefore, of great importance if Nigeria wants to be truly competitive in the future.

5. The Land Use Act, Land Management and Nigeria's Economic Development: Issues and Challenges

The concept of land management involves certain diversified issues such as the act of running and controlling land affairs or taking decisions over the use and disbursement of land and its resources.⁶²³ Land management also connotes the idea of supervising and administering the use to which land is put in the society. It also includes all conceivable measures adopted by government to keep, protect and develop land and its resources for productive adventures such as farming, grazing, mining, wood processing and so on.⁶²⁴

Despite frantic efforts by past Nigerian governments to carry out reforms in the land sector, the various attempts have not been able to promote a programme of land use and management that support effective wealth creation, economic growth, food security, conservation of nature, protection of vulnerable groups, poverty reduction, enforceable land rights and housing delivery.⁶²⁵ It is posited that effective land management has not been realised due to conflicting land tenure systems, unworkable legal framework, governmental instability, illiteracy, poverty and corruption. This necessitated the various efforts by governments at adopting certain reforms in the land sector in recent time.⁶²⁶

It is submitted that the Land Use Act has impacted both positively and negatively on the availability of land for development in Nigeria in such a way that it has provided access and freedom for individuals to acquire land in any part of Nigeria.⁶²⁷ The Act has also an impact on property development in a way that brings sanity and gives an insight or idea of the kind of property to be constructed in an area for a particular purpose by zoning into either commercial, residential, etc.⁶²⁸ Security of tenure and land rights of citizens is an important foundation for economic development. For many of these, land titles are

⁶²²*ibid.*

⁶²³*Ibidu, op. cit., at 4.*

⁶²⁴*ibid.*

⁶²⁵*ibid at 1-2.*

⁶²⁶*ibid at 4.*

⁶²⁷ Nuhu, M.B., "Land Reform in Nigeria: The Nigerian Institution of Estate Surveyors and Valuers Perspective - Challenges and Prospects" Being a paper presented at the FIG Working Week 2011, Bridging the Gap between Cultures Marrakech, (Morocco, 18-22 May 2011) 1-10, at 7; see also, Nuhu, (2008), *op. cit., at 10.*

⁶²⁸Nuhu, (2011), *op. cit., at 7.*

the main sources of collateralisation for obtaining credit from informal and established financial institutions. Consequently, securing land rights and land titles is particularly relevant for all socio-economic classes in the nation's economy.⁶²⁹

On the other hand, the Act has also made it difficult for some to acquire land because of government bureaucratic process of acquiring one and the issuance of certificate of occupancy and the vesting of lands on the government; all which made it difficult for individuals to acquire land.⁶³⁰

5.1. Mortgage Transactions and Issue of Consent

An important way in which the Land Use Act and land administration have impacted on economic transactions in Nigeria is the requirement of governor's consent in relating to mortgage transactions. As sections 21 and 22 of the Act stipulates, it shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, among others, without the consent of the governor first had and obtained. One of the major problems confronting land security in Nigeria is the requirement of consent by the appropriate authority for any dealing in land.

A mortgage is a transfer of property (often an interest in land) as security for the repayment of a loan.⁶³¹ Strictly defined, a mortgage is a real right in respect of the immovable property of another, securing a principal obligation between a creditor and a debtor.⁶³² It is a conveyance or other disposition of land to secure the payment of money or the discharge of some other obligations.⁶³³ Mortgage as a form of credit transaction in Nigeria is decisively important, and of course, constitutes a significant expression of and contributor to the national development.⁶³⁴ A mortgage is also defined as "a legal or equitable conveyance of title as a security for the payment of a debt or the discharge of some other obligation for which it is given subject to a condition that the title shall be reconveyed if the mortgage debt is liquidated."⁶³⁵

⁶²⁹*Ibid*, at 6.

⁶³⁰*Ibid*, at 7; see also, Nuhu, (2008), *op. cit.*, at 10.

⁶³¹ See Egwummuo, *op. cit.*, at 232.

⁶³²de Bois, *et.al.*, *op. cit.*, at 631; see also, Bray, *op. cit.*, at 351.

⁶³³*Santley v Wilde* (1899) 2 Ch. 474.

⁶³⁴ Umezulike, I.A., *The Land Use Act, More than two Decades After, and Problems of Adaptive Strategies of Implementation* (College of Law, Igbinedion University, Okada, 2004) 105.

⁶³⁵*Stamley v Wilde*, (1899) 2 Ch. 474, Lord Lindley, M.R. According to Oluyede, a mortgage is a conveyance of land or assignment of chattels as a security for the repayment of a debt or the discharge of some

The procedure for obtaining the required consent is cumbersome and expensive with adverse effects on commerce.⁶³⁶ As Obaseki, JSC, aptly captured it in *Savannah Bank (Nig) Ltd. v. Ajilo*.⁶³⁷ "the Land Use Act is bound to have a suffocating effect on the commercial life of the land and house owning class of society who use their properties to raise loans and advances from the banks. I have no doubt that it will take the whole working hours of a Governor to sign consent papers (without going half way) if these clauses are to be implemented." Since the commencement of the Act, a number of legal problems have arisen from this form of credit transaction including a number of issues which are of such concern to the banks and mortgage institutions, industries, individuals, legal practitioners, conveyancers and the general public.⁶³⁸

It is submitted that security for credit or mortgage transaction is valueless if the mortgage cannot be realised without difficulty when the need arises. A good security must, therefore, be readily ascertainable and reasonably stable over a fairly long time.⁶³⁹ It must also be transferable without undue cost and trouble to the mortgagee including the ability of the said mortgagee to obtain indefeasible title with minimum trouble and delay without incurring a residual obligations and liabilities to third party in the process.⁶⁴⁰ The Land Use Act has brought a great deal of revolution to mortgage transactions by the requirement that consent of the governor must be obtained to the transaction before the mortgagor can transfer his interest to the mortgagee.⁶⁴¹

Mortgagees have special preference for land security for their credits. Thus, mortgages of land have increased in commercial importance in their security portfolio. That is why it is necessary to examine whether in the light of the provisions of the LUA, the mortgagee's final potent remedies are still extant.⁶⁴² It is, however, settled on the authorities that the validity of mortgage of statutory right of occupancy depends on

other obligation for which it is given. See Oluyede, *op. cit.*, at 141. Mortgage may also be described as transfer of an interest in property (mainly real property) as a security for a debt. This arrangement enables the creditor (mortgagee), in the event of the debtor (mortgagor) being unable or unwilling to pay off the debt, to enforce the said debt against the mortgaged property, say by selling it and recouping what he is owed.

⁶³⁶ Wilson, I., "Enhancing Nigeria's Economic Development: A Case for Institutional and Regulatory Reforms in Nigeria's Banking Sector" paper presented at the BBI 2nd National Stakeholders Forum on Removing Bottlenecks to Business in Nigeria, held at Nicon Hilton, Abuja, Nigeria, (19th and 20th April, 2005) 1-14 at 6.

⁶³⁷[1989] NWLR (Pt. 97) 305 at 329.

⁶³⁸Umezulike, *op. cit.*, at 105.

⁶³⁹*ibid.*, at 107.

⁶⁴⁰*ibid.* at 107-108.

⁶⁴¹ Aluko, O., *The Law of Real Property and Procedure*, 2nd ed. (Brighter Star Law Series, Ibadan, 2001) 126.

⁶⁴²Umezulike, *op. cit.*, at 108.

whether at the time of its creation the consent of the governor was sought and obtained.⁶⁴³

As noted above, the problem includes the prohibitive consent fee and other fees payable by the mortgagor. Also, precious time is wasted in processing the application for consent which may take months and at times, years to go through. The existence of a cumbersome process of title documentation of land ownership which is reinforced by inadequate cadastral system makes mortgage financing very difficult.⁶⁴⁴ It is certain that there would be very few people who have not been at the receiving end of the cumbersome process of obtaining Governor's consent in Nigeria. The process of obtaining consent is truly herculean, tortuous and laborious.⁶⁴⁵

The import of the Supreme Court decision regarding consent in *Savannah Bank v Ajilo* also impact negatively on mortgage transactions in Nigeria. However, an issue has been raised as to whether the grantor of right of occupancy, whose duty it is to obtain the required consent should be allowed to invalidate the transactions for lack of Governor's consent.⁶⁴⁶ In other words, can the equitable principle that a grantor cannot be allowed to rely on his own wrong be invoked in dealing with the consent provisions of the Land Use Act. This issue came up in *Ajilo's case*. Obaseki, JSC who read the lead judgement in that case held, *inter alia*: "[a]lthough the 1st plaintiff/respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior consent in writing of the governor, the express provisions of the Land Use Act make it undesirable to invoke the maxim *ex turpi causa non oritur action* and the equitable principle enshrined in the case of *Bucknor-MacLean Inlaks Ltd (1980) 8-11 SC 1.*"⁶⁴⁷

The view held by Obaseki, JSC in *Ajilo's case* on the non-applicability of the maxim "*ex turpi causa non oritur action*" has been criticized by Omotola.⁶⁴⁸ In a similar context,

⁶⁴³See *Savannah Bank Ltd v Ajilo* (supra).

⁶⁴⁴Sanusi, J.O., "Mortgage Financing in Nigeria: Issues and Challenges" Being a Paper Presented at the 9th John Wood Ekpenyong Memorial Lecture, Organized by the Nigerian Institution of Estate Surveyors and Valuers, (January 29, 2003) 1-21 at 16.

⁶⁴⁵Babalakin & Co., *op. cit.*, at 7.

⁶⁴⁶Omotola, J.A., "Interpreting the Land Use Act" (1992) 1(1) *The Journal of Nigerian Law* 108-120 at 108.

⁶⁴⁷*Savannah Bank Ltd v Ajilo*, (supra), at 324; see also, *Federal Mortgage Bank of Nigeria v Dr Elisha Bamidele Babatunde* [1999] 12 NWLR (pt 632) 683.

⁶⁴⁸In his words: "there is nothing in the relevant provision of the Act which necessarily prohibits the application of the principle. The consent provisions of the Act especially sections 22 and 26 are all traceable to similar provisions in the Land Tenure Law 1962 (see sections 28 and 32 thereof) and section 11 of the Land and Native Rights Act, 1916. The latter was considered by the Federal Supreme Court in *Solanke v Abed* (1962) 1 All NLR 320(a decision not referred to by his lordship, probably overlooked) Unsworth FJ, delivering the judgement of the court, with which Ademola, CJF, and Taylor, FJ, concurred, held that the grantor could not be heard as against the grantee to put forwards his own

Yakubu also submitted that a court of law should move forward to do substantial justice and provide answers to social problems to enable our law to grow.⁶⁴⁹ Though not watering down the decision in *Ajilo's* case that consent is required on any transaction involving land in the country, Nigerian courts are now inclined to doing substantial justice rather than relying on technicalities.

In *Chief Belonwu Ugochukwu v Cooperative & Commerce Bank Nigeria Ltd*,⁶⁵⁰ the appellant sometimes in 1978 obtained loan facilities from the respondent bank. He was not paying the loan and the interest, ten years later the bank informed him of its intention to exercise its right under the mortgage deed to sell the mortgaged property. The appellant promptly filed a suit seeking declaratory reliefs and challenged the validity of the deed of mortgage, on the ground of non-compliance with the Land Use Act and also relying on the Supreme Court's decision in *Savannah Bank Nig. Ltd v Ajilo*. Dismissing the appeal, the Court held as follows:

"The holder of a right of occupancy, evidenced by a certificate of occupancy is the one to seek the consent of the governor to alienate, transfer, mortgage, etc. There is no doubt the consent given in exhibit 3 was at the instance of the appellant who was in need of fund from the respondent by way of mortgages. *It is not from him one must hear that the consent he obtained was void...The appellant being the holder of the right of occupancy over the house i.e. No. 239 Cameroun Road, Aba, was to seek consent and it is unconscionable for him to turn roundabout and maintain that the consent of the governor he obtained was flawed having received valuable consideration i.e. the loan from the respondent.*"⁶⁵¹

On his part, Ogundare, JSC added:

"[I]t was the duty of the plaintiff, as mortgagor to seek the consent of the governor for him to mortgage his property to the defendant. This is what the law says: see the Land Use Act. *For him to turn round years after executing the mortgage deed (and when as a result of his default, the mortgagee, that is the defendant, sought to exercise its right under the mortgage deed) to assert that the mortgage deed was null and void for lack of the governor's consent, is to say the least, rather fraudulent and unconscionable.* It has become a vogue these days for mortgagors

wrongful act and say that the agreement was unenforceable because he himself had failed to get the necessary consent under section 11 of the Land and Native Rights Act. See Omotola, (1992), *op. cit.*, at 110.

⁶⁴⁹ See Yakubu, J.A., "The Equal and Unequal Scale of Justice" (2002) 3 *Journal of Private & Business Law* 194-210 at 200 & 210.

⁶⁵⁰[1996] 6 NWLR (pt 456) 524.

⁶⁵¹Per S.M.A. Belgore, JSC at 540. Emphasis added.

in similar circumstances to fall upon the decision of this court in *Savannah Bank Nig. Ltd v Ajilo* (1989) 1 NWLR (pt 97) 305 as a vehicle to escape from their liability under the mortgage deed they have entered into. I think that this is an unfortunate development and I do not think that case, that is, *Savannah Bank v. Ajilo* (supra) decides such a thing...To allow a mortgagor to rescind from his liability on the ground of his failure to do that which the law enjoins him to do will only result in paralysis of economic activities in this country. This court, I dare say, will not allow such a situation to arise."⁶⁵²

A similar position was taken by the Supreme Court in *Awojugbagbe Light Industries Ltd v P. N. Chinukwe & Ors*.⁶⁵³ Dismissing the appeal, the Supreme Court held, *inter alia*, thus: "...I need only to remark in passing that it is inequitable and morally despicable for the appellant, after obtaining a loan and after utilizing the same to now turn round and allege that the agreement (exhibit E) between it and the grantor of the loan, i.e. the 2nd respondent, is null and void."⁶⁵⁴ The decision of the Supreme Court in *Ugochukwu and Awojugbagbe Light Industries Ltd* considered above has given impetus to transformation in judicial decisions on the applicability of the maxim "*ex turpi causa non oritur action*", and in subsequent cases, Nigerian courts have been more assertive on the applicability of the maxim.⁶⁵⁵

⁶⁵²At 542. Emphasis added.

⁶⁵³[1995] 4 NWLR (pt 390) 379. In that case, the appellant as plaintiff sued the respondent as defendant in the High Court of Oyo State sitting at Ibadan. The appellant challenged the mortgage it executed in favour of the 2nd respondent, N.I.D.B. Ltd as being null and void for not having complied with the relevant provisions of the Land Use Act, 1978. In their statement of defence and counter-claim, the respondents pleaded the indebtedness of the appellant; the appointment of the receiver, the 1st respondent, in accordance with the terms of the mortgage deed after the appellant had failed to liquidate the debt when it had become due for repayment. The 2nd respondent counter-claimed for the sum of N364, 142. 08K being the total amount (comprising the principal and the interest) the appellant was indebted to it. As security for the loan, the appellant's managing director mortgaged his property at No. 60/64 Akobielemu Layout, Ijebu road, Ibadan to the 2nd respondent at about 1980. The mortgage deed was, however, not perfected until about 8th October, 1985 upon the receipt of the governor's consent. At the conclusion of the hearing, the learned trial judge dismissed all the claims of the appellant and entered judgment for the respondent in the sum counter-claimed. Dissatisfied with the decision, the appellant appealed to the Court of Appeal which dismissed the appeal. It finally appealed to the Supreme Court which also dismissed the appeal.

⁶⁵⁴See *per Onu*, JSC, at 426. This case was decided by the full panel of the Supreme Court to wit: Bello, CJN, I.L. Kutigi, JSC, M.E. Ogundare, JSC, E.O. Ogwuegbu, JSC, S.I. Onu, JSC, Y.O. Adio, JSC & A.I. Iguh, JSC. Also, three senior counsel were invited as *amici curie*: Chief F.R.A. Williams, SAN, Prof A.B. Kasumu, SAN and Prof J.A. Omotola.

⁶⁵⁵In *Alhaji Ferdinand Ibekwe v Mrs. Lucy Maduka* [1995] 4 NWLR (pt 392) 716 at 725, the Court of Appeal, (Jos Judicial Division) condemned such a fraudulent act and held that apart from being morally despicable for a person who has benefited from an agreement to turn round and say that the agreement is null and void, no court of law should allow a person to benefit from his wrong-doing. See also, *Raymond Inyang & 2 Ors v Engr. Maurice A. Ebong* [2002] 2 NWLR (pt751) 284 at 333-334. Similarly, in

This position is commendable as being in tune with the settled principle of law expressed in the Latin maxim, "*nollus commodum capere postest de juria sua propria*" that is, no one should be allowed to benefit from his own wrong.⁶⁵⁶ This position was taken further by the Court of Appeal in *Eboni Finance and Securities Ltd v Wole Technical Services & 2 Ors*⁶⁵⁷ where the court, *per* Pats-Acholonu, JCA held as follows:

"[A]s the 1st and 2nd respondents have received the money, might equity not come to their rescue for unjust enrichment. I think the principle of unjust enrichment which unfortunately is not well developed in English law as both in US and Scotland should of necessity be nurtured to growth in a new and complex society like ours where people can easily at a whiff of breach resort to law to ward off debtor other enrichments they have had, at the expense of other. This is specie of constructive trust which is an instrument which the court of equity may employ to prevent undue enrichment. I believe that when a person is holding tight that which is subject of equity he should not be allowed to hold it firmly. Therefore where a party unjustly enriches himself at the expense of the plaintiff he must be made to disgorge it...The premise behind the doctrine of restitution and unjust enrichment is that justice be done...In this case, the respondents must be made to vomit out what they have taken (unjustly)."⁶⁵⁸

First Bank of Nigeria Plc v May Medical Clinic and Diagnostics Centre Ltd & Ors [1996] 9 NWLR (pt 471) 195, the Court of Appeal, *per* Mohammed, JCA at 204-205, commented as follows: "...the law can be lenient to applicants who unwittingly through acts of commission or omission though innocently commit procedural irregularity...but certainly the law does not favour those who for selfish reasons circumvent the real issue, in order to draw benefit from their own misdeeds..."

⁶⁵⁶ See *First Bank of Nigeria Plc v May Medical Clinic and Diagnostics Centre Ltd & Ors* (*supra*) at 204; see also, *Buswell v Goodwin* (1971) 1 All ER 418 at 421 where Widgery, LJ said: "The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to endorse." *The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v Samuel David Eke-Spiff & 3 Others* [2009] 7 NWLR (pt 1139) 97 at 132.

⁶⁵⁷ [1996] 7 NWLR (pt 461) 464.

⁶⁵⁸ At 478; see also, *Pharmatek Industrial Projects Ltd v Trade Bank Nig. Plc & 4 Others* [2009] 13 NWLR (pt 1159) 577 at 627-628 & 641; *UBN v Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567. See also, *Schobell v Barber* (1967) 1 QR 349, where one of two joint tenants murdered the other, it was held that the murderer took by survivorship, but that public policy prevented him from profiting from his wrong and so imposed on him a constructive trust as to one half in favour of the victim's next-of-kin. The rule is that a man shall not slay his benefactor and thereby take his booty. See *The Estate of Hall* (1914) LPL 7; *Re Giles* (1972) Ch. 544 & *McCormick v Grogan* (1869) LR 4 H.L. 82 at 97. Also, in *Alh Ayotunde Seriki v Sefiu Olukorede* [1999] 3 NWLR (pt 595) 469 at 480-481, it was held that no person involved in any form of immoral or illegal act or transaction should be allowed to come to court to seek redress. No polluted hand shall touch the pure foundation of justice. One cannot have a right of action when he or she comes to a court of justice in an unclean manner. See the English case of *Lodge v National Union Investment Co. Ltd* (1907) 1 Ch. 300 where B borrowed money from M, an unregistered money-lender and mortgaged certain securities to him. The contract was illegal and void under the Money Lender Act, 1900. B sued M for delivery up of the securities. Parker J refused to make the order for delivery up except upon the terms that B should repay the money which had been advanced to him.

5.2. Insecurity of Title

As is normally the case in human affairs, the promulgation of the Land Use Act in 1978 raised expectations.⁶⁵⁹ But, what is the reality of the situation now? It is submitted that the existing system of landholding and administration in Nigeria is fraught with numerous problems and challenges.⁶⁶⁰ The Act aims at streamlining and simplifying the management and ownership of land in the country. Security of land is essential for economic development in any society.⁶⁶¹ It is a well-known fact that the current state of land management in the country has failed to guarantee security of title, thereby, impacting negatively on economic development in the country.

Part of the problems that led to the enactment of the Act were sharp practices, which often led to the same piece of land being sold to more than one person, creating vague and defective titles. For instance, in *Ogunbambi v Abowaba*,⁶⁶² the Supreme Court noted as follows:

"The case is indeed in this respect like many which come before this court: one in which the Oloto family either by inadvertence or design sell or purport to sell the same piece of land at different times to different persons. It passes my comprehension how these days, when such disputes have come before this court over and over again, any person will purchase land from this family without the most careful investigation, for more often than not they purchase a law suit, and very often that is all they get."

This problem still exists today. As Omotola rightly pointed out, "our insecurity of title to land has multiplied, disputes over title to land continued unabated. The courts are as busy as ever sorting these out. Land is now more difficult to acquire. Processing of document of title takes years to complete. Many applications for grant of right of

In the same vein, in *Haigh v Kaye* (1872) 7 Ch. App. 469, James L.J stated that Statute of Frauds was never intended to prevent the court of equity from giving relief in a case of plain, clear and deliberate fraud. Also in *Nigerian Industrial Development Bank Ltd v Olalomi Industries Ltd* [2002] 5 NWLR (pt 761) 532 at 548, the Court admonished as follows: "...it is my view that it will be in the interest of justice to do so rather than allow the mortgagee to eat his cake and still have it back. The court should resist at all cost the attempt at using it as an engine of fraud or cheating or dishonesty." See also, Akintola, S.O. "Examination of Constructive Trusts as a Remedy for Unjust Enrichment" (2002) 3 *Journal of Private and Business Law* 130 at 140; see also, Sonnekus, J.C., *Unjustified Enrichment in South African Law* (LexisNexis, Durban, 2008) 8-9; Visser, Daniel *Unjustified Enrichment* (Juta & Co, Cape Town, 2008) 4-5. See also, Taiwo, E.A., "The Effects of the Failure to Obtain Consent to Alienate Rights under the Land Use Act and the Emerging Equities" (2006) 5 *Journal of Private and Business Law* 171-185 at 185.

⁶⁵⁹ See Omotola, J.A. (ed.), *The Land Use Act (The Report of a National Workshop held at the University of Lagos, 25-28 May, 1981)* (Lagos University Press, Lagos, 1982) 11.

⁶⁶⁰ Banire, *op. cit.*, at 9.

⁶⁶¹ *Ibid*, at 10.

⁶⁶² (1951) 13 WACA 222 at 223, *per Verity Ag. P.*

have before. Thus, where it is shown that another person has a better right to the grant, the court will set aside the certificate wrongly issued.⁶⁷⁰

In this regard, in *Saidu Chiroma v Madeus Yeam Suwa*,⁶⁷¹ the Court of Appeal dismissed the action of the appellant for trespass against the respondent in respect of the land in which the appellant held a certificate of occupancy when evidence revealed that prior to the issuance of the certificate the appellant had sold the land to the respondent.⁶⁷² Also, in *Osazuwa v Ojo*,⁶⁷³ the Court held thus:

"A certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy then the court can revoke it."⁶⁷⁴

5.3. Lack of Adequate Access to Land in the Country

One of the objectives of the Land Use Act is to assist the citizenry, irrespective of his social status, to realise his ambition and aspiration of owing a place where he and his family will live a secured and peaceful life. As earlier stated, the importance of land cannot be over emphasised. Thus, in *Ibrahim v Mohammed*,⁶⁷⁵ the Supreme Court stated that the Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live. However, in reality, reverse is the case as the issue of lack of access to land remains germane in Nigeria. Not everyone has access to land as promised by the Act.

The Act was enacted to address some problems but it is difficult to see the extent to which it has solved any of these problems. It is submitted also that access to land alone cannot provide a way out of poverty, for access and control over land to be productive and sustainable; it must be linked to a range of other services and infrastructure, such

⁶⁷⁰*Hannah K. Agundo v Mercy N. Gberbo & Anor* [1999] 9 NWLR (pt 617) 71 at 97-98; *Ogbahon v Reg. Trustees of Christ's Chosen Church of God & Anor* [2002] 1 NWLR (pt 749) 675 at 713; *Omiyale v Macaulay* [2009] 7 NWLR (pt 1141) 597 at 628; *Ogunleye v Oni* [1990] 2 NWLR (pt 135) 745.

⁶⁷¹[1986] 1 NWLR 751.

⁶⁷² See also, *Dzungwe v Gbisha* [1985] 2 NWLR (pt 8) 528; see also, *Utuama, op. cit* 137.

⁶⁷³[1999] 13 NWLR (pt 634) 286.

⁶⁷⁴ See also *Haruna v Ojukwu* [1991] 7 NWLR (pt 202) 207; *Dabup v. Kolo* [1993] 9 NWLR (pt 317) 254-269-270.

⁶⁷⁵(2003) 17 WRN 1.

as affordable credit and access to markets.⁶⁷⁶ Since it is on land that food is cultivated to sustain life, the outward manifestation of this right in Nigeria is, therefore, greatly depend on the management of land through the norms and mechanisms of the Land Use Act.⁶⁷⁷

Land occupies a central position in economic development in any country. Land, being a scarce and a unique resource, its careful management is essential to economic development and, therefore, should be taken seriously. It is submitted that the utility to which a nation puts its land that makes it to be classified as developed, developing and third world country.⁶⁷⁸ Whatever may be the prevailing method of land administration in a society, land has always been one of the most important assets in a country. Virtually every form of investment or development by government and private entities is dependent upon land in one way or another.⁶⁷⁹ It is generally accepted that poor land administration can impede economic development and social welfare. The quality and quantity of land determine the extent of man's development. It is generally acknowledge that land is central to any solutions offered to the process of development and poverty.⁶⁸⁰

6. Corruption as Impediment to Economic Development in Nigeria

Ordinarily, the title of this paper should limit our discussions to the impact of land administration on economic development in Nigeria. However, one cannot but comment, though briefly, on corruption given its enormous adverse effect on economic development of any country. For meaningful economic development, Nigeria should strive to minimise corruption and ensure good governance. The issue of corruption is germane because despite good land management and administration as well as the availability and access to land by everyone, if corruption is not eradicated, meaningful

⁶⁷⁶ See Khoza, S. (ed.), *Socio-economic Rights in South Africa*, 2nd ed. (Community Law Centre, University of Western Cape, 2007) 200.

⁶⁷⁷ Udombana, N.J., "Weighed in the Balances and Found Wanting: Nigeria's land Use Act and Human Rights" in Smith, I.O. (ed.), *The Land Use Act, Twenty Five Years After* (Department of Private and Property Law, University of Lagos, Lagos, 2003) 62.

⁶⁷⁸ See Onalaja, M.O., "The Courts and the Problem of Compensation for Land Rights" in Adigun, O. (ed.), *The Land Use Act, Administration and Policy Implication* (University of Lagos Press, Lagos, 1991) 156.

⁶⁷⁹ Banire, *op. cit.*, at 4.

⁶⁸⁰ Adigun, O., "Legal Theories of Property- The Land Use Act in Perspectives" in Adigun (ed.), *The Land Use Act, Administration and Policy*, *op. cit.*, at 10.

economic development will elude the country. Good governance is, therefore, the antidote for corruption.⁶⁸¹

The Independent and Corrupt Practices Commission (ICPC) Act in its section 2 defines corruption to “includes bribery, fraud and other related offences.” However, the Economic and Financial Crime Commission (EFCC) Act⁶⁸² has broadened this definition to include “money laundering, embezzlement, bribery, looting and any form of corrupt practices...” Corruption is also described as the misuse of entrusted power for private benefit. It is described as a symptom of something gone wrong in the management of the state in the sense that institutions designed to govern the relationships between citizens and the state are used instead for the personal enrichment of public officials and the provision of benefit to the corrupt. It also entails an act done with intent to give some advantage inconsistent with official duty and the rights of others. It is an act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.⁶⁸³

While transparency and good governance are the hallmarks of a democratic state, corruption is universally accepted as antithetical to development and good governance.⁶⁸⁴ In land registry in each state, corruption abound greatly with officials in

⁶⁸¹ The World Bank and International Monetary Fund (IMF) have defined governance as “the manner in which public officials and institutions acquire and exercise authority to shape public policy and provide public goods and services.” See World Bank & IMF Development Committee *Strengthening Bank Group Engagement on Governance and Anti-Corruption* (8 September 2006) i; Broadly speaking, governance refers to the exercise of power through a country's economic, social and political institutions in which institutions represent the organizational rules and routines, formal laws, and informal norms that together shape the incentives of policy-makers, overseers, and providers of public services. See UNDP Policy Paper *Governance for Sustainable Human Development* (UNDP, 1997) 2-3; available online at: <http://www.adb.org/Documents/Policies/Governance/gov300asp?p=policies> (accessed on 2008/12/20) & also at: <http://www.worldbank.org/publicsector/overview.htm> (accessed on 2008/12/20).

⁶⁸² See sec. 46 of the Act.

⁶⁸³ See *Black's Law Dictionary*, (6th ed.) 345; See also, sec. 1 of Decree No.38 of 1975 which described corruption as “the offer, promise or receipt of gratification as inducement for reward.” See generally, Ocheje, Paul D., “Law and Social Change: A Socio-legal Analysis of Nigeria's Corrupt Practices and other Related Offences Act, 2000” (2001) 45(2) *Journal of African Law* 173-195, at 178-180; Fagbadebo, O., “Corruption, Governance and Political Instability in Nigeria” (2007) 1(2) *African Journal of Political Science & International Relations* 28-37 at 29; UNDP, *Corruption and Good Governance Discussion Paper 3*, (New York, July 1997) 35; Peter, C. Maina & Masabo, Juliana, “Confronting Grand Corruption in Public and Private Sectors: A Spirited New Initiative from Tanzania” (2009) 1(2) *Namibia Law Journal* 49-71 at 49; Cremer, G., *Corruption and Development Aid- Confronting the Challenges* (Lynne Rienner Publishers, Colorado, 2008) 9-10; Oke, Tayo, “How to Make Nigeria a Bribery-free Society” *The Nation* (Friday June 8, 2012) 18.

⁶⁸⁴ In its report, *Governance for Sustainable Human Development*, the UNDP acknowledges the following as core characteristics of good governance: participation, rule of law, consensus orientation, transparency, responsiveness, equity, effectiveness and efficiency, accountability and strategic vision. See UNDP

the habit of undervaluing landed property for personal gains and kickbacks and other forms of corrupt practices. We should endeavour to live as Nigerians within the tenor of the Constitution and good democratic principles. In its preamble, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states that the Constitution is enacted for the purpose of promoting good government and welfare of all persons in the country. The Constitution also obliges the State to abolish all corrupt practices and abuse of power.⁶⁸⁵

The obvious fact is that corruption is not a new phenomenon in Nigeria; it has long been part of our societies, and as such, it will not just disappear unless it is frantically fought. Though, pervasive in nature, yet, it can be contained and its pernicious effects on social and economic development can be curtailed significantly if government is serious about it. Government should, therefore, create an appropriate enabling environment to fighting corruption by implementing policies and providing adequate legal framework. It should be stated clearly that the fight against corruption goes beyond merely enacting laws that makes corruption illegal and punishable.⁶⁸⁶ Legislative framework is just the starting point in this respect. Examination of the various laws put in place to fighting corruption in Nigeria leaves little doubt that laws alone cannot win the war against corruption.

Despite all the "good" laws on this issue, Nigeria is still regarded as one of the most corrupt countries in the world. There are enough laws in the statute books to deal

Policy Paper, above note 1, at 2-3; see also, *Good Governance and Anti-Corruption Policy and Guide* (The EEA Financial Mechanism and the Norwegian Financial Mechanism 2004-2009, adopted on 01 December 2005; Addendum: 05 May 2006) 3. According to Abdellatif, good governance is, among other things, participatory, transparent and accountable, effective and equitable, and it promotes rule of law. It ensures that political, social and economic priorities are based on broad consensus in society and that voices of the poorest and most vulnerable are heard in decision making over the allocation of development resources. See Adel M. Abdellatif, "Good Governance and its Relationship to Democracy and Economic development" *A Paper Presented at the Global Forum III on Fighting Corruption and Safeguarding Integrity*, Seoul, (20-31 May 2003) 4-6; Mark Zirnask, Kerryn Clarke & Annie Feith, *From Corruption to Good Governance* (A Paper by the Justice & International Mission Unit of Uniting Churches in Australia) National Council of Churches in Australia (March 2008) 9. See also, Kututwa, Noel, *African Anti-Corruption Commitments- a Review of Eight NEPAD Countries* (African Human Security Initiative, 2005) 67. See also, Taiwo, E.A. "Executive Immunity under the Nigerian Constitution and Its Impact on the Government's Anti-Corruption Crusade" (2010) 16(2) *East African Journal of Peace and Human Rights* (Journal of the Human Rights and Peace Centre (HURIPeC) Faculty of Law, Makerere University, Uganda), 216-247 at 216.

⁶⁸⁵ See sec. 15(5) & sec. 22 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. Other laws put in place to fight corruption before this Constitution include, the Public Officers (Investigation of Assets) Decree No. 5 of 1966; the Corrupt Practices Decree of 1975; the National Drug Law Enforcement Agency Act, Cap 253, LFN, 1990; the Indiscipline, Corrupt Practices and Economic Crime (Prohibition) Decree of 1994; the Money Laundering Decree No 16 of 995; the Advance Fee Fraud Decree No. 3 of 1995; the Foreign Exchange (Miscellaneous) Provision Decree No. 17 of 1995; the Failed Bank Tribunal Decree No 16 of 1996, etc.

⁶⁸⁶ Kututwa, *op. cit.*, at 12.

effectively with corruption issues, what is lacking is the strong political will needed to effectively execute those laws. Strong political will to fighting corruption is, therefore, necessary to ensure the effectiveness of the anti-corruption laws and agencies and to see to economic development in Nigeria.

The recent revelation in the probe by the National Assembly established it clearly that within one year, government officials and oil cabals siphoned N2 trillion for a dubious fuel subsidy scheme.⁶⁸⁷ Also, within the same period, civil servants stole billions of Naira in pension fund.⁶⁸⁸ The time is, therefore, now to seriously canvass against corruption in the country. Government should rev up the anti-corruption war and prosecute without delay those indicted in the saga.

7. Conclusion

The importance of land management to a society cannot be over-emphasised, irrespective of the level of economic development in the society. Good land management ensures that property rights are well defined, thereby minimising the incidence of conflicts and disputes relating to land. With property right well defined and with good land management, people will be encouraged to make investments in improving land assets in view of the fact that the assurance of property rights in land increases the certainty that holders of such right will be able to benefit from improvements made on such land.⁶⁸⁹ As considered in this paper, land serves as security for the relevant credit facility. Property right will ensure that there is enhanced access to credit facilities for the purpose of improving or developing land for economic purposes. This will ensure that land is put to the best use, thereby facilitating economic progress and social development.

It is suggested that long bureaucratic process involved in allocation of land should be streamlined in order to ensure timely approval of land allocation and subsequent transactions in land should be fastened. Also, the cost incurred in the process of getting the certificate of occupancy should be reduced to a minimum amount. Experts and high technical skilled manpower should be employed to minimize the problems of double allocation. The issue of consent should be critically looked at. As noted in the paper, the insistence on prior consent of the government either to assign or mortgage a property has been the greatest impediment to the development of real estate market in Nigeria.

⁶⁸⁷ See *The Punch*, "Editorial", (Friday 8 June, 2012) 16.

⁶⁸⁸ *Ibid.* see also, Frank, Timi & Malaye, Dino, "Open Letter to the President. Dr. Goodluck Ebele Jonathan: Review of Electricity Tariff, Untimely to the Nigerian people" *The Nation* (Monday 4 June, 2012).

⁶⁸⁹ Banire, *op. cit.*, at 8-9.

Land Use Act reform/review currently embarked on by the National Assembly should be competed with dispatch.

Adequate and fair compensation should be paid promptly any time the government acquires individual land for public use. Compensation must be just and equitable, reflecting a fair balance between the public interest and the interests of those affected. In deciding on the amount of compensation, all relevant circumstances, including the current use of the property, the history of ownership and the use of the property, market value of the property and many more should be considered.⁶⁹⁰ It should be noted that "fair compensation" is not always the same as the market value of the property; market value is but one of the items which must be taken into account when determining what would be a fair compensation. A wider range of socially relevant factors such as resettlement costs and, in appropriate circumstances, solace for emotional distress should consequently be taken into account.

To have rapid economic development, governments at all levels are therefore called upon to eradicate corruption within their domains. Ethical orientation is also necessary since breakdown in ethical social values and greed have equally been identified as causes of corruption. Corruption often flourishes in an environment where basic human rights are lacking, thus, government should, therefore, build and encourage a culture of respecting basic human rights in order to effectively challenge corruption. Government as well as everyone is called upon to cultivate the culture of honesty, transparency and zero tolerance to corruption if we are to have meaningful economic development in Nigeria.

⁶⁹⁰ See Khoza, *op. cit.*, at 203. See also, *Haakdoornbult Boerdery CC and Others v M* (5) SA 596 (SCA) para 48; *Mphela and Others v Haakdoornbult Boerdery CC* 488 (CC) para 13.



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