

THE PROCEDURE FOR REVOCATION UNDER THE LAND USE ACT AND GOVERNOR'S COMPLIANCE: A CRITICAL APPRAISAL

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Abstract

The paper examined the extent of government's compliance with the procedure of acquisition of private property in Nigeria. Even though there are statutes which provide for the procedure of acquiring property, from time to time government have often flouted laid down procedure for the acquisition of private property. True, it is the duty of the courts to intervene against government and in favour of private citizen, what happens, where government disobey court orders? Or what happens where private citizens for lack of means did not challenge in court any wrong procedure adopted by government? Apart from calling for more judicial activism in this area, the paper argued that government should follow laid down procedure for the acquisition of private property; for even God who has laid down the procedure for man to be holy has also subjected Himself to holiness.

Introduction

The right of an individual to own property is constitutionally guaranteed.¹ One incident of ownership is the right of a landowner

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to enjoy and use his property to the exclusion of others, such right is curtailed through the strict application of the eminent domain.² Today, a landowner's right in respect of his property is subject to governmental power to compulsorily acquire such land by revoking the existing interest on the land for overall public interest³ subject however, to the payment of compensation to the owner of the acquired land.⁴ It is in view of this that the Land Use Act⁵ (hereinafter known as LUA) laid down the procedure through which government could compulsorily acquire land.⁶ This paper will examine the extent of government's compliance with this procedure.

Pre-1978 Land Tenure Laws in Nigeria

Prior to the promulgation of the LUA in 1978, there was no uniform land policy in Nigeria. In the southern part of the country there was mainly the customary land law in operation whilst in the north statutes mainly regulated the land tenure system.

1) Customary Land Tenure

Various communities had their own rules and customs relating to land which is acceptable and prevailing among the natives where the land is situated: there was therefore no uniform customary land law.

¹ Constitution of the Federal Republic of Nigeria 1999 s 43

² The power of eminent domain allows government to take private property, subject to the payment of just compensation, without the owner's consent. See Kratovil and Harrison, 'Eminent Domain-Policy and Concept', (1954). 42 *California Law Review* 596.

³ Land Use Act, Cap L1, Laws of the Federation of Nigeria 2004 s. 28(1).

⁴ Constitution of the Federal Republic of Nigeria 1999 s.44(1), Land Use Act s 29(1).

⁵ *Op-cit.*

⁶ Land Use Act ss 28(6) and (7), 29(1) and 28(2). See also *Obikoya & Sons Ltd v Governor of Lagos State* [1987] 1 NWLR (pt 50) 385.

2) Statutory Land Tenure

The various statutes that regulated land tenure before the LUA are both under the received English Law and Nigerian Legislation.

a) Received English Law.

Section 45 of the Interpretation Act⁷ introduced the common law of England, the doctrines of equity and Statutes of General Application which were in force on the 1st day of January 1900 into Nigeria. By that provision, the English common law of property became applicable in Nigeria where customary land law is not applicable⁸. Some English statutes which form part of Nigerian principles of Land law are: Statutes of Fraud, Small Tenement Act, Statutes of Distribution, Real Property Limitation, Land Transfer Act, Conveyancing, Recovery of Premises Act, Wills Act and Vendor and Purchasers Act etc. Also, the Nigerian law of mortgages, leases, conveyance and succession which form part of the land law are based on English Law.⁹

b) Nigerian Legislation

Land Legislation in Nigeria started as early as 1861 when the colony of Lagos was established. As soon as the colonial administration was established on that date, land legislation like Arotas Grants Act¹⁰ Epetedo Grant Acts¹¹ and Glover Settlement Act¹². These Acts

⁷ Laws of the Federation of Nigeria and Lagos 1958 cap 89

⁸ Yakubu M. G. "Fundamentals of Nigerian Law" in Nigerian Institute of Advanced Legal, Studies (Law series N0, 2) 1989, Ajomo M.A. ed. 63

⁹ *Ibid.*

¹⁰ Laws of the Federation of Nigeria and Lagos 1958 cap 42

¹¹ Laws of the Federation of Nigeria and Lagos 1958 cap 61

regulated the allocation and use of land in the colony of Lagos. The lands were largely residential lands. Farm lands were regulated by customary law. In 1900, a general land policy¹³ which covered the whole of what was known as southern protectorate was promulgated. Another regulation came in 1906¹⁴ in respect of the Crown lands.¹⁵ The Native Lands Acquisition Ordinance of 1908¹⁶ was aimed at prohibiting any alienation of land to an alien by whatever means without the Governor's consent.

In 1902,¹⁷ the Land Proclamation was made in the Northern part of the country. This statute divided the land of the Northern Protectorate into two: crown lands and public lands.¹⁸ The Land and Native Rights Proclamation was promulgated in 1910. The Land and Native Rights Proclamation of 1910 was designated as Land and Native Rights Ordinance in 1916. Under that Ordinance, all lands in Northern Nigeria were declared to be native lands and were under the control and management of the colonial Governor.¹⁹ The Native Rights Ordinance of 1916 was repealed and replaced by the Lands Tenure Law of Northern Nigeria 1962. Except for minor changes these policies remained the principles of statutory land law

¹² Law of the Federation of Nigeria and Lagos 1958 cap 75

¹³ Ordinance No.1 of 1900

¹⁴ Crown Land Proclamation No. 13 1906.

¹⁵ Crown Lands were pieces of land held or owned by foreign companies and individual business firms obtained through treaties entered into with local chiefs.

¹⁶ Ordinance No. 16 of 1908.

¹⁷ Proclamation of No. 13 of 1902.

¹⁸ For "Crown Lands" see footnote 18 supra. Public lands were the lands, acquired from the Fulani rulers and the pagan tribes. See Yakubu M.G. *Op. cit.*

¹⁹ See Section 5 of the Ordinance of 1916 Contained in Cap 105, Laws of Nigeria 1948.

in the Northern part of Nigeria before the promulgation of the LUA in 1978²⁰

Land Tenure Law in Nigeria Since 1978

The promulgation of the LUA on 29th March 1978 had the effect of bringing the whole of Nigeria under one statutory land law.²¹ Prior to the LUA, there was the problem of uncertainty of title particularly under the customary land tenure system in the south²², beside this problem of uncertainty of title, the government was finding it extremely difficult to get: land for development., The compensation demanded by individuals for government acquisition of their lands most times were more than the cost of the public project. It became very imperative that government should intervene through legislation to correct the ills.²³ The preamble to the LUA sums up its objective, and it reads thus:

Whereas it is in the public interest that the rights of all Nigerian to the Land in Nigeria should be asserted and preserved by law AND WHEREAS it is also in the public interest that the right of all Nigerians use and enjoy land in Nigeria and the national fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families, should be assured, protected and preserved.

²⁰ Yakubu M.G. *Op. cit.*

²¹ *Ibid.*

²² *Ogunbanlbi v Abowaba* [1951] 13 WACA 222, *Alli v Ikusebialla* [1985] 5 S.C 93.

²³ Ojo O. "Effect of Land Use Act on the Institution of Customary Tenancy" in the Land Use Act — Twenty-Five Years After, Department of Private and Property Law Faculty of INV, University of Lagos, 2003, Smith I.O.ed, 330.

The LUA, in the stead of the radical title (or ownership, communal or otherwise) introduced a right of occupancy as the highest proprietary interest that can be conferred. The introduction of right of occupancy under the LUA had the effect of extinguishing all forms of ownership (both under the customary law and common law) in favour of a right of occupancy. Section 1 of the LUA vests all lands comprised in the territory of each state of the federation in the Governor of that state and such land would be held in trust and administered for the common benefit of all Nigerians. When Section 1 is construed with the provisions relating to right of occupancy, the effect is that: since the commencement of the LUA, it is no longer possible to own land allodially. In *Salami v Oke*²⁴ the Supreme Court held thus:

Absolute ownership of land is no longer possible since according to the provisions of Section 1, of the Act all lands comprised in the territory of each state in the federation are hereby vested in the Governor of the state and such land shall be held in trust and administered for the common benefit of all Nigerians.²⁵

It is important to note that what is capable of ownership now is the right of occupancy.²⁶

Types of Rights of Occupancy

Under the LUA, two types of rights of occupancy were created. These are: statutory right of occupancy and customary right of occupancy. Both statutory right of occupancy and customary right

²⁴ [1987] 9-11 SC 43

²⁵ *Ibid* per Kawu J.S.C.

²⁶ Oluyemi A.F. Revocation of Rights of Occupancy: Legal Framework in Nigeria, Lagos State Ministry of Justice, 2005, 22.

of occupancy are of two classifications. The first is the statutory right of occupancy granted by the state Governor pursuant to Section 5(1) (a) of the LUA and the customary right of occupancy granted by the Local Government under section 6 (1) (a) of the LUA. The second classification is the statutory right of occupancy deemed to have been granted by the state Governor pursuant to Section 34 (2) of the LUA and the customary right of occupancy deemed to have been granted by the Local Government under Section 36 (2) of the LUA.²⁷ In both cases of Statutory rights of occupancy and customary rights of occupancy there exist an actual grant as well as deemed grant. An actual grant is naturally a grant made by the governor of a state or a local government, while a deemed grant comes into existence automatically by the operation of law.²⁸

a) *Statutory Right of Occupancy*

By Section 5 of the LUA, the Governor can grant statutory right of occupancy to any person for all purposes in respect of land whether or not the land is situate in an urban area.²⁹ A person in whom a land is vested by virtue of section 34(2) of the LUA is deemed to be a holder of a statutory right of occupancy issued by the governor under the LUA.³⁰ Section 5 (2) of the LUA provides that ‘upon the grant of a statutory right of occupancy under the provisions of

²⁷ *Kyari v Alkali* [2001] 11 N.W.L.R. (pt 724), 412 at 440 per Iguh JSC see also *Provost, Lagos State College of Education & Ors v Edun* [2004] 6 N.W.L.R (pt 869) 476, at 499 per Iguh J.S.C.

²⁸ See *Savannah Bank (Nig) Ltd v Ajilo* [1989] NWLR (pt 97) 305, *Adisa v Oyinwola & Ors* [2000] 10 NWLR (pt 674) 116.

²⁹ *Adeniran v Alao* [1992] 2 NWLR (pt. 223) 350. See also *Idakwo v Ilona* [1998] 3 NWLR (pt 541) 315; *Iyewev v Uli* [1999] 13 NWLR (pt 634) 189, *Agundo v Gberbo* [1999] 9 NWLR (pt 617) 71, Tobi N. “The Land Use Act and Judicial Activism” 2003 vol. 23 JPPL 8.

³⁰ *Teniola v Olohunkin* [1999] 5 NWLR (pt 602) 280. See also *Jukoyi v Adesina* [1999] 10 NWLR (pt 624) 633.

subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.’

The Supreme Court held that the rights that will be extinguished are mere licence or usufruct but not rights which are capable in law of being alienated.³¹The Supreme Court puts it thus:

...Section 5 (2) is not concerned with the extinguishment of legally vested rights. The meaning of “all existing rights” as used there is limited. It is the right to use and occupation of land which are for less than and inferior to property rights. They may be mere Licence or usufruct but are never rights which are capable in Law of being alienated...Legally vested rights cannot simply be extinguished³²

It is also important to note that where there is a subsisting statutory right of occupancy, the grant of another statutory right of occupancy over the same piece of land is invalid. In *Ilona v Idakwo*,³³ the right of occupancy granted to the appellants on 24th April 1984 over the land in dispute was held invalid by the Supreme Court because there was already a subsisting statutory right of occupancy over the land which had not been revoked. A Governor has inherent powers to revoke a right of occupancy if granted in

³¹ *Ibrahim v Mohammed* [2003] 6 NWLR (pt 817), 615 at 663. See also: *Dantsoho v Mohammed* [2003] 6 NWLR (pt 817), 457 at 493-494.

³² *Ibid.*

³³ [2003] 11 NWLR (pt 830), 53 at 83-84.

error.³⁴ By the same token a Governor can cancel such a revocation on discovering that the revocation was made in error.³⁵

b) *Customary Right of Occupancy*

In *Dielu v Iwuno*³⁶ the Supreme Court held that by virtue of Section 6(1) of the LUA, 1978, a Local Government is empowered to grant a customary right of occupancy in respect of land not in an urban area for agricultural and other purposes. In *Awaogbo v Eze*,³⁷ the Supreme Court also held that Section 6, of the LUA, 1978 deals with the power of a Local Government in relation to land not in urban area. Section 6(3) makes it lawful for a Local Government to enter upon, use and occupy land within its area of jurisdiction for public purpose.

Grounds for Revocation of Right of Occupancy

The system of coercive public takeover of private land in Nigeria was before 1978, governed primarily by the Public Lands Acquisition Legislation³⁸ and the Land Tenure, Law, 1962.³⁹ The former applied to the south and the latter in the northern states; The operation of the Public Land Acquisition Legislation was based on the concept of acquisition of land for public purpose. The operation of the Land Tenure Law. On the other hand, was premised on the concept of revocation of rights of occupancy for

³⁴ *Ilona v Idakwo supra*.

³⁵ *Ilona v Idakwo supra*.

³⁶ 4 NWLR (pt 445) 622.

³⁷ 1995] 1 NWLR (pt 372) 393.

³⁸ See e.g Public Land Acquisition Act, Cap 167 Laws of the Federation and Lagos of 1958; Public Lands Acquisition, Cap-113 Laws of Lagos State, 1973. Public Lands Acquisition Cap 126 Laws of Bendel State, 1976.

³⁹ N.N. No. 25 of 1962

good cause.⁴⁰ The enactment of the LUA in 1978 has witnessed a change in these concepts.⁴¹

The LUA in fostering uniform Land Tenure System in the southern and northern parts of the country introduced the notion of the revocation of the rights of occupancy for overriding public interest applicable countrywide.⁴² Compulsory takeover of land by government is now through revocation of right of occupancy. It is important to note that revocation of rights-of occupancy under the LUA is not limited to public purpose. Rights over land can be revoked for breach of conditions of a grant.⁴³

The word "revocation" was not defined by the LUA, but it has the effect of extinguishing all rights of a holder of right of occupancy. The Governor of a state has power to revoke a right of occupancy.⁴⁴ Section 28(1) of the LUA provide thus: "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest".⁴⁵ Apart from "overriding public interest as a ground for a Governor's exercise of the power of revocation, a Governor may also revoke a statutory right of occupancy on the following grounds

- a) A breach of any of the provisions which a certificate of occupancy is by Section 10 of this LUA deemed to contain.

⁴⁰ Utuama A-A. "Compulsory Acquisition and Revocation Process" 1990-1993, Vol. 17, *Nig. J. Contemp-Law*, 28

⁴¹ See *Saude v Abdullahi* [98914 NWLR (pt 116) 387 pp. 416-417, see also Utuama A.A. *Op-cit*.

⁴² Utuama A.A. *Op-cit*.

⁴³ Land Use Act s 28(5).

⁴⁴ Land Use Act s 28(1).

⁴⁵ Land Use Act s 28 (2) and (3) explains what constitutes "overriding public interest).

- b) A breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of the LUA.
- c) A refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor under S.9 (3) of the LUA.⁴⁶

A Governor is also empowered under the LUA to revoke a right of occupancy in the event of the issue of a notice by or on behalf of the president, if such notice declares such land to be required by the Federal Government for public purposes.⁴⁷ The problem here is that the LUA did not state who should pay the compensation, leaving the holder of the right of occupancy in respect of such a land in a dilemma. It is important to note that where a Certificate of Occupancy is issued as a result of mistake or inadvertence on the part of the issuing official or concerned authority it cannot be said to be fake, false or fraudulent.⁴⁸ The apparent reason for this according to the Supreme Court is that there is no fraudulent intent.⁴⁹

Procedure for Revocation

The LUA⁵⁰ expressly laid down the procedure for a valid revocation and they include:

1. The revocation should be signified under the hand of a public officer duly authorized in that behalf by the Governor.⁵¹

⁴⁶ Land Use Act s 28(5). See also Oluyemi A.F. *Op-cit.*; *Rossette Manufacturing Nig Ltd v M/S Ola Ilemobola Ltd &Ors* [2007] 14NWLR109, at 157-158, *CSS Bookshop Ltd v RTMCRS* [2006] 11 NWLR 531 582-583

⁴⁷ Land Use Act s 28(4)

⁴⁸ *Yakubu v Jauroyel* [2014] 11 NWLR 205 at 223.

⁴⁹ *Ibid.*

⁵⁰ *Op-cit.*

2. Notice shall be issued stating the purpose of revocation that is either for public purpose or for breach of conditions of grant.⁵² Any revocation for purposes outside those prescribed can be declared void.⁵³
3. Notice shall be served on the holder.⁵⁴ As regards mode of serving the Notice, section 44 of the LUA⁵⁵ provides that:
 - a. by delivering it to the person on whom it is to be served or;
 - b. by leaving it at the usual or last known place of abode of that person; or
 - c. by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
 - d. in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office; or
 - e. If it is not practicable after reasonable inquiry to ascertain the name or address a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises (naming them) to which it relates and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

⁵¹ Land Use Act s 28(6) *Majiyglpe v A.G.* [1957] NRNLR 158.

⁵² *Obikoya & Sons Ltd v Governor of Lagos State* [1997] 1 NWLR (pt 50) 385.

⁵³ *Ereku v Military Governor of Mid-Western State* [1974] 10 S.C. 59. *Osho v Foreign Finance Corp.* [1991] 4 NWLR (pt 184) 147.

⁵⁴ Land Use Act s 28(6).

⁵⁵ *Op-cit.*

4. Notice must be proved to have come to the knowledge of the person concerned i.e. there must be proof of receipt of such Notice.⁵⁶
5. The holder's title only becomes extinguished on the receipt by him of the Notice or on such later date as will be stated in the Notice.⁵⁷
6. Where the revocation is for public purpose (as against penal revocation under Section 28(5) of the LUA, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements or under the Minerals Act or the Petroleum Act or any relevant legislation as the case may be.⁵⁸

Non-Compliance by Government

In spite of this laid down procedure; there are still cases of non-compliance on the part of government. Non-compliance can either be in the form of improper notice/ lack of notice or failure of public purpose.

a) *Improper notice/ lack of notice*

In *Osho v Foreign Finance*,⁵⁹ the Supreme Court held that the notice of revocation not having been duly served on the plaintiff was invalid. In *Nitel v Ogunbiyi*,⁶⁰ the Court of Appeal nullified a revocation notice that was not personally served on the property owner at the address known to the Government. The facts of the case were fairly straightforward.

⁵⁶ *A.G. Lagos State v Sowande* [1992] 8 NWLR (pt 261) 589 at 601-602.

⁵⁷ Land Use Act s 28(6) and (7).

⁵⁸ Land Use Act s 29(1) and (2).

⁵⁹ [1992] 1 NSCC 521 or [1991] 4 NWLR (pt.184) 157.

⁶⁰ [1992] 7 NWLR 543. see also *Oto & ors v Adojo & ors* [2003] 7 NWLR 636, *Gwar v Adole* [2003] 3 NWLR 516.

By a notice issued by the Kwara State Government, it purportedly acquired the respondent's large tract of land adjacent to the General Post Office for the purpose of construction of telephone exchange building for the Appellant. The respondent had four structures on the said land and at all material times resident in Lagos, a fact which the appellant conceded. The notice of compulsory acquisition was not served on the respondent in Lagos where he resided but was pasted on the building.

The respondent thereupon instituted an action challenging the validity of the said acquisition and averred that since the service of the notice was not personal, the revocation was invalid and acquisition illegal. The Court of Appeal upheld the respondent's claim that the right was not properly revoked as laid down in section 28 (6) LUA. Achike J.C.A., in the case held that the requirement of section 28 (6) is that a notice of revocation of a right of occupancy must be served personally on the holder and any such notice purporting to revoke the right of occupancy by any officer duly authorized by the Governor is ineffectual if it fails to comply with this requirement. Explaining the rationale for this, Achike J.C.A. stated that:

The purpose of giving notice of revocation is to duly inform the holder of a right of occupancy of the steps being taken to extinguish his said right of occupancy. It will be quite invidious to accept any substituted service as a proper service of notice of revocation when the residence and whereabouts of the holder are within the knowledge of the party serving the notice. This, will hardly accord with good sense or common sense. That will be erecting

an imminently dangerous precedent at the hands of mischief makers outside the contemplation of the combined effect of Section 28 (6) and (7) and 44.

In *Gwar v Adole*,⁶¹ no notice of revocation was served on the appellant and Mangaji J.C.A. delivering the judgment of the court held thus:

In my judgment notice of revocation of title and serving such notice to the person affected are twin requirements that have to be complied with strictly. I have gone through the record over and over but could find no evidence that the appellant's title over the land in dispute was duly revoked and the notice of revocation properly communicated to the appellant. All that, was to it was that appellant's land was simply converted to a layout, an act that was the wont of the Military Governments. No notice was ever prepared by a public officer duly authorized by the Military Governor in that behalf not to talk of serving same on the appellant. Given the above grave lapses, I am convinced beyond doubt that the issuance of the certificate of occupancy over the appellant's land by the Governor thus signifying title is invalid...That title was not revoked by the Governor, and his existing rights to the use and occupation of the land therefore remain extant.⁶²

⁶¹ [2003] 3 NWLR 516.

⁶² *Gwar v Adole supra* at 550-551.

Commenting further on the need for proper service, Nnaemeka-Agu J.S.C. in *Attorney General of Bendel State v Aideyan*⁶³ stated that:

It must be borne in mind that acquiring a person's property compulsorily is prima facie a breach of his entrenched fundamental right to his property. As his right to his property is therefore, his fundamental right, he is entitled to make representations against such a compulsory acquisition or claim compensation therefore, or appeal or petition against it. So, he is entitled to a protection of that right to his property by exercising his right to fair hearing. It is only by exercising it that justice can be assured in that matter, this clearly implies that he can correct or controvert any ground put forward for the acquisition or raise any irregularities in the acquisition procedure... As no one can defend the unknown, it is only by service of a true and proper notice in the manner prescribed by law that the expectations of the owner's entrenched constitutional rights in the matter could be guaranteed and satisfied.⁶⁴

b) *Failure of Purpose and Principle of Reversion*

One area of non-compliance as earlier stated is where there is a failure of purpose. Failure of purpose could arise in many ways. It could arise where part of the land was used for the public purpose for which it was acquired and the remnant

⁶³ [1989] 1 All N.L.R. 663.

⁶⁴ *Attorney General of Bendel State v Aideyan supra* at 685.

shared by the acquiring authority to private individuals.⁶⁵ The second is where private citizens are divested of their land under section 28 but the Governor later reallocated the land to private interest.⁶⁶ The question flowing from these scenarios is whether land should be allowed to revert to the original owner or the Governor should be allowed to hold onto the land -in trust until when the acquired land will be required for similar public purpose.⁶⁷ The LUA did not lay down the procedure to follow when there is a failure of purpose but the issue of failure of purpose has received judicial construction. In *Foreign Finance Corporation v Lagos State Development Property Corporation*,⁶⁸ it was decided that when Government acquired land for public purpose it must be used for that purpose only and when the public purpose for which a person's land is acquired fails the land reverts back to the original owner.⁶⁹ Also, if land is compulsorily acquired for a public purpose A for instance, it cannot be used for another public purpose. Usage for another public purpose has been interpreted to mean failure of purpose for which it has been held that such land ought to be returned to the original owner.

⁶⁵ Amokaye O.G. "The Land Use Act and Governor's Power to Revoke in Land: A Critique" in the Land Use Act-Twenty-five years After, Lagos, Department of Private and Property Law, Faculty of Law, University of Lagos, 2003, 261-262. one example was the Osborne Land in Lagos which was acquired for erection of electricity grid and power station but was later shared by the officials to construct private houses. See the Federal Government. White Paper on Federal Land and Buildings in Nigeria otherwise called "Brig-Oluwole Rotimi's Repot" submitted to the President- The report indicted many public functionaries and such land must be returned to the government.

⁶⁶ Amokaye O.G. *op-cit*.

⁶⁷ *Ibid*.

⁶⁸ 3. LRCN 894.

⁶⁹ *Obikoya & Sons Ltd v Govt. of Lagos State* (1987) 1 NWLR (pt 50), 385.

In Akinde & ors v The Federal Government of Nigeria &Ors,⁷⁰ the land in dispute was acquired for Federal Low Housing Scheme. The original Scheme was abandoned and another — a "Sight and Service"⁷¹ Scheme was introduced. It was held that since the land in question could no longer be used for the purpose for which it was acquired i.e. for Federal Government Low Cost Housing Scheme, the defendant ought to have returned same to the plaintiffs. It is also important to note that where land is acquired for public purpose and subsequently granted to a private company to execute a programme at a profit for the government it would still be considered as invalid. In *Ajibulu v Lawson &Ors*,⁷² the respondent's land was acquired by the Ogun State Government and later granted it to the 2nd appellant, a private company; it was held that the compulsory acquisition of the respondent's land only for the purpose of transferring it to the 2nd appellant (a Private Company) is invalid and not for a public purpose, notwithstanding that the 2nd appellant used the land in carrying out Economic, Industrial and Agricultural Development, same government activities.

Principle of Interpreting Expropriatory Statutes

The courts have enjoined strict adherence to formalities prescribed for the acquisition of proprietary rights.⁷³ Where there is a failure to comply, *Fortissime contra proferentes* principle of

⁷⁰ Unreported, Suit No. FHC/L/CS/629, 198 delivered on 4/7/2007 by Justice Oyindamola Olomojobi.

⁷¹ "Sight and Service" Scheme is the laying out of land into plots and provision of "Services" such as roads, drainages and electricity. It is also an indirect housing scheme by the government. The land laid out in plots are the "Sights" while the amenities are "Services", The "Sight", is sold to members of the public to build while "Services" are provided by the government. This kind of scheme is usually embarked upon to avoid the high cost of a Direct Scheme.

⁷² [1991] 6 N.W.L.R. (pt 195) 44.

⁷³ Oluyemi A.F. *op. cit.* p. 53.

interpretation is employed. In *Bello v Diocesan Synod of Lagos*,⁷⁴ the Supreme Court stated thus:

The Principle on which the courts have acted from time immemorial is to construe *Fortissime Contra Proferentes* any provision of the law which gives them extraordinary powers of compulsory acquisition of the properties of citizens... when an owner of property against whom an order has been made under the Act comes into this court and complains that there has been some irregularity in the proceedings that he is not liable to have his property taken away, it is right I think that his case should be entertained sympathetically and that statute under which he is being deprived of his rights to property should be construed strictly against the local authority and favourably towards the interest of the applicant...⁷⁵

The writer is encouraged by such principle of interpretation because the principle of interpretation is an effective tool to curb the excesses of government in their irregular procedures in acquiring private property.

Compensation

One issue which arises for consideration after a valid revocation of right of occupancy is the need to compensate the right holder. Compensation is payable under the LUA upon the revocation of a right of occupancy or public purpose or for the extraction of building materials by government only on unexhausted

⁷⁴ [1973] 3 S.C 103 at 130 see also *Ajibulu v Lawson & Ors supra* at 65-66.

⁷⁵ *Bello v Diocesan Synod of Lagos, supra* at 130.

improvement⁷⁶ and not for a bare land. Section 44 (1) of the Constitution⁷⁷ makes it mandatory for compensation to be paid to the holder of a revoked right. It provides thus:

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.

- (a) requires the prompt payment of compensation⁷⁸ therefore; and
- (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

The Constitutional provision above when read in conjunction with Section 29 of the LUA makes it mandatory for payment of compensation to the holder of the revoked right. The Supreme

⁷⁶ Land Use Act s 29 (1) "Unexhausted improvements" is defined as "anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long-lived crops or trees, fencing, wells, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing products" , see also Land Use Act s 51 (1).

⁷⁷ Constitution of the Federal Republic of Nigeria 1999.

⁷⁸ Underlining mine for emphasis.

Court also recognizes the right of a citizen to compensation. In *Osho v Foreign Finance & Anor*⁷⁹ it opined thus:

When a revocation of a right of occupancy is validly done under the Land Use Act, the citizen whose right of occupancy is so revoked is under Section 29 (1) of that Act entitled to compensation for the value of the land at the date of revocation of their exhausted improvements...In the instant appeal and having regard to the findings of the learned trial Judge on the existence of buildings and installations on the land in dispute, it is difficult to see how the appellants could have escaped liability to pay compensation for the structures put on the land by pleading revocation under the Land Use Act. The only difference is in the method of proof⁸⁰

It should be noted that payment of compensation is not a pre-requisite to valid revocation but only a fall out of it. Where the right of occupancy revoked is in respect of land required for mining purpose or oil pipelines or other purposes connected with the mining and oil pipeline, the occupier will be entitled to compensation under the appropriate legislation of the Mineral Act or Mineral Oil Act or any legislation replacing it.⁸¹

Non-Entitlement to Compensation

One worrisome aspect of the LUA is that where the right of occupancy is revoked for public purpose only the "holder" and "Occupier" that are entitled to compensation for the value at the

⁷⁹ [1991] 4 NWLR (pt.184) 157.

⁸⁰ *Osho v Foreign Finance & Anor supra* at 197-198 per Obaseki JSC.

⁸¹ . Land Use Act s 29(2).

date of the revocation of their unexhausted improvements on the land.⁸² The meaning of "holder" and "occupier" under the LUA does not include the mortgagee.⁸³ This may have the effect that though the mortgagee has the right to the improvements on the land, (which is the security for, his debt) yet on revocation, the mortgagee has no right to the compensation money.⁸⁴

It appears that there is no judicial pronouncement on the point in Nigeria. However, the issue arose in the Tanzanian case of *Manyara Estates Ltd & Ors v. National Development Credit Agency*,⁸⁵ where under the Land Ordinance⁸⁶ compensation for improvements on land upon a revocation of a right of occupancy was only payable to the "Occupier". The Court held that the mortgagee was not in the position of the "Occupier" and therefore was not entitled to receive the compensation, and that the charge created by the mortgage did not attach to the compensation into which the right of occupancy had been converted. The court also started further that the doctrine of tracing could not be applied in the circumstances because of the absence of any fiduciary relationship on the part of the paying authority to the mortgagee. The non-entitlement of compensation to a mortgagee under the LUA shows the precariousness of the right of occupancy as a mortgage security. Prof R.W James⁸⁷ has suggested a way out of such problem when he said that:

⁸² Land Use Act s 29 (1) and (2).

⁸³ Land Use Act s 51.

⁸⁴ Essien E. "Land Use Act and Security in Real Estate in Nigeria" in the Land Use Act — Twenty-Five Years after Lagos, Department of Private and Property Law; Faculty of Law, University of Lagos, 2003, 279-300.

⁸⁵ [1970] E.A. 177.

⁸⁶ Cap. 133 (of Tanzania).

⁸⁷ Nigerian Land Use Act: Policy and Principles, University of Ife Press Ltd, 1987, pp.177-179.

...It is necessary for legislation to state clearly that in the event of revocation of a right of occupancy the compensation payable in respect of unexhausted improvements or any alternative property granted to the right holder in lieu of compensation shall be applied towards the satisfaction of mortgage debts (if any), in order of priority. In the absence of legislation to this effect it would be prudent for conveyancers to include a covenant in the mortgage document to the following effect: In the event of the right of occupancy being revoked, the mortgage debt shall be secured additionally on any compensation payment due to the mortgagor in respect of the unexhausted improvement or any land granted to him, in lieu of compensation.⁸⁸

Adequacy of Compensation/Resettlement

Another important issue that should be examined is whether compensation/resettlement as provided under the LUA is adequate or not. Where a right of occupancy has been revoked for overriding public interest⁸⁹ and is not a revocation of the occupier's right for alienating without the Governor's consent compensation is payable to the holder of the right of occupancy.⁹⁰ The compensation payable in respect of the land is an amount equal to the rent paid by the occupier during the year the right of occupancy is revoked.⁹¹

⁸⁸ *Ibid* at 179.

⁸⁹ Overriding public interest means among other things the requirement of the land by the state or federal government or local government for public purposes, or the requirement of the land for mining purposes or oil pipelines. Land Use Act s 28 (2).

⁹⁰ Land Use Act s 29 (1).

⁹¹ Land Use Act s29 (4) (a).

This means that if a person paid no rent he is not entitled to compensation but his piece of land is taken away compulsorily' by the government.⁹²The implication of this provision is that compensation cannot also be paid for bare land. This is unfair and inadequate. If the Constitution⁹³ provides for compensation both movable and immovable property, and bare land is an immovable property, then compensation should be paid for its acquisition. In relation to buildings, installations and improvements on the land, the amount of compensation payable is the cost of replacement as determined on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation together with interest at the bank rate for delayed compensation.⁹⁴This will only be adequate if the officer that determined the cost of replacement adopts the current market value of such property.

In relation to crops on land, the compensation payable is an amount equal to the value as prescribed and determined by the appropriate officer⁹⁵ This also is not adequate, it is suggested that an alternative land should be provided in addition to payment of the crops. This may be important in encouraging agriculture. Generally, it is, suggested that, compensation should be paid for loss of use of the right of occupancy and for "disturbance"⁹⁶ for all the instances of S. 29 (4) of the LUA. On the issue of resettlement of displaced persons, where land in respect of which a customary right of occupancy is. revoked was used for agricultural purposes

⁹² Ikpe F. "Discussions: Land Value and the Question of compensation" in National Workshop on the Land Use Act, 1978, Lagos University Press Akoka, ed. Omotola J.A. 47.

⁹³ Constitution of the Federal Republic of Nigeria 1999 s 44.

⁹⁴ Land Use Act s 29 (4)(b).

⁹⁵ Land Use Act s 29 (4) (c).

⁹⁶ This word is used to describe the inconveniences suffered by the holder or occupier for loss of right of occupancy.

by the holder, he is entitled to an alternative land for the same purpose.⁹⁷ This is fair enough or else many farmers will be displaced and sent out of job where they are not provided with any other alternative and this can lead to social upheaval.⁹⁸ Furthermore, where the right of occupancy of any developed land, on which a residential building is erected is evoked the governor or the local government may in lieu Of compensation resettle the owner in any other place or area by way of a reasonable alternative accommodation.⁹⁹ While it is agreed that alternative accommodation may prevent homelessness, this is not adequate because where the value of the land for resettlement is less than the acquired land, no reimbursement to the displaced person, i.e. the LUA is silent on cases where the value of the land for resettlement is less than the acquired land. On the other hand, where the land for resettlement is of higher value, the displaced person is required to pay the "excess value" as a loan.¹⁰⁰

One worrisome aspect of the LUA is the exclusion of the courts in the determination of the adequacy or otherwise of the compensation payable¹⁰¹. Any dispute between the "occupier" or "holder" and the government regarding the amount of compensation payable is to be finally determined by The Land Use Act and Allocation Committee.¹⁰² Commendably enough, the courts have extricated itself from this provision and have

⁹⁷ Land Use Act s 6 (6).

⁹⁸ See Adigun O. "The Land Use Act and the Principles of Equity" in National Workshop on the Land Use Act 1978, Lagos University Press Akoka, ed. Omotola J.A, 64 at 70.

⁹⁹ Land Use Act s 33 (1).

¹⁰⁰ Land Use Act s 33 (2).

¹⁰¹ Land Use Act s 47(2) ;see also Amokaye O.G. *op.cit* 266.

¹⁰² Land Use Act ss 30 and 47.

consistently held, that the ouster clause in section 47 is so far as it conflicts with the provisions of the constitution is void.¹⁰³

Conclusion

This paper examined the extent of government's compliance to procedure for the acquisition of private property. Government has the constitutional right to compulsorily acquire property on payment of compensation. At the same time, there are statutes which provide for the procedure of acquiring property by the government. Sometimes, government does not comply with the laid down procedure. The practice of acquiring "juicy" land for private economic interest by most Governors runs contrary to the spirit and intendment of the LUA.¹⁰⁴

This practice has been judicially deprecated by our courts. As stated by Nnaemeka-Agu JSC "our law reports are replete with cases in which some of such compulsory acquisitions" for public purposes" turned out to be mere bogus smokescreens for malefaction.¹⁰⁵ Where there is non-compliance with procedure, Tobi JSC in *Provost, Lagos State College of Education & Ors v Edun*¹⁰⁶ was of the view that 'it is the duty of the courts to intervene against the government and in favour of the private

¹⁰³ *Kanada v Governor of Kaduna State & Anor.* [1986] 4 NWLR (pt 38) 361, *Letnboye v Ogunsiji* [1990] 6 NWLR (pt 155) 210.

¹⁰⁴ Amokaye O.G. *op-cit.*

¹⁰⁵ Per Nnaemeka-Agu, in *A.G. Bendel v Aideyan* [1988] 2 All N.L.R. 663 at 685: See also *Chief Commissioner, Eastern Provinces v. Ononye* [1944] 17 N.L.R. 142. *Ereku v Military Governor of Mid- Western Nigeria supra*, *Olatunji v Military Governor of Oyo State* [1995] 5 N. W.L.R (Pt 97), 587 *Ajibulu v Lawson supra*, *Ajao & Anor v sole Administrator for Ibadan City Council (1971) 1 N.M.L.R 74.*

¹⁰⁶ *Supra* at 510.

citizen'. A more difficult problem here is: what happens where government "tramples upon" and disobeys court orders? While the writer is encouraged by the judicial activism observed, more of it is recommended. Government also have a duty not only to follow laid down procedure but also to obey court orders.