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**Impact of the Land Use Act on Land Tenural System in
Nigeria**

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Abstract

Purpose: Before the advent of the Land Use Act in 1978, individuals, families and communities owned land absolutely according to customary law. Thus, the family or community was free to give out their land to deserving members of the family or community or even to outsiders as the case may be. Where an individual was the absolute owner of the land, he was free to deal with it in any manner he liked. Therefore, the individual, family or community exercised all incidents of ownership without restrictions. All these were altered when the Land Use Act was promulgated. The extent to which this Act affected the existing land tenural system in Nigeria is discussed in this article. This article critically analyses the land tenure system under both conventional land law and customary land tenure in Nigeria.

Methodology: Applying doctrinal research methodology, it uses some available resources in some Nigerian libraries, both online and offline.

Findings: This study concluded that the provisions of the Land Use Act have severe consequences on land tenural system in Nigeria.

Recommendations: In view of the challenges highlighted in the Act, this article recommends among other things that the State Governors need to improve and quicken the process of issuing certificates of occupancy and payment of adequate compensation after revocation of title to land to forestall unnecessary litigation and that there should be a land reform that recognizes the rights of individuals or communities to land either freehold (indefinite absolutely) or for a relatively long-term duration. This will ensure a genuine free market economy.

Keywords: *Land tenure, land law, communal land, family land, governor's consent.*

INTRODUCTION

The consequences of population pressure, urbanization and socio – economic growth have great social and economic impact on land issues in Nigeria. Modernization saw people moving from rural areas into urban centers where modern facilities are available. Population pressure in cities made residential accommodation in particular, a problem in those centers. The highly over-populated urban areas are in need of expansion but land where this expansion is to be made is scarce.¹ The growth of Nigerian economy due mainly to the discovery of oil which made large number of people rich enough to build better houses and maintain large farms contributed to high demand for land in urban centers. Heavy and large industries were established and thus, bringing about more demand for land and increase in rural – urban migration.²

For government as well, land became so expensive and acquiring land for public purposes became very difficult and sometimes even impossible because of the cost of compensation.³ Also the guaranteed f a piece of land by law to everyone was a problem.⁴ Thus, it was felt that government should do something about land distribution in Nigeria. These problems led to the promulgation of the Land Use Decree⁵ which came into force on 29 March, 1978. The Land Use Act is an existing law in terms of the 1999 Constitution of the Federal Republic of Nigeria.⁶ The implication is that changes in it are only possible in accordance with the stringent rovisions of the Constitution relating to amendment. The basic philosophy of the Act is captured in its preamble, which provides:

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.

When the Act was promulgated into law on 29 March, 1978, it received mixed reactions from people. While some individuals and trade union leaders favoured it, many others particularly traditional rulers from the southern part of the country criticised it as depriving them of their tradition and property.⁷ They described it 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”.⁸

However, with the Act being in operation for almost four decades now, many people have come to the realization that the Act has caused a lot of problems and created a great complexity in land

¹ Yakubu, M.G., *Notes on the Land Use Act* (Zaria: Abu Press Ltd, 1986) 9 Quoted in Adewale Taiwo *The Nigerian Land Law* (Lagos: Princeton & Associates Pub. Co. Ltd, 2016) 218

² Ibid

³ Ibid

⁴ Ibid

⁵ The decree assumed the appellation of an Act in 1980 through the Adaptation of Laws, (Re-designation of Decrees, etc) Order, 1980. See Particularly Sections 1& 13 of the Adaptation of Laws (Re-designation of Decree, etc) Order, 1980

⁶ See S. 315 (5) of the 1999 Constitution of the Federal Republic of Nigeria

⁷ Yakubu n.1

⁸ Ibid

transactions in the country. There have been calls from different angles in the country in recent times, calling for either the amendment of the Act or its total abrogation as it has worked a lot of injustice to the people and has really paralyzed the mortgage industry.⁹ This article examines the effects of the Act on land tenural system in Nigeria.

Conceptual Clarifications

It is necessary to clarify some of the concepts used in this article.

Land tenure:

Land tenure is the system of landholding in a given society. In Nigeria, before the promulgation of the Land Use Act, the system of land holding was the customary land tenure system. That is land holdings according to customary law which includes Islamic law.

Customary law:

Customary law has been defined as the “custom and usages traditionally observed among the indigenous African peoples and which form part of the culture of those peoples.”¹⁰ It is the law that was handed down from time immemorial from ancestors and as such, represents a collection of precedents and decisions of the by-gone chiefs.¹¹ Customary law entails the customs and usages traditionally observed among the indigenous people that formed part of their culture and religions.¹² It has been described as a “mirror of accepted usage”¹³ and common law of Nigerian people.¹⁴ According to Bronstein, “Culture is the critical part of the lived reality of people lives. It gives meaning to all our lives and is fundamental to our identities.”¹⁵

Thus, culture and customs are valuable and important parts of people’s lives.¹⁶ In this regard, Allott submits that custom is the “raw materials out of which customary norm is manufactured.”¹⁷ Customary law in the Nigerian context embraces both native law in southern Nigeria and Sharia law operating in Northern Nigeria.¹⁸ Nigerian customary law as a body of rules accepted by her different people as binding on them has evolved a land tenure system which has been affected to a great extent by the Land Use Act.

⁹ Adewale Taiwo N.I

¹⁰ See Mqake, R.B., *Customary Law and the New Millennium* (Alice: Lovedale Press, 2003)3

¹¹ Ibid

¹² See Juna, I. “from ‘Repugnancy’ Bill of Rights: African Customary Law and Human Rights in Lesotho and South Africa” 2007 (1) *Speculum Juris* 88-112 see also *Hlope v Mahlalela* 1998 (1) SA 449 (T) 457, where Van Der Heerver AJ O bserve that not “all cultural practices are indigenous law and vice versa”

¹³ *Owoniyi v Omotoso* (1961) All NLR 304 at 309. See also *Zaidan v Mohseen* (1973) 11 S.C. 1, 21

¹⁴ See *Ex-Parte Ekepenga* F.C.S 204/1961 of 30/4/1962 (Unreported).

¹⁵ See Bronstien, V. “Re-conceptualising the Customary Law Debate in South Africa” (1998) 14 SAJHR 388-410, 393

¹⁶ See Robinson, K.L., “The minority and subordinate Status of African Women Under Customary Law” (1995) 11 SAJ HR 457, 469

¹⁷ See Allot, “The People as Law makers Custom, practice and Public Opinion as Source of Law and Africa and England” (1977) *Journal Of African Law*. 1, 5

¹⁸ Taiwo, E. A. “Justification, Challenges and Constitutionality of the Penal Aspects of Shariah Law in Nigeria” (2008) 17 (1) *Griffith Law Review* 183 at 187-188.

Ownership:

There is a contention as to whether or not the concept of ownership is known to African customary law. One view is that the concept of ownership is unknown to customary ideas.¹⁹ The other view contends that the concept of ownership has been part of Nigerian customary law and the concepts not strange to customary law, though the term has always been used in a loose sense.²⁰ Sometimes, the term has been used to denote “absolute ownership” while at times, it is used to refer to “rights of ownership.”²¹ However, the term signifies the largest claim to land under customary law and it is, therefore, a recognized concept of customary law.

Units of Land Holding

Under Nigerian customary law, the units of land holding are (i) community; (ii) the family; and (iii) the individual. These are examined below.

Community land holdings or community ownership of land

Community land holding is a remarkable principle of customary land law. Community land or communal land is land vested in the community as a corporate whole and in which no individual member of the community could claim exclusive ownership of any portion of such land. In the *locus classicus* case of *Amodu Tijani v. Secretary Southern Nigeria*,²² the court held that land belongs to the community, village or the family, and never to the individual. And in *Eze v. Igiliege & Zors*,²³ the court held that land belongs to the community as a whole and that the onus was on the defendant to establish that his section had title to the exclusion of the community as a whole.²⁴ Similarly, in *Stephen Onowhosa v. Peter Ikede Odiuzou*,²⁵ Iguh, J.S.C stated as follows:

The law is well settled that where a plaintiff leads evidence that a land in dispute is communal property, the onus is on the defendant to establish that the land belongs to him exclusively. See *Udeakpu Eze V. Igiliege* (1952) 14 WACA, 61; *Atuanya V. Onyejekwe* (1975) 3SC 161 at 167. This onus, the defendants were unable to discharge in this case. I think both courts below are right in holding that the land in dispute is in the communal ownership of both appellant and the respondents.

The above cases show that individual ownership is subsumed under communal and family ownership.²⁶

A community land or communal ownership may arise from the initiatives or decisions of the founders of the land. The founders of the land or its original settlers may decide to designate the land to the entire community and if this is the case, the particular land remains a communal land.²⁷

¹⁹ See Coker, G.A.B., *Family Property Among the Yoruba* 2nd ed. (1962) 33, 33

²⁰ See Nwabueze, B.O., *Nigerian Land Law* (Nwamife Pub. Ltd, 1972) 28. See also *Onwoamanum v Fatunde* (1986) 2 NWLR (pt 21) 199

²¹ Ibid

²² (1921) 2 A.C. 399 at 404

²³ (1952) 14 W.A.C.A. 561

²⁴ It follows that the General principle of law states in *Amodu Tijani*'s case raises a rebuttable presumption, the general principle is that land belongs to the community or family, any one asserting the contrary must prove it

²⁵ (1999) 1 NWLR (Pt 586) 173 at 190

²⁶ Fekumo, F.J. *Principle Of Nigerian Customary Law* (Port Harcourt: F & F Publications, 2002) 92

²⁷ See *Mora & ors v Nwalusi & ors* (1962) 1 All NLR 681

The term “community” is a political and social concept, and as such, a community cannot act on its own. It can only act through some human agents such as a headman, chief or traditional ruler of the community who exercises the power of control and management of communal land on behalf of the community. Such a communal head may exercise his power of control and management in consultation with other senior chiefs or elders of the community.

The principle of corporate management of communal land was stated by Lord Haldane in *Amodu Tijani v Secretary of Southern Nigeria*²⁸ in the following words:

In every case the chief or the headman of the village or community has charge of the land and in loose mode of speech, is sometimes referred to as the owner. He is to some extent in the position of a trustee and as such, holds the land for the benefit of the community.²⁹

Although, the headman of the community in the exercise of his powers is sometimes described as a trustee, but strictly speaking, he is not a trustee in the English sense of the word. Unlike the trustee in the conventional sense, the title to the communal land is not vested in him, the title is vested in the community as a corporate entity. Also, in the customary sense, the institution of command land lacks the division into legal and equitable ownership which are the fundamental principles of trust property. To strict legal terms, the application of trusteeship analogy to the head of community is inaccurate.³⁰ Notwithstanding this contention, courts have continued to describe the chief or headman of the community as a trustee of the communal land.³¹ Fekumo³² argued that though from the legal perspective, it might be incorrect to refer to the head of the community as a “trustee” or “an owner”, there could be no objection in referring to him as a trust owner and his ownership as “trust ownership”.

The important thing is not whether the headman or chief of the community is an owner, agent, manager or trustee of the community land. The important thing is that prior to the promulgation of the Land Use Act, communities land holding was absolute and that the Land Use Act has eroded or affected this unit of land holding.

Family land:

The word family in the Nigerian context has both a restricted and extended meaning. The restricted meaning was adopted by Uwaifo, J.S.C in *Efunwape Okulate v. Gbadamosi Awosanya*³³ as follows:

The body of persons who live in one house or under one head, including parents, children, servants.... The group consisting of parents and their children, whether living together or not, in wider sense all those who are nearly connected by blood or affinity... Those descendants claiming descent from a common ancestor; a house; kindred lineage.

²⁸ n 22

²⁹ Ibid at p.404

³⁰ See *Ututama, A.A., Nigerian Law of Real Property* (Ibadan: Shanesson C.I. Ltd, 1989) 7 See also *Alli v chief Ikusebial a* (1985) 1 NWLR (pt 4) 630

³¹ See *Christopher Ejiamike v Lucy Chibogu Ejiamike* (1972) 2 E.C.S.L.R. (Part 1), 18 per Oputa, J (as he then was)

³² n. 26

³³ (2000) 2 NWLR (pt 646), 530 at p 542

Thus, in *Ayiratu Iyabo Ogundairo v. Madam Amiratu Abeje*³⁴ the trial Judge held that “family property” is property which devolves from father to children and grandchildren under native law and custom. In the case of *Mrs. Stella D. Iwarimie Jaja v. Clarkson M. Iwarimie*³⁵ Inko Tariah, J., held that under Opobo native law and custom, the family includes the deceased parents, brothers, sisters, children, wife and close elders. This is the extended meaning of the word “family”. This meaning depends on the particular custom in operation.

Woodman³⁶ defines family as:

A group of persons lineally descended from a common ancestor exclusively through males (in communities called patrilineal for the reason) or exclusively through females starting from the mother of such ancestors (in communities called matrilineal for this reason) and which group succession to office and property is based on this relationship.

In *Coker v Coker*³⁷ Carey, J., stated that it is well established that the primary meaning of the term “family” refers to the children. The term “family” in relation to a family property means a group of persons who are entitled to succeed to the property of a deceased founder of a family. Such persons are usually the children of the deceased founder of the family.³⁸ Generally speaking, the word “Children” refers to both sexes of the offspring, but in some societies, female children have been held not entitled to inherit the property of their late father.³⁹ As a general rule, under customary rules of inheritance, a widow is not a member of the family and, therefore, has no right to inherit the property of the late husband.⁴⁰

In the strict sense of it, the brothers, sisters, cousins or uncles of the deceased founder of a family do not come within the meaning of the term “members of the family”. However, the deceased may by his declaration, for example, in a will, enlarge the family to include such relatives.⁴¹ Thus, one can say, therefore, that the term “family” connotes a group of persons bound by blood who are entitled to inherit jointly, the property of a deceased founder of a family, either in accordance with customary rules of succession or under a will which creates a family property.

Family land is land vested on the family as a corporate entity. No individual member can make separate claim to family land. It is only the family that can transfer its title to any person.⁴² The consent of majority of principal members of the family are required for the alienation of family land.⁴³ It must be stressed that while under customary law, the family through its principal members have absolute control of family land and can therefore alienate it without reference to any other authority, all this was drastically changed by the Land Use Act.

³⁴ (1967) L.L.R.9

³⁵ (1974) 2 RSLR 89 at p.91

³⁶ Woodman, GR Customary Land Law of the Ghanaian (Accra: Ghana University Press, 1996) 218

³⁷ (1938) 13 NLR 83 at 85

³⁸ *Lopez v Lopez* (1924) 5 NLR 50

³⁹ Ibid. Such barbaric customs have come under heavy castigation. See *Muojekwu v Ejikeme* (2000) 5 NWLR (pt. 657) 402 at 436-437 per Tobi JCA (As he then was)

⁴⁰ *Suberu v Sunmonu* (1957) 2 FSC 33 but see the current trend in *Muojekwu v Ejikeme*

⁴¹ See *Sogbesan v Adebiji* (1941) 16 NLR 261

⁴² See *Solomon & ors v Mogaji* (1982)11 SC 1 where a purported transfer of family land by a member of the family was declared and of no effect.

⁴³ See *Akanyede v Akanyede* (2009) 11 NWLR (pt 1152) 217 at 249

Individual landholding:

In the olden days, individual ownership of land was rare.⁴⁴ Nevertheless, there was still in existence, individual landholding. That was why the view expressed by Lord Viscount Haldane in *Amodu Tijani v Secretary of Southern Nigeria*⁴⁵ that land belongs to the community, the village or the family, never to the individual; that the notion of individual ownership of native land was foreign to native ideas was seriously criticized.

Land was originally owned by individuals, and the concept of communal or family ownership of land was a later development.⁴⁶ Thus, in *Aganran v Olushi*⁴⁷ it was held that where a family sold its family land to a member or stranger, the purchaser becomes an absolute owner thereof. Also in *Jegede v Eyinogu*⁴⁸ it was held that a donee of land becomes an absolute owner of the land that is donated to him. However, modernisation, urbanisation, and the force of social and economic activities since independence, have brought individual ownership of land in Nigeria into greater prominence than before.⁴⁹ In *Arase v Arase*⁵⁰ the supreme court, per Idigbe, JSC observed as follows;

It is now settled by decided cases that basically all land in Benin is owned by the community for whom the Oba of Benin holds the same in trust, and it is the Oba of Benin who can transfer to any individual the ownership of such land.

What is important from the above cases is that once an individual acquires title to land such individual becomes absolute owner and all the incidents of ownership inure to him. The land begins with him and ends with him. Unless he transfers his ownership over the land to a third party, he remains the absolute owner. Again, it is important to stress that this essential right of the individual land owner, just as that of the community and family landholding was adversely affected by the promulgation of the Land Use Act.

Having examined the units of landholding in Nigeria before the introduction of the Land Use Act, it is now appropriate to discuss the extent to which the Act has affected the units of land holding.

THE LAND USE ACT AND UNITS OF LANDHOLDING

According to Taiwo, the Land Use Act creates a tripartite system of land holding in Nigeria, namely, state, federal and private/individual land holding system.⁵¹ However, upon a careful consideration of sections 5,6,34 and 36 of the Act, the following four units of land holding were created:

Statutory right of occupancy expressly granted by the governor⁵²

⁴⁴ Nwabueze, B.O. Nigerian Land Law (Nwamife Publishers Ltd, 1972), 35 n.20

⁴⁵ N.22

⁴⁶ See *Oragbaide v Onitioju (1962) 1 All NLR 32; chukwueke v Nwankwo (1985) 2 NWLR (pt6) 195*

⁴⁷ (1907) 1 NLR 60

⁴⁸ (1959) 4 FSC270

⁴⁹ See *Otogbolu v Okeluwa (1981) 6-7 S.C 99*

⁵⁰ (1981) 5 S.C 33

⁵¹ No 1 see also Section 1, 6 and 49 of the Land Use Act

⁵² Ibid S.5 (a)

Customary right of occupancy expressly granted by the local government.⁵³

Statutory right of occupancy deemed granted by the governor.⁵⁴

Customary right of occupancy deemed granted by the local government.⁵⁵

The Supreme Court has recently remarked on the laws governing ownership of land before the advent of the Land Use Act, that land in the southern part of Nigeria were governed by the customary law of the people as opposed to the land tenure law of the north before the advent of the Land Use Act.⁵⁶ The implication is that in the southern part of Nigeria where ownership of land was governed by customary law, the units of land holding were basically three as stated before namely communal, family and individual. Under customary law, the state, local government and federal government had no title to land. Therefore, by making these entities as having interest in land, the Act has seriously impacted on customary land tenure system in Nigeria.

The Effect of Section 1 of the Act

Section 1 of the Act provides as follows:

Subject to the provisions of this Act, all land comprised in the territory of each state in the federation are hereby *vested* in the governor of that state and such land shall be held in *trust* and administered for the use and benefit of *all Nigerians* in accordance with the provisions of this Act.⁵⁷

The Act by legislative fiat transferred all land in the territory of a state to the Governor of the state. Although the courts have consistently maintained that the use of the word “vested” did not confer ownership of the land on the Governor as a beneficial owner,⁵⁸ the radical title to land no longer resided with the original land owners; but with the Governor. In other words, the landowner is forced by the Act to share his ownership with the Governor. To “vest” generally means to give someone the official legal right to use property.⁵⁹ The person “vested” with authority is to exercise absolute powers.⁶⁰ Thus, when property vests in someone, it belongs to him legally or officially and he is to exercise absolute authority over the property. It follows, therefore, that the Governor of the state is the legal or official owner of the land. Ogundare J. was of this view when he said:

In my humble view..... the use of the word “vested” in section 1 of the Land Use Act, 1978 has the effect of transferring to the Governor of a state the ownership of the land in the state.... I am of the view and I so hold that the intelligible result is to deprive citizens of this country their ownership in land and vesting same in the respective state governors.

The above view enjoyed the tacit support of Eso, JSC in *Nkwocha v. Governor of Anambra State*.⁶¹

⁵³ Ibid S.6 (a)

⁵⁴ Ibid S. 34(2)

⁵⁵ Ibid S. 36(2)

⁵⁶ *Orianzi v A.g. Rivers state & ors* (2017) 6 NWLR (pt 1561) 224 at 267

⁵⁷ Emphasis Supplied

⁵⁸ See *Savanna Bank Of Nigeria Ltd v Ammed O. Ajilo* (1981) 1 NWLR (pt97) 305, at 362-353 per Belgore J.S.C.

⁵⁹ Hornby, S.A. Oxford Advanced Learners Dictionary

⁶⁰ Chambers 21st Century Dictionary, 2007

⁶¹ (1984) 6 S.C. 362 at 363

Even Irikefe, JSC observed that the Act has profound effect on the land tenural system in Nigeria⁶² Thus, the use of the word “vested” has created a problem of interpretation. One way of avoiding it is to define the word “vested” as used in the section by stating that it does not mean or intend to mean absolute transfer of land. Alternatively, the word should be deleted from the section.

Another problem introduced by the section 1 is the use of the concept “trust.” The use of the words “held in trust” in this section has raised the question whether the State Governor is a trustee within the meaning of that term under the received English law with the attendant rights and obligations as between the trustee and the *cestui qui trust*. Commenting on the provisions of section 1 of the Act in the *Nkwocha* case, Irekefe, JSC said⁶³

... By this piece of legislation a legal trust affecting every inch of Nigerian land is created, consisting every State Military Governor as trustee in respect of land within the limit of his state for the benefit of Nigerians.

In attempting to explain the true nature of the trust, Nnamani, JSC opined⁶⁴

...it is necessary to comment on the trust created by the said section 1 of the Act. i.e. that the Military Governor is to hold the land in the state for the benefit of all Nigerians This, I agree, means that all Nigerians, irrespective of their state of origin can apply for and hold statutory right of occupancy in respect of land in a state.

All the above extracts agreed with the lead Judgement of Kayode Eso, JSC where he said:⁶⁵

I am clear in my mind that “all Nigerians” herein can only mean all Nigerians. It would not matter the state of origin of that Nigerian. Once he is a Nigerian, that Military Governor held the land in trust and for his benefit.

While all the opinions emphasized that the Governor holds the land in trust for all Nigerians, the nature of the trust created was not clear. It was Balogun J in *Adewunmi v Ogunbowale*⁶⁶ who stated that the term “trust” is used in a loose sense as follows:

The concept of trusteeship is used in section 1 of the Land Use Act, as enacted, in a loose sense. It is not intended to confer upon every citizen of Nigeria the benefit which beneficiary has against the trustee under the common law. No Nigerian citizen can under the section as enacted claim against the Military Governor an account for any benefits accruing from land held by him under the Act in trust and administered by him for the common benefits of all Nigerians.

The problem created by the use of the word “trust” in section 1 attracted opinions from commentators. Fekumo⁶⁷ was of the view that the “legal” trust” created under section 1 is simply “trust ownership”. And in a strained interpretation, Karibi – Whyte JSC in *Abioye v. Yakubu*⁶⁸ noted:

It seems to me that the purport of section 1 is to translate the concept of family or community

⁶² ibid

⁶³ ibid

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ (unreported) Suit No. ID/115/81 of 28/5/82- High Court, Ikeja

⁶⁷ Fekumo, J. F. n. 26, p 410

⁶⁸ (1991) 5 NWLR (pt 190) 6 NWLR (pt 15) 210;

holding of land to the estate by vesting all land in the Military Governor..... the fact that the Military Governor for this purpose has responsibility to the beneficiary is not usually discussed..... the land so vested “shall be held in trust for the use and common benefit of all Nigerians in accordance with the provisions of this Act”. The erstwhile owners cannot be said to have been denied more than the statute has stated.

Although what could be deduced from the above passage is that the vesting of the radical title on the Governor under the Act has not totally obliterated the character of land ownership or holding in a family or community,⁶⁹ it had profound effect on such land holding. Translating or transforming family or community holding of land to state holding itself has consequences. The original land owner has become a tenant on his own land. Also, Nigerians who do not own any piece of land have become beneficial owners of land. The land of an individual, family or community has become the common patrimony of every Nigerian. No matter under what interpretation the courts had given to the section, the fact remains that it has significantly affected customary law land holding in Nigeria.

To say the least, the provisions of section 1 of the Act has altered the existing land laws, particularly in the southern part of the country in some fundamental ways, namely:

It technically removed families and communities from trusteeship of land and replaced them with the State Governors.

Individual interests in land are now one of occupancy and therefore fall short of freehold.

The individual, family or community is now a tenant of his/its own land while the Governor is the landlord.

Making the Governor a special “trustee” who is not accountable to the beneficiaries of the trust property.

The problem of interpretation might be avoided by defining “trust” as used in the section. Alternatively, the word should be omitted from the section to read thus:

Subject to the provisions of the Act, all land comprised in the territory of each state of the federation shall be administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

Effect of Sections 2 and 3

Section 2(1) of the Act provides:

As from the commencement of this Act, (a) all land in urban areas shall be under the control 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 part.

To ensure an effective control and management, the land vested in the Governor is zoned by section 3 of the Act into urban and non-urban lands. Apart from vesting all land in the State, the Act in section 2(1) (a) (b) also distinguishes between two types of land – urban and non – urban

⁶⁹ *Ojob v ogboni* (1996) 6 NWLR (pt 454) 273, at 292-293

or rural land.⁷⁰ Section 3 makes provision for designation of parts of an area or territory of a state as urban area. The section does not stipulate conditions for such designation.

Where an area has been designated urban area, government programs aimed at developing rural areas will be denied such areas, whereas in fact and in truth they are rural in nature.⁷¹ Some rural areas are regarded by the people as sacred and venerated. Other areas, because of their pristine nature are reserved. With the powers of designation vested in the Governors, such areas may be designated urban areas thereby desecrating the cultural values of the people. F.K.Von Savigny⁷² says Law reflects the cultural outlook of the people. The Land Use Act was just imposed on the people by the military dictatorship without their consultation and the “nationalization” of land by government is inconsistent with the people’s cultural values, democratic principles and the operation of a free market economic system.

Effect of Section 5 and 6

Section 5(1) of the Act empowers the Governor to grant statutory Right of Occupancy to any person for all purposes while section 6(1) empowers the local government to grant customary right of occupancy to any person or organization for agricultural, residential and other purposes.

Subsection 2 of section 6 further provides as follows:

No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor. The implication of sections 5(1) and 6(1) is that individual interests in land were removed and replaced with one of occupancy and therefore fall short of freehold. The individual, family or community is now a tenant of his/its own land while the Governor or Local Government is the landlord.

With regard to the provisions of section 6(2) reproduced above, it is pertinent to state that the people of the southern part of Nigeria generally are not inclined to grazing business or cattle rearing. They are predominantly traders and farmers. It follows that a law which limits the grant of customary right of occupancy in respect of an area of land to 500 hectares for agricultural purposes is an affront to the people. Furthermore, section 6(1) specifies the purposes for which the customary right of occupancy is granted. It is granted for agricultural, residential or “other purposes”. By the rules of statutory interpretation, the “other purposes” must be strictly construed in line with agricultural and residential purposes. Grant of customary right of occupancy for industrial purposes, social welfare, health, education etc. purposes are clearly excluded. If the legislature intended these purposes to be included, the provision would have been worded appropriately.

⁷⁰ *Salati v Shehu* (1986) 1 NWLR (pt15) 210; *Yahaya Yari v Ahmed Shehu Ibrahim* (2002) 5 NWLR (pt76) 587 at 617; *C hinda V Amadi* (2002) 11 WRN 72 where the Court of Appeal states how the classification of land as urban or rural should be determined

⁷¹ Oba Abdul-Hamid and Adebayo Adelodun “Public Governance: Examining State Land policy within the context of the Land Use Act in Nigeria” *Uniport Journal of Public law*

⁷² Savigny V.K.F., “System of Modern Roman Law” *Lloyds Introduction to Jurisprudence* 7th Ed. (London Sweet and Maxwell Ltd 2001), 921 See also Dias M.W.R, *Jurisprudence* 5th Ed. India: Lexis Nexis, 2013), 378

Again section 5(2) of the Act provides:

Upon the grant of a statutory right of occupancy under the provisions of 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.*⁷³

It appears from the foregoing provision that the Governor may with a mere issuance of a piece of paper, divest families of their homes and agricultural lands overnight with a holder of certificate of occupancy driving them out with bulldozers and cranes.⁷⁴ This also applies to customary tenants and licensees who though having possession of land are not the absolute owners thereof. The grant of certificate of occupancy of this class of persons should not operate to extinguish the interest of their over lords. The problem envisaged in section 5(2) came for consideration in the very recent case of *Napoleon S. Arianziv v. A.G. Rivers State & ors.*⁷⁵ The Supreme Court in this case stated that there cannot be two rights of occupancy subsisting in respect of same land. The apex court held that where there is a subsisting right of occupancy, it is good against any other right. Therefore, to grant the right of occupancy over the piece of land will be merely illusory and invalid. The court held:

As long as the previous or earlier title or right of occupancy in or over a piece of land subsists, no other rival or competing title or right of occupancy can simultaneously exist in or over the same piece of land. Two rights of occupancy cannot subsist in respect of the same property or else there will be anarchy.⁷⁶ It is argued that the provisions of section 5(2) breeds confusion and should be expunged from the Act without defeating the intents and spirit of it. The provision as it stands runs counter to the provisions of sections 34 and 36 of the Act on the deemed right of occupancy. For instance, section 36(2) of the Act provides:

Any occupier or holder of such land, whether under customary rights or otherwise howsoever, shall if that land was on the commencement of this act being used for agricultural purposes, continue to be entitled to the possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate local Government.⁷⁷ In this regard, the Supreme Court in *S.O. Adole v. Boniface B. Gwar*⁷⁸ held that the Land Use Act was not promulgated with the objective of abolishing all existing titles or rights to possession existing prior to its promulgation.

Rather, it reinforces or strengthens title of prior holders who are deemed grantees but it limits their interest to statutory right of occupancy, or as the case may be, customary right of occupancy by removing the radical title. Customary right of the title holder has not been taken away or

⁷³ Emphasis supplied

⁷⁴ Taiwo Ladi, "The Land Use Act, 1978 – A timely call for reform in Okonkwo, O.C., (ed) Contemporary Issues in Nigerian Law: Essays in Honour of Judge Bola Ajibola (Lagos: Toma Micro Pub. Ltd 1992), 326 at 328. See also *Adetokunbo Ademola v John Amao & ors.* Suit No. AB/8/81 Abeokuta High Court; *Akinloye v Ogungbe* (1979) 2 LRN 282; *Tijani Akinloye v Chief Oyejide* Suit No. HCJ/9A/81

⁷⁵ (2017) 6 NWLR (pt. 1561) 224, 278

⁷⁶ Ibid

⁷⁷ See also Section 34(2) of the Act which states: "where the Land is developed the land shall continue to be held by the persons in whom it was vested immediately before the commencement of this Act as if the holder of the land was as the holder of a statutory right of occupancy issued by the Governor under this Act." See also Section 34 (5)

⁷⁸ (2008) 11 NWLR (pt 1099) 562 at 588 & 606.

extinguished with the coming into force of the Land Use Act.⁷⁹

Similarly, in *C.S.S. Bookshops Ltd V. Registered Trustees of Muslim Community in Rivers State & 3 Ors.*⁸⁰ it was held that by virtue of section 34(1), (2) and (5) of the Land Use Act, where a developed land in an urban area was vested in any person immediately before the commencement of the Act, the land shall continue to be held by the person in whom it was vested as if the holder of the land was the holder of a statutory right of occupancy issued by Governor under the Act.

Effect of Section 7

In terms to section 7 of the Act, it shall not be lawful for the Governor to grant a Statutory Right of Occupancy or Consent to assign or sublet a Statutory Right of Occupancy to a person under the age of twenty one years. This provision is in line with the old common law provision of contractual age of majority which is twenty one years. Law is fast changing, and globally, the age of majority is now generally accepted to be 18 years.⁸¹ It is submitted that the provision of section 7 of the Act needs amendment to be in terms with global trend.

Effect of Section 9

Section 9 of the Act empowers the Governor to issue a Certificate of Occupancy in his hand in respect of a right of occupancy. Such certificate shall be paid for by the person in whose name it is issued, followed by payment of prescribed fees. It is common knowledge that most Governors use the provisions of the Act requiring their consent for assignments, mortgages and issuance of certificate of occupancy as means of raising internally generated revenue through the imposition of outrageous charges and cumbersome procedures. In some cases, the cost of processing certificate of occupancy to obtain a bank loan is very high. This naturally is a huge challenge for economic development and growth of an efficient housing, agricultural and mortgage system especially in states whose citizens are largely civil servants, subsistence farmers and petty traders. Asking a school teacher for example to bring out five hundred thousand Naira or more to process a certificate of occupancy is an indirect way of telling him to forget about applying for any loan in the bank for mortgage or any other purpose.

Effect of Sections 21, 22 and 28

Section 21 of the Act prohibits alienation of customary right of occupancy without the consent of the Governor, while section 22 prohibits alienation of statutory right of occupancy without the consent of the Governor first had and obtained.⁸² Prior to the enactment of the Act, individuals, families and communities had full liberty to alienate their land without such restrictions. One problem with the consent provisions is that there is no provisions in the Act to deal with situations where the Governor's consent was unnecessarily withheld.⁸³ If the consent is refused there is nothing the affected party can do. This lacuna represents a problem in the Act. The Act should, as

⁷⁹ See *Ojah v Ogoni* (1996) 6 NWLR (pt. 454) 272; *Onwuka v Ediala* (1989) 1 NWLR (pt. 96) 182; *Ononuju v A.G., Anambra State* (2009) 10 NWLR (pt 1148) 182 at 206 & 208; *Ogunloye v Oni* (1990) 2 NWLR (pt 135) 745

⁸⁰ (2006) 11 NWLR (pt 992) 530 at 561-562

⁸¹ See Art. 1 of the Convention on the rights of the child (CRC), 1990

⁸² See *Savana Bank v Ajilo* (1987) 2 NWLR (pt57) 421. See also *Chief Belonwu Ugochukwu v Cooperative & Commerce Bank of Nigerian Ltd* (1996) 6 NWLR (pt 456) 524; *Awojugbagbe Light Industries Ltd v P.N. Chinukwe & ors* (1995) 5 NWLR (pt390) 379

⁸³ See *Queen v the Minister Experte Bank of the North Ltd* (1963) NNLR 581

a matter of necessity, state the consequences and conditions for refusal or an inordinate delay by the Governor. It is needless to state that an unnecessary holding of consent has the tendency of stifling economic growth because that will impede private investments, development of an efficient land market and financial transactions connected to land.

Section 28 of the Act states that a right of occupancy may be revoked by the governor for overriding public interest.⁸⁴ This power is exercisable in respect of either statutory or customary right of occupancy.⁸⁵ The power of revocation is also exercisable in respect of right of occupancy granted or deemed granted.⁸⁶ For purposes of section 28, overriding public interest includes the following: alienation by the occupier of any right of occupancy or part thereof contrary to the provisions of the Act or any regulations made thereunder; requirement of the land by government for public purpose; requirement of the land for mining purposes or oil pipelines or for any purposes connected therewith, and the requirement of the land for the extraction of building materials, in the case of customary right of occupancy.⁸⁷

It is stressed that revocation under section 28 of the Act must accord with the intention of the provisions of the Act. Any exercise of revocation for purposes outside those outlined or enumerated by section 28 of the Act will be against the policy and intention of the Act and will be declared void.⁸⁸ It is further stressed that revocation of a statutory right of occupancy in connection with economic, industrial or agricultural development of a private company or an individual is not for overriding public interest within the meaning of the Act.⁸⁹ Thus, both in the *Administrators / Executors of the Estate of General Sanni Abacha (deceased) V. Samuel David Eke – Spiff & 3 Ors*⁹⁰ and *Orianzi v. A.G Rivers State*⁹¹ the Supreme Court observed that when plaintiffs right of occupancy was revoked and the same land was re-allocated to private individuals, the re-allocation to private individuals could not be assimilated to an action taken in the overall public interest. It held further that it is unconscionable, unlawful and unconstitutional to take away a piece of land already allocated and re-allocate same to someone else without serving a notice of revocation on the earlier allottee and not paying that person compensation.⁹² Acquisition of land has to follow due process and procedures especially where it will involve displacement of individual rights.⁹³

The meaning of public purpose in the Act creates problems. It is difficult to justify as public purpose the laying of oil pipelines or mining carried out by private or public limited liability company. The multinational oil companies involved in oil pipelines laying operations or mining operations are not government companies. Federal Government only owned shares in those companies. The companies were formed for the profit motives of private people. To attribute the

⁸⁴ See *the Administrative/Executors of the Estate of General Sanni Abacha (Deceased) v Sammuell David Eke-Spiff & 3 Ors* (2009) 7 NWLR (pt 1139) 97 at 130, 131 & 132; *Orianzi v A.G. Rivers State & Ors.* n. 75

⁸⁵ See also section 38 of the Act

⁸⁶ See *Lagos State Development and Property Corporation & Ors v Foreign Finance Corporation* (1987) 1 NWLR (pt. 5 0) 385 at 413

⁸⁷ See generally S.128 (1)-(3) & S.51 of the Act. See also *Orianzi v A.G. Rivers State & Ors.* n. 75

⁸⁸ *ibid*

⁸⁹ *ibid*

⁹⁰ N. 84

⁹¹ N.75

⁹² *Ibid*

⁹³ See *Ononuju v A.G. Anambra State* n. 79

operations of these companies as operations for public purpose is indefensible. Another issue is the requirement of the land for extraction of building materials. It is submitted that the building materials extracted must be for public purposes otherwise it would be illegal for the Governor to revoke right of occupancy when land is required for extraction of building materials to build his personal mansion.

Again, section 51 of the Act defines public purpose to include

(b) For the use by any body corporate directly established by law or by *any body corporate registered under the Companies and Allied Matters Act as respects which the government owns shares, stocks or debentures.*⁹⁴

From the above provision, the Governor can revoke a right of occupancy when land is required for use by a company where the state or federal government has shares, stocks or debenture. It has been argued earlier that revocation on such grounds is unjustifiable. It has been argued before that for revocation to be valid, the public purpose in respect of which the revocation is made must fall within the class of public purposes already specified. Thus, in *Osho v. Foreign Finance Corporation*⁹⁵ while constructing the meaning of “public purpose”, the Supreme Court held that any other purpose for revocation of a right of occupancy not specified as public purpose cannot be lawful purpose under the Act. Thus, by this decision of the apex court the governor must bear in mind that revocation for any other purpose not specified as public purpose cannot be valid.

Effect of Section 29

The Land Use Act prescribes the payment of compensation upon revocation of a right of occupancy. Thus, section 29 of the Act provides that where a right of occupancy is revoked for the public purpose, the holders or occupiers shall be entitled to compensation for the value of the land at the date of revocation of their un-exhausted improvements.⁹⁶ Where the right of occupancy is revoked in respect of any developed land on which residential building has been erected, the government may offer, in lieu of pecuniary compensation, resettlement in any other place by way of a reasonable alternative accommodation where the circumstances permit.⁹⁷

More often than not, problems arise on the quantum of compensation payable by the governor upon acquisition or revocation of a right of occupancy, especially on land which has no exhausted improvements. This problem is surmountable if only State Governors would take the benefit of the provisions of section 2(2) of the Act dealing with Land Use and Allocation Committee. Many State Governors fail or neglect to establish the Land Use and Allocation Committee in their States. This has resulted in individuals and families dragging State Governors to court on the ground of inadequate or nonpayment of compensation for their acquired land.⁹⁸ This has hampered the delivery of land for years.

⁹⁴ Emphasis Supplied

⁹⁵ (1991) 4 NWLR (pt 184) 157

⁹⁶ See S.29 (1) of the Act. The right to compensation is a constitutional right enshrined under S. 44(1) of the 1999 Constitution

⁹⁷ Ibid S.33

⁹⁸ See *Suade v Abdullahi* (1989) 4 NWLR (pt 116) 387; *A.G. Bendel State v Aideyan* (1989) 4 NWLR (pt118) 464

Effects of Sections 34 and 36

Sections 34 and 36 of the Act make provision for deemed statutory and customary rights of occupancy respectively. Section 34(5) of the Act provides that in respect of an undeveloped land, one plot or portion of the land not exceeding half of one hectre in area shall continue to be held by the person in whom the land was vested as if the holder of the land was the holder of a statutory right of occupancy granted by the Governor in respect of the land.⁹⁹ The implication is that where a person before the commencement of the Act owned large expanse of land which has not been developed, only one plot or half of a hectre will be given to him and the rest will be confiscated by the Governor.

It should be noted that the provisions governing revocation of a right of occupancy are to be found in section 28 of the Act and there is nothing in that section which provides for the confiscation of land belonging to a person for the purpose of granting it to another person who may be a total stranger to the land in question. It is submitted that the only purpose for which a right of occupancy (be it statutory or customary), may be revoked is for public purpose. The provision of section 34 (5) does not qualify as public purpose within the meaning of section 28 of the Act. Fortifying this submission is section 44 of the 1999 Nigerian Constitution which provides that no movable property or any interest in immovable property of any person shall be taken possession of or acquired compulsorily anywhere in Nigeria.

Again, section 34 (5) and (6) absolutely prohibits alienation of land subject to a deemed customary right of occupancy. It is submitted that if development of rural areas have to be achieved, then non – urban land must be alienable. When the Land Use Act was enacted, the legislator had in mind the ease to acquire land readily for state projects. This is a major benefit being derived from the Act by the Federal and State Governments. Their major problem was how to provide for compensation or resettlement. There are however, other sectors of the society that have suffered from this policy. Under the Act, easy availability of land to the state implies diminution in the power of individuals to own large portions of land. This is manifest in sections 34(5) and 36(5) of the Act.

The limitation on the capability of individuals to hold large portions of land, though laudable has its consequences. It hinders an intensive private sector participation in the provision of houses and business premises. In other words, it hampers estate development. A person holding an undeveloped piece of land beyond a half hectre is legally stripped of his excess holding. This has the effect of drastically reducing the spate of housing estates and agricultural farms. So section 36(5) is in need of amendment. Secondly, the development, and encouragement of large scale agricultural endeavours have not fared well under the Act. The Land Use Act prevented farmers from subletting or mortgaging their lands as security for loans obtained from financial institutions. It need not be emphasized that availability of funds is a material factor in the exploitation of agricultural farm lands. The effect of sections 21, 22, 34 and 36 in this respect cannot be ignored.¹⁰⁰

⁹⁹ See *C.S.S. Bookshops Ltd v Registered Trustees of Muslim Community in Rivers State* (2006) 11 NWLR (pt 992) 530 at 561; 567 & 574

¹⁰⁰ Taiwo Ladi, n. 75

CONCLUSION

The rationale behind the promulgation of the Land Use Act is to ensure easy access to land for government and ostensibly for individuals. To facilitate this, the Act in section 1 vested all land in the territory of a state in the Governor of that State. The Government is to hold the land as a trustee for the benefit of all Nigerians. The Act further subdivides land into urban and non – urban lands and put administration of land in the Governor and Local Government respectively. Furthermore, the Act stripped the community, family and the individuals of their natural or customary land holding and substituted that with rights of occupancy, statutory or customary.

Again, no individual has power to alienate land for any purposes without the consent of the Governor first had and obtained. The Act also makes provisions for revocation of rights of occupancy for overriding public interests. There are also provisions which totally prohibit alienation of land. There also restrictions from holding more than half hectre of undeveloped land. To say the least.

RECOMMENDATIONS

Establishment of Land Use and Allocation Committee

This is the committee that is empowered to advise the Governor on land matters including designating areas in the state as urban areas; as well as on the amount of fees chargeable for issuance of certificate of occupancy and other matters including payment of compensation for acquisition of land for public purposes. Most states operate without this committee in place. Governors from such states are therefore denied of the opportunity of professional advice. The Land Use and Allocation Committee of the state should not only be constituted but must be given free hand to operate and must comprise of relevant professionals with requisite skills.

Processes of Issuing Certificate of Occupancy and Payment of Compensation

State Governor needs to improve and quicken the process of issuing certificate of occupancy and payment of adequate compensation after revocation of tittle to land to forestall unnecessary litigation

State Master Plan

Most State Governors just declare some areas of the State as urban areas without the paraphernalia of urban areas. When a rural area is declared an urban area, infrastructural development for such rural areas is denied the area. Thus, where the designation of urban area is not followed immediately with provisions of amenities to match the new status, the area so designated will be at a disadvantage. An effective state master plan will correct this anomaly.

Fees and charges Associated with Land Transfer

Fees and charges associated with land transfer or mortgage need to be streamlined to facilitate access to land for development which in the long run will generate the needed revenue for the States.

Arbitrary Revocation of Right of Occupancy

While the Land Use Act lasts, State Governors should refrain from arbitrary and unnecessary revocation or acquisition of land as a means of political victimization or for political patronage.

The Certificate of Occupancy issued by State Governors should have value as reliable title of any holder of land especially for mortgage and related purposes.

Removal from the Constitution, Review or Outright Repeal.

Section 274 (5) (d) of the 1999 constitution makes the Land Use Act an existing law and an integral part of the Constitution. This makes it an extra ordinary statute whose alteration is possible only in accordance with the procedures laid down by the Constitution for the amendment of its (Constitution) provisions.¹⁰¹ Since it is not easy to review or amend it due to the fact that such amendment must follow the procedure of amending the Constitution itself, it is advocated that the Act be repealed outright.

But where this is not possible, it is suggested that the Act be reviewed along the line proposed by the late President Umaru Musa Yar'Adua. The Late President deemed it fit to call for a review of the Act by sending a proposed amendment bill titled: Land Use (Amendment) Act 2009 to the National Assembly for this purpose. The bill seeks to vest ownership of land in the hands of those with customary ownership, and also enable farmers to use land as collateral for loans for commercial farming to boost food production in the country. The bill also seeks to restrict the requirement of Governor's consent to assignment only, which will render such consent unnecessary for mortgages, sublease and other land transfer forms in order to make transactions in land less cumbersome and facilitate economic development. The proposals in the proposed bill are hereby adopted. However, the bill with all the positive changes it portends is yet to see the light of the day.

Land Reform

It is also suggested that there should be a land reform that recognizes the right of individuals or communities to land either freehold (indefinite absolutely) or for a relatively long-term duration. This will ensure a genuine free market economy.

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¹⁰¹ See *Nkwocha v Gov. of Anambra State* (1984) 6 SC 362

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