

A Historical Overview of Enabling Laws Governing Compulsory Land Acquisition and Compensation in Nigeria

¹Celestine U. Ugonabo,²Josemaria C. Ugonabo, ¹Fidelis Ifeanyi Emoh,

¹Department of Estate Management, Nnamdi Azikiwe University,
Awka, Anambra State, Nigeria

²Ikwueto Law Firm, Abuja, Nigeria
fi.emoh@unizik.edu.ng

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Abstract: *It is said that where the right of one person ends, then the right of another commences. This saying buttresses the relevance of the inalienable human rights which accrue to all humans equally. The 1999 Constitution of the Federal Republic of Nigeria as Amended aptly entrenches these fundamental human rights in Chapter Four particularly at sections 43 and 44. Article 17 of the United Nations Universal Declaration of Human Right also provides for the right to own immovable property. The Constitution in section 43 guarantees that all citizens of Nigeria may own immovable property without restrictions but then goes ahead to acknowledge the possibility of compulsory land acquisition by the government and provides for a strict procedure for compulsory land acquisition which acknowledges the supremacy of the citizen's unfettered rights to own property and guarantees an independently valued compensation payable to a dispossessed property owner. The subject of this research is therefore beyond domestic land law. It delves into the constitutional and international law spheres in historically examining what legislations and legal frameworks have been in place to guarantee the right to own immovable properties and what more can be done to strengthen the protection of the right to own immovable properties in Nigeria.*

Keywords: Compensation, Compulsory land acquisition, Constitution, Federal Republic of Nigeria, Land Use Act, Immovable properties

INTRODUCTION

When a person owns a piece of land per se, is it possible that the government or such other authority can pick an interest in the land and compulsorily acquire the land for good reasons without recourse to the said owner's preference or disposition? The answer is certainly yes; however, such acquisition must be done in accordance with laid down statutory procedures so as to avoid an abuse of statutory power and to compensate such dispossessed land owner. Through the years legislations have been passed, amended and repealed to balance the government/public interest with the private and exclusive property rights of Nigerians.

It is understandable therefore that the Nigerian laws on compulsory acquisition of land for public purposes emerged as a response to the problems arising from the multiplicity of land tenure systems in the country which ultimately did not have a harmonized position on compulsory land acquisition. Indeed, during the pre-colonial era, there were various land tenure systems in Nigeria which were fashioned along ethnic lines. However, the problems associated with compulsory land acquisition for public purposes did not manifest in the said pre-colonial era because of the limited or low level of public activities and less need for use of land for public purpose.

The problems associated with compulsory land acquisition reared its ugly head with the advent of the colonial rule and the attendant need for extensive land for provision of infrastructures like road construction, drainage works, public buildings construction among others. Increased public activities of the colonial government in Lagos and the vehement protest by dispossessed land owners, made it fundamental that a method of acquisition for public purpose be created as an enabling law.

This paper historically examines the enabling laws governing compulsory land acquisition in Nigeria with particular emphasis on Land Use Act which is the current legislation on this subject

This work will go ahead to show that through the development of Nigerian law, the practice of taking privately held lands for public purpose by the government progressed from mere "land acquisition" to land title "revocation" under the Land Use Act of 1978.

Historical Background

The increasing need for land for provision of infrastructural facilities by the colonial government in Lagos and the attendant protest by dispossessed land owners led to the enactment of **Ordinance No 17 of October 1863** which is one of the earliest laws on compulsory land acquisition. The ordinance empowered the Governor of Lagos to pull down buildings and pay compensation on the buildings pulled down including the land.

The Swamp Improvement Ordinance of 1887 was the second law enacted. Under the Swamp Improvement Ordinance, owners of some swamp land in Lagos were required to fill them up and failure to comply within the specified period led to the sale of the land by public auctions organized by the colonial government in favor of anybody willing to comply with the requirements of the ordinance. In such situation the purchase money paid at the auction was usually handed over to the non-compliant/ousted land owner. The Colonial government was also authorized to use swamped land for public purpose and if found useful an appropriate compensation was paid to the owner of the land.

The first statute which conferred a general power of compulsory acquisition was enacted in Lagos in 1876 and was extended to the protectorate of southern Nigeria in 1903. Following the amalgamation of Lagos as southern protectorate in 1906, the statute was made to apply to the whole of southern Nigeria.

The Public Land Acquisition Ordinance later known as Public Lands Acquisition Act was published on 3rd May 1917 to empower the acquisition of lands when required for public purposes. This ordinance was a modification of the English Land Clauses Act 1845. This was the principal legislation from which the power for public acquisition of land was derived with modifications by the various decrees of the Nigerian Military Government especially Decree No 33 (Public Lands Acquisition (miscellaneous provisions) Decree 1976 which zoned the country for compensation purposes and the Land Use Act 1978.

Other legislations governing compulsory land acquisition and compensation in Nigeria include:

- a. State Land Act No 38 of 1968 (cap. 45)

- b. Nigerian Minerals and Mining Act 2007
- c. Oil pipelines Act 1956 as amended by the Oil Pipeline Act of 1962 and 1965 (Cap. 145)
- d. Petroleum Industry Act 2021
- e. Land Use Act No. 6 of 1978.
- f. Constitution of Federal Republic of Nigeria 1999 as amended 2011.

These laws/Acts will be briefly discussed hereunder but particular emphasis will be placed on Land Use Act 1978 which is the major legislation governing compulsory land acquisition and compensation in Nigeria.

1.0 Compulsory Acquisition Under Public Lands Acquisition Act 1917

The Public Lands Acquisition Act was the principal acquisition law of the Federal Republic of Nigeria until Land Use Act 1978, though certain aspects of it were modified or repealed by various military decrees from 1966-1979. An example of the decree that modified this Act was the Decree No 33 (Public Land Acquisition) Miscellaneous Provision Decree 1976 which zoned the country for compensation purposes.

Under the 1917 Public Lands Acquisition Act, it was obligatory for the acquiring authority to publish acquisition notice and to pay adequate compensation for the acquired land. Upon the acquisition of any land, it became vested in the state as state land. Section 8(1) of the Act prescribes a period of six weeks' notice of acquisition in the manner prescribed by the Act before taking possession of the land. The Act also authorized entry on the land by the acquiring authority for the purpose of carrying out preliminary survey or works but imposed a duty on the said authority to give at least seven days' notice in the case of a dwelling house. Officers entering the land for such preliminary site activities were obligated to exercise sufficient care so as to prevent unnecessary damage to the properties of the owner/occupier as they are liable to pay compensation for any such damages.

Under the 1976 decree which has been repealed by Land Use Act 1978, where there was dispute over ownership of land, interest in land, counter claim or quantum of compensation etc., it was referable to the land tribunal by either the acquiring authority or Claimants.

It is noteworthy that none of these enactments allowed for compensation on any unoccupied land except where an owner of an intersected land had an adjoining land which was under his/her use. The Public Lands Acquisition Act compelled the acquiring authority to pay compensation to owners of intersected lands rendered incapable of beneficial use.

It is instructive to note that “Public Acquisition Act” Cap 167 is no longer the legislation under which land is acquired for public purposes of the federation as certain sections of it has been extensively repealed or modified by the Land Use Act 1978.

2.0 The State Lands Act (CAP 45)

After acquisition of land under Public Lands Acquisition Act, it became state land administrable under the State Lands Act (Cap 45). Under this Act outright sale of state land was prohibited save in exceptional circumstances stipulated by the Act. Long or short leases may be granted as need arises as seen in temporary occupation licenses on surplus state lands along a number of road sides used for petrol stations.

The director of lands at both the Federal and State level manages all the Federal or State lands and may sue for rent in arrears and distrain for rent.

Section 23(a) and (b) of the Act made it possible to resume State land for public purposes by an officer authorized by the President of the Federation or by the State Governor in appropriate cases. Compensation is payable to a State Lessee for resumption of State land formally granted to him but not for merely passing a right of way through it. A temporary occupation lease (TOL) can be revoked with short notice without compensation. The State Lands (Compensation) decree 1968 ie decree No 38 1968, changed the method of assessment of compensation on resumption of state land from the investment method of valuation to the current replacement cost together with interest at bank rate. It also attached value to expired term of the lease instead of unexpired term. This decree has since been repealed by Public Lands Acquisition (miscellaneous provision) Decree No 33 1976 which in turn has been repealed or modified by Land Use Act, 1978.

3.0 Compulsory Acquisition In The Oil Industry

Generally, acquisition in the oil industry falls into two broad categories; firstly, for permanent use like depot, residential etc. and secondly for a short usage or for a defined number of years such as Oil pipeline right-of-way for 20 years. Usually, land required for permanent use is acquired through the State Government by the Land Use Act 1978 who revokes and re-issues a Certificate of Occupancy over the land after payment of compensation for the unexhausted development on it to the Claimant. Similarly acquisition of surface right or right of way over land required for laying pipes is by publication of acquisition notice under the Oil Pipelines Act stipulating that a

right of way will be required for 20 years with the possibility of extension of the period if need arises.

3.1 Compulsory Acquisition Under The Nigerian Minerals And Mining Act 2007

Section 1(1) of the Act provides that “the entire property in and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria”. The Act in section 1(2) provides further that land in which minerals have been found in commercial quantities shall be acquired by the Federal Government in accordance with the provisions of the Land Use Act.

Compensation is payable to the holder or occupier of the land by the prospecting mining licensee or lessee through the acquiring authority in accordance with the provisions of the Land Use Act 1978.

3.2 Compulsory Acquisition Under The Oil Pipeline Act, 1956 (CAP. 338) LFN (1990)

The Oil Pipeline Act 1956 as amended by the 1962 Act (Cap. 338) LFN (1990) (hereafter the Act) is an Act to make provision for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining and for purposes ancillary to such pipelines.

Section 4(1) of the Act empowers the minister to grant survey permit to a holder of an oil prospecting license or oil mining lease who has discovered mineral oil or natural gas in commercial quantities to survey the pipeline route for transporting such oil or gas to a suitable deep-water point accessible to ocean going tankers, to a refinery or to any point of destination where the holder requires such oil or gas to be transported for any purpose connected with mineral oil operations. The law attaches rights and obligations to the license such as the right of the licensee to use and maintain the route and to impose restrictions on the use of adjoining land.

Section 5 of the Act permits the licensee or mining lessee to enter together with his officers, workers and equipment on any land upon the route specified in the permits for the purposes of surveying and constructing the route provided he gives at least 14 days’ notice of his intention to the landowner. He should not also enter upon any cultivated land without having given such notice to the owners or occupiers thereof or having affixed such notice in some prominent position upon such land. Where his entry causes unnecessary damage to the premises, he is obliged to pay adequate compensation to the owner for such damage as stipulated in part IV of the Act.

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An applicant for a license must prepare a survey plan defining the pipeline route clearly and forward the survey description with the notice of the acquisition of the right of way to the appropriate Ministry in the state through whose territory the route passes for publication in the government official gazette and local newspapers with copies served on interested parties in a prescribed manner.

Furthermore, occupiers whose interests are likely to be affected must be given 7 days' notice within which to submit their objections if any, before the hearing by the appropriate State Ministry. Fair hearing must be given to all parties whose interests are injuriously affected and who filled objection. It should be noted that Oil Pipelines Act confers a license of a right-of-way on the holder for a definite term, say 20 years renewable from time to time under certain conditions.

Part IV of the Act provides that compensation is payable by oil prospecting licensee for buildings or structures, crops, profitable trees, disturbance, injuries for failure to repair and depreciation in value of land by works done on it. Payment could also be made in lieu of accommodation works and damage caused by oil pollution to occupiers of land. Where there is a dispute as to whether any compensation is payable or the amount payable thereof or as to persons whom such compensation should be paid such dispute shall be determined by a magistrate exercising civil jurisdiction in the area concerned. A dissatisfied litigant has the right of appeal to either the High Court or Court of Appeal (section 19 of the Act).

3.3 Compulsory Acquisition Under The Petroleum Industry Act 2021

The Petroleum Industry Act 2021 confers the entire ownership and control of petroleum in, under or upon any land in Nigeria on the Federal Government. Land in this context includes dry land, land under the territorial waters or that which forms part of the continental shelf.

By the provisions of section 3(g) of the Act, The Minister of Petroleum is empowered to grant oil exploration license to prospect for Petroleum or Oil Mining lease to exploit Petroleum to any Nigerian citizen or company registered under Companies and Allied Matters Act (CAMA) 2020 with a proviso that the licensee must fulfill certain laid down conditions.

The duration of Oil prospecting license under the Act though renewable is 5 years while oil mining lease does not exceed 20 years. One of the conditions for granting oil lease is that the licensee must have struck oil in commercial quantity. Rent is paid for non-producing concessions while royalty becomes payable as soon as concession goes into production. Indeed, by section 14 of the 7th Schedule to the Act, the Nigerian Upstream Regulatory Commission may upon the default of a licensee to make the statutory remittances revoke the license and re-enter the land.

The Petroleum Industry Act which is a relatively new enactment reinforces the notion of the Land Use Act and the Nigerian Constitution 1999 as amended which protects property owners from uncompensated acquisition or revocation of their land/property. Section 115 of the Petroleum Industry Act provides that a License or permit under the Act shall only be issued subject to full compliance by the Applicant with the provisions of the Land Use Act regarding compensation

4.0 Revocation Of Right Of Occupancy Under The Land Use Act

The Land Use Act was enacted in 1978 for the purpose of vesting all lands comprised in the territory of each state of the federation in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of section 1 of the Act. In **Bashir v. Bashir (2014) 11 NWLR (Pt. 1417) 68** the Court of Appeal rightly held that the main purpose of the Land Use Act is to achieve a fusion between the land tenure system in the then Northern Nigeria and the Southern Nigeria whereby absolute ownership of land by families, communities and individuals became abolished, while all land within each State became vested in the Governor of that state.

Section 2(1) of the Act vests the control and management of land in urban areas in the Governor of each state on the advice of the Land Use and Allocation Committee. The powers of control and management of land in the Governor includes granting statutory right of occupancy, granting easements, power to demand and revise rents for any land granted and power to impose penal rent etc. as per section 5 of the Act. Other powers vested in the Governor include the power to approve alienation of a right of occupancy and the power to revoke a right of occupancy for overriding public interest.

Section 2(2) of the Act vests the control and management of land in rural area in the local Government within the area of the jurisdiction where the land is situated. The Act authorizes Local Government to grant Customary Right of Occupancy with respect to land in rural areas.

Consequently, all lands within the Federal parts of Nigeria (e.g. the Federal Capital Territory, Abuja) is held in trust by the President of Nigeria, while all urban lands within the territory of each State in Nigeria is held by the Governor of the State and all other lands in each state (not being Federal or Urban land) is held in trust by the Chairman of the relevant Local Government Area.

In **Dagaci of Dere v. Dagaci of Ebwa (2001) 7 NWLR (Pt. 712) 365** the Court of Appeal in interpreting the intendment of section 2 of the Act held inter alia that

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“The State Governor would henceforth be responsible for the allocation or grant of land in all urban areas to individuals for commercial and other purposes, while similar powers with respect to non-urban areas are conferred on the Local Governments. The only exception is with regard to land vested in the Federal Government or its agencies.”

However, it has been argued that all land within the territory of a state is owned by that state; nevertheless, the Act empowers the Governor to revoke a right of occupancy in any land for the purpose of overriding public interest but must be done within the ambit of the Land Use Act stipulations.

4.1 Overriding Public Interest Under The Provisions Of Land Use Act.

Section 28 of the Act provides that revocation of a statutory right of occupancy must be for an overriding public interest. In **CIL Risk & Asset Mgt. Ltd. v. Ekiti State Govt (2020) 12 NWLR (Pt. 1738) 203** The Court held thus **“To revoke a statutory right of occupancy for public purpose, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his proprietary right, the law must be strictly complied with and the provisions must be strictly construed. Any other purpose for revocation of a right of occupancy not specified as public purpose in section 28 of the Land Use Act cannot be lawful purpose under the Act”**.

Section 28(2) curtails the elasticity of the term “overriding public interest” by providing that the overriding public interest for which a governor can revoke a right of occupancy means:

- a. The alienation by the occupier, by assignment, mortgage, transfer of possession, sub-lease, or otherwise of any right of occupancy or part thereof, contrary to the provisions of the Act or of any regulations made thereunder. Or
- b. The requirement of land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State. Or
- c. The requirement of the land by the Government of the Federation for public purposes of the Federation. Or

- d. The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

There is a plethora of instances throughout the federation where State Governors for spurious reasons purporting to be for overriding public interest revoked rights of occupancy over land thereby resulting in disaffection, acrimony and endless litigation. One of such instances arose in **Adamawa State Ministry of Lands & Survey v. Salisu (2021) 2 NWLR (Pt. 1759) 1** where land was compulsory acquired supposedly for overriding public interest but reallocated to a private real estate developer. In that case the court held that:

“Before a person’s property can be acquired compulsorily it must be for overriding public interest. The test is that the purpose must be of benefit to the public and not to assist the commercial transaction of a company or group of people for their personal financial purposes. In this case, the burden of proof was on the Appellants to prove that the 1st Respondent’s land was acquired for overriding public interest or public purpose which must be specified as to the way it benefits the public at large and must be capable of being proved. It was clear that the Appellants acquired the 1st Respondent’s land in dispute from the 1st Respondent and others. The 2nd and 3rd Respondents were part of the beneficiaries. It was on record that the 2nd Respondent is a private developer/private company while the 3rd Respondent is the Managing Director of the 2nd Respondent. The Appellants did not in any way prove that the compulsory acquisition of the land in dispute was for overriding public interest. The 2nd and 3rd respondents having seen the fallacy of the acquisition rightly conceded the Appeal”

The foregoing shows that an aggrieved person whose property rights have been revoked may establish a case either that the reason for the revocation is not for public purpose or that his property in question is used for a greater public purpose than intended by the revoking authority. For instance, where a governor attempts to revoke a right of occupancy over which a person farms for the purpose of building a recreational center, the right holder can argue that production of food overrides recreation. Suppose a farmer’s land is to be acquired for agricultural development, a heavy onus would be on the governor to prove that there is something overriding in the purpose.

The legal purpose of a compulsory acquisition of land is to use the land so acquired for an overriding public purpose or interest and not to re-grant or re-allocate it to another individual or private organization. See Okafor v. A.G Anambra State (2005) 14 NWLR (Pt 945) 210

Section 28 and 51(1) of the Act enumerate the circumstances in which a right of occupancy would be revoked for overriding public interest or public purposes as follows.

- a) The use of land by the local or state government for mining or oil pipelines or for any purposes connected therewith.
- b) For extraction of building materials
- c) For exclusive government use or general public uses
- d) For the use by anybody corporate directly established by law or by any body corporate registered under the Companies and Allied Matters Act (CAMA) in which the government owns shares, stakes or debenture.
- e) For or in connection with sanitary improvements of any kind.
- f) For obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway road or other public work or convenience about to be undertaken or provided by the government
- g) For obtaining control over land required for or in connection with development of telecommunication or provision of electricity.
- h) For obtaining control over land required for or in connection with planned urban or rural development or settlement.
- i) For obtaining control over land required for or in connection with economic, industrial or agricultural development.
- j) For education and other social services.

In defining public interest section 51 uses the word “includes”. Is the governor at liberty to revoke for other purposes not expressly listed in the Act on the ground that the object is public all the same. In **Olatunji V Military Governor Oyo State, (1995) 5 NWLR (Pt. 397)585**, Salami JCA opined obiter that other than public purposes stated therein, they must be similar to those in the section. On the other hand, in **Osho v. Lagos State Dev. & Property Corporation (1994) 4 NWLR (Pt. 184) 157**, Obaseki, JSC found that other purposes not specified as public purpose in the Act cannot be lawful purpose. The Supreme Court held in **Bello V The Diocese Synod of Lagos (1973) 3 S.C. 103**, that sections 28 and 51 are expropriatory and must therefore be given a very restrictive construction. It is difficult to envisage a public purpose that will not come within the very broad listing in section 51.

What is the legal position where a right of occupancy is revoked ostensibly for public purpose but later granted to a private person or corporate body? In a long line of cases, the Courts have held that a right of occupancy cannot be revoked for the purpose of granting the land to a private person

or corporate body except it is shown that government holds shares, stakes or debentures in the corporate body. **See Chief commissioner Eastern Province V. Ononye, (1943) 17 NLR 142. See also Kyari V Alkali (2001) 11 NWLR (Pt. 724) 412.**

A revocation that does not accord with this provision is invalid ab initio. Similarly a revocation that is in accord with the Act but which is subsequently altered for private use can be nullified.

This was the case in **Administrator/Executor of Estate of Abacha V Ekespiff (2003) 1 NWLR (Pt. 800) 114**, where land granted to the Respondent was unlawfully revoked and granted to General Abacha by the Governor. On Abacha's demise in 1998, the Respondent sought redress in court and the Court of Appeal granted this declaration and condemned the action of the Governor as being wrongful, illegal and contrary to section 28(1) of the Act.

Furthermore, by the joint decisions in **Ajao V Sole Administrator, Ibadan City Council (1971) 1 NMLR 74. and Olatunji V Military Governor of Oyo state (Supra)** where the initial owner of a property notices that his property which was acquired for a specific public purpose has been converted for another public purpose, for a private purpose or is abandoned, he is competent to re-enter and take possession of the property or alienate same to a third party. This is on the strength of authority for the proposition that upon an acquisition of land, the original owner retains a reversion which automatically revives on the abandonment of the original purpose. It is therefore the law that there is a reversion of interest in land to the original owner or holder of right of occupancy by operation of the law in the event that the public purpose for which the land title was revoked fails.

4.2 Notice of Revocation of Right of Occupancy Under Land Use Act

Wherever privately held land is required for a public purpose, the Land Use Act categorically stipulates that a notice shall be issued to the holder/occupier of the declaration by the government that his land is required for public purposes. The government or any public officer duly authorized usually issues the notice as provided in Section 28 (6) of the Act which reads; "the revocation of right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the governor and notice thereof shall be given to the holder". The tenor of this provision indicates that notice should be given merely for information. We can only be thankful to the

Supreme Court in **Odogwu v. Ilombu 2007 8 NWLR PT (1037) 488** for insisting that notice must be served as a condition precedent to any revocation.

On Importance of service of notice of revocation of right of occupancy and how service of process under the land use act effected, the Supreme Court in Abacha v. Eke-Spiff (2009) 7 NWLR (Pt. 1139) 97 held that -

Service of notice of revocation of a right of occupancy is very crucial. By virtue of section 28(6) of the Land Use Act, a notice of revocation of a right of occupancy must be given to the holder. By section 44(a), and (c) of the Land Use Act, any notice required to be served on any person shall be effectively served on him -by delivering it to the person on whom it is (a) to be served; or by leaving it at the usual or last known place (b) of abode of that person; or by sending it in a pre-paid registered letter addressed to that person at his usual or last (c) known place of abode. In this case there was non compliance with the statutorily enumerated modes of service hence the revocation was invalid.

In **Osho V LSDPC** (Supra), the Appeal Court held inter alia that notice must contain the grounds for revocation, must first be served on the holder of a right of occupancy, and it must give the holder an opportunity to challenge the rightfulness or otherwise of the revocation in accord with the fair hearing provisions in Section 33 1979 Constitution (now section 36 1999 Constitution). The Court held that any procedure short of this will render the revocation invalid.

The mode of service prescribed under the Act is personal service to the holder/occupier and upon his receipt of the notice his right to the land is automatically extinguished. Section 44 of the Act provides for service to be personal or notice may be left at the right holders usual or last known place of abode or by registered post, or if it is not practicable after reasonable inquiry to ascertain the right holders name or address, to deliver it to any person on the premises or posting it to some conspicuous part of the premises to be revoked.

A sensible reading of the section will suggest that the list in the section is in order of priority. Leaving the notice at the right holder's usual abode should be resorted to only after effort has been made to effect personal service. Service by registered post would arise only after effort has been made to ascertain the right holder's usual abode and so forth.

It follows from the foregoing that contrary to the popular practice of the Government, the requirement for personal notice to the holder/occupier cannot be waived regardless of whether the land is developed or undeveloped and neither can such personal notice be substituted by the publication in a gazette or a local newspaper. Publication of acquisition can only properly follow after personal notice has been given to the land owner in question. It has been held that notices served in modes not recognized by the Act are null and void.

In **Nigeria Engineering Works Ltd V Denap Ltd (1997) 10 NWLR 482** notice of the revocation published in the “Observer Daily Newspaper” was held ineffectual. However, even where personal notice has been given, the Government must also address the question of the quantum of compensation payable to the occupier/holder in question.

4.3 Compensation Payable On Revocation Of Right Of Occupancy Under Land Use Act 1978

The Apex Court in **Messrs Singoz &Co. (Nig.) Ltd v. U.M. Co. Ltd. [2022] 18 NWLR 213** held that if a right of occupancy is revoked for the cause set out in section 28(2)(b) or in 28(3)(a) or (c), the holder and occupier shall be entitled to compensation for the value at the date of the revocation of their unexhausted improvement.

See also the Court’s decisions in **Goldmark (Nig.) Ltd v. Ibafor Co. Ltd. (2012) 10 NWLR (Pt. 1308) 291** and **Orianzi v. A.G. Rivers State (2017) 6 NW LR (Pt. 1561) 224**

In **Ferguson v. Comm, for Works Planning, Lagos State (1999) 14 NWLR (Pt. 638) 315** the Court per Aderemi JCA in establishing the concurrent right of a Tenant and Landlord of a compulsorily acquired property to compensation had this to say

"Equity is about nothing but fairness. It is my considered view that those in occupation of land or landed property with the consent or permission or acquiescence of the legal owners would have acquired some rights in the property. It is only fair that such persons should be given a moiety from the compensation money paid for the land; the calculation of what sum to pay must be based on the extent of their interests if fairness or equity would be seen to have been done in the case. It seems to me that is the intendment of the law. "

The quantum of compensation payable to a holder/occupier generally depends directly on the purpose for which the land is being acquired by the government and also the purpose for which the land was used by the holder/occupier prior to the acquisition. As provided in section 29 of the Act, where the affected land is required for a general purpose, the holder/occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements and not for a bare land. The rationale for this fraudulent assumption is that since land is owned by the state

under section 1, there is no basis for state to compensate the expropriated land owner. Such assumption is insensitive to the proprietary right of the original land owner who for long has toiled on the land and traditionally enjoyed the benefit of it.

In **Olateju v. Comm. L & H Kwara State (2024) 17 NWLR (Pt. 1968) 473** the Supreme Court held that by virtue of sections 28(1), (2)(b) and 29 of the Land Use Act and section 44 of the 1999 Constitution (as amended), evidence of prompt payment of compensation to the owner of a land acquired by the acquiring authority is a sine qua non for a valid compulsory acquisition of the land. Therefore, a Governor cannot validly exercise his power of revocation of land from the holder of the right of occupancy without payment of compensation.

Distinctively, if the affected land is required for mining purposes, oil pipelines or any similar purposes, compensation would be assessed in accordance with the provisions of the Mineral Act, The Petroleum Industry Act 2021 or any subsequent legislation replacing those laws.

Where there are economic trees and crops or installations and buildings on the required land, compensation will be computed in relation to the value of economic trees and crops, rents and the cost of installation, building and other improvements on the land. Interest is however payable at the prevailing bank rate for delayed payment of compensation.

Again, where residential buildings are situated upon the acquired land, the holder/occupier may be offered an alternative piece of land for resettlement in any other place if he so desires or he may be paid compensation on the value of the property. But where the value of the alternative piece of land is higher than the compensation otherwise payable under the Act, the Government may direct that the excess value be considered as loan to the resettled landowner, to be refunded to the government in a prescribed manner. Where a person accepts a resettlement, his right to compensation is deemed to have been duly satisfied and no further compensation shall be payable to such person. **See Ferguson v. Comm, for Works Planning, Lagos State Supra.**

Generally, government prefers to offer alternative land to the holder/occupier whose right is revoked in lieu of monetary compensation. However, where monetary compensation is payable, government usually appoints an Estate Surveyor and Valuer usually from the State or Federal Lands Department instead of a neutral independent Estate Surveyor and Valuer. Government usually relies on the data and valuation opinion of the Government Valuer while any other Valuation conducted independently at the instance of the out-going owner of the land is forced to

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conform with the Government's valuation. One therefore wonders whether the Government Valuer can give a fair and balanced valuation of the revoked property since he is not a neutral party. This definitely goes against the Natural law maxim that one cannot be a judge in his own case "Nemo Judex in Causa Sua".

Importantly, where a dispute arises between the Government and the land owner regarding the actual amount of compensation payable, such dispute shall be referred to the appropriate Land Use and Allocation Committee. One of the most worrisome aspect of the Act is the exclusion of Courts in the determination of the adequacy or otherwise of the compensation payable. A situation where the acquiring authority is in position to solely dictate the compensation payable will ultimately lead to executive tyranny and oppression against the people. Fortunately, the Courts have extricated itself from this legislative entanglement and have consistently held that the ouster clause in section 47 in so far as it conflicts with the provisions of the 1999 Constitution of the Federal Republic of Nigeria as amended is void. *Kanada V Governor of Kaduna State* (1986) 4 NWLR (Pt. 38) 361.

7.0. Constitutional Position

Compulsory Acquisition and Compensation is treated under the Fundamental Human Rights provisions of 1999 Constitution. Section 43 of the 1999 Constitution confers right on every Nigerian citizen to acquire and own immovable property anywhere in Nigeria. Section 44(1) of the Constitution went on to provide as follows.

"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 compensation thereof 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.

It follows from the foregoing provisions that no Nigerian citizen's interest in a property shall be compulsorily acquired except in accordance with the provisions of the law which

prescribes/guarantees prompt payment of compensation, right of access for the determination of his interest in the property and guaranteed right of the claimant to refer his case to a Court of Law.

Interestingly, the seeming conflict between the provisions of the Constitution and that of the Land Use Act 1978 does not encourage strict implementation of the provisions of the Constitution.

Section 1 of the Constitution proclaims the supremacy of the Constitution, while subsection (3) of the section stipulates in no ambiguous words that;

“If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void”

Based on the aforestated sections of the Constitution which upholds Constitutional supremacy, no problems seem to arise as it ensures that any of the provisions of the Land Use Act, which is in conflict with the Constitution, will be rendered void to the extent of its conflict. The snag however is that section 315(5) of the Constitution gives the Act a larger-than-life image. It provides inter alia that the Land Use Act and its provisions thereof shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of sections 9(2) of this Constitution.

The clear implication of section 315(5) is that in the face of a conflict between the provisions of the Act and those of the Constitution, the otherwise invalid provisions in the Act would remain valid and cannot be challenged in court until altered or repealed in accordance with the cumbersome procedure laid down in section 9(2) of the Constitution.

The Court of Appeal in **Azie v. Azie (2016) 5 NWLR (Pt. 1506) 593** in interpreting the position or status of the Land Use Act vis a viz the Constitution held that **“It is wrong to say that the Land Use Act is part of the Constitution. It is not an integral part of the Constitution hence any of the provisions of the Land Use Act which is inconsistent with the Constitution is to the extent of the inconsistency null and void. Although by section 315(5)(d) of the 1999 Constitution, the Land Use Act was incorporated into the Constitution, this is only to give the Act a pride of place and confer on it special jurisdiction under section 9(2) in terms of the amendment and no more. The Land Use Act cannot be elevated to the status of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)”**.

Whereas this essay is not on the conflict between the Constitution and the Land Use Act, we wish to adopt the view of the supremacy of the Constitution relying on the provisions of section 1(1) and (3) of 1999 Constitution and the obiter dictum of the Supreme Court in **Nkwocha V Governor**

of Anambra State (1984) 6 SC. 62 to the effect that the Land Use Act is not an integral part of the Constitution.

Granted that the 1999 Constitution is supreme and superior to other existing legislations in Nigeria including Land Use Act 1978, it follows that expropriation of a citizen's right in property must comply strictly with the fundamental rights provisions of the Constitution particularly section 36 and 44(1).

8.0

Conclusion

Having carried out a historical overview of the laws governing land acquisition and compensation in Nigeria with particular emphasis on the Land Use Act 1978 in the order narrated above, it is our respectful view that there are laws in the area of this subject which extensively protects property rights of Nigerians, the challenge however is the framework for the implementation and enforcement of these laws.

As we have earlier cited, where a Governor unlawfully revokes land rights for the enjoyment of his private associates, how soon and effectively can the aggrieved party enforce his Constitutional rights? Access to justice is an impediment to the enjoyment of these rights by the average Nigerian Citizen. In **J. Sunkanmi Dairo & Ors v. The Registered Trustees of the Anglican Diocese of Lagos LKELR[2017] SC.148/2006** a land dispute which commenced in 1985 at the High Court in Ikeja, Lagos State, lasted 33 years within the Nigerian Justice System where Judgment was finally delivered by the Supreme Court in 2017. This and similar several cases pose a clog in the wheel of Justice because of course an average person is discouraged from contesting the acquisition of his land or related matters thereof in Court. If for instance a party is aggrieved by the inadequacy of compensation paid upon the acquisition of his land or the purpose for the acquisition of his land, the current state of the Nigerian Justice System does not allow for speedy justice delivery. In effect, a disputed land may be unlawfully acquired and used for purposes for 33 years before an aggrieved party finally gains justice. The other side to this bitter peel is the corruption and lack of practical independence within the Judiciary where for instance a State Governor is responsible for the appointment/confirmation of State Judges. As much as Judges are proclaimed as independent, it in our respectful view that where State High Court Judges preside over compulsory acquisition matters within their state, it goes against the established legal maxim of **Nemo Judex in Causa Sua**. The Judge of a state would usually take the side of the State and there are many ways in which Judges in practice may tamper with the justice system without necessarily mis-interpreting the law. Judges may for instance enable delays at trial and delays

occasion denied justice as established above. Our respectful view therefore is that a special Court/Tribunal be set up to deal with Compulsory Land Acquisition Matters and that only Judges with specialized experience in property law practice and who are deliberately neutral and independent of the State or Government acquiring authority should constitute such special Courts.

Furthermore, in defiance to the decision in **Obikoya & Sons Ltd V Governor of Lagos State, (1987) 1 NWLR 387** Governors still revoke citizens right under section 28 of the Act without strict compliance with the fair compensation guaranteed under the Constitution. Where a right of occupancy is revoked, the holder is entitled to compensation for unexhausted improvements on the land. Where a dispute arises as to the quantum of compensation payable under the Act, the appropriate Land Use and Allocation Committee is by section 47(2) of the Act, vested with exclusive jurisdiction to determine the dispute and its decision is final. This provision is clearly antithetical to the fair hearing provisions of the Constitution which demands that such hearing shall be “by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. **See Section 36(9) of the Constitution.**

A further legal review is also required to establish an independent and neutral valuation system. We propose respectfully where there is need for valuation under this research subject, the government and the private party would appoint one professional valuer each who would conduct their respective independent valuation and then submit to a mutually agreed valuer to upon considering both valuation reports and other factors determine the value of the land or property in question.

Notwithstanding the numerous flaws and defects associated with existing compulsory land acquisition and compensation laws in Nigeria, we are positive that a review of these laws vis a viz practical inventions like a special court/tribunal for compulsory land acquisition disputes and the development of state laws or rules for compulsory land acquisition including the mode of neutral property valuation will enhance the enforcement and respect for property rights. It would also foster general development in Nigeria because the acquisition of land for public purposes is actually a good occurrence, but one which may be delayed or voided if the right procedure is not followed to safe guard property rights.

Finally, where compulsory acquisition is considered, the issues that one should keep in mind are:

- ❖ Under what law is the land being acquired?

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- ❖ For what purpose is the land being acquired?
- ❖ Whether the proper procedure for acquiring such land was complied with.
- ❖ What compensation is available and the mode of assessment/valuation thereof?

Estate Surveyors and Valuers involved in compulsory land acquisition and compensation valuation should pose the above questions and proffer answers to them before embarking on assessment of compensation payable. This will certainly ensure that the best interest of the Client is sought. It is important to always know that compulsory acquisition can not occur without a law authorizing it.

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