

Evaluation of Enforcement Machinery of Prohibition of Fraudulent Practices on Land and Property Law Anambra State, 2012

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ABSTRACT: *Fraudulent activities on land are common occurrence in property market in Nigeria generally and particularly in Anambra State. The fraudulent practices on land include: selling of land to more than one person, selling of another person's or family land without due consent, collection of illegal levies from the property owners/developers by non-state actors, among others. The existence of this problem necessitated the promulgation of Prohibition of Fraudulent Practices on Land and Property Law, Anambra State in 2012 to checkmate the miscreants who engage in such unwholesome practice. The extent of enforcement of provisions of this law in Anambra State since its inception has been a cause for concern. Content qualitative analysis research design was adopted in the review of the provisions of the Law and its enforcement. Regrettably, the Law is not being vigorously enforced as envisaged; indeed, it is being sabotaged. It is alleged that some unscrupulous law enforcement agents collude with the miscreants to carry out the fraudulent acts. Urgent amendment of the Law to substitute the local government implementation committee with two-level enforcement committees; the primary ones at the town/community level and the secondary one at the state level and creation of special tribunal/court to handle land grabbing cases are recommended in addition to government taking up the responsibility of addressing the root cause of youths' restiveness, unemployment, among other social menaces in the state.*

KEYWORDS: fraudulent practices, land grabbers, prohibition, property law, touts, unemployment

INTRODUCTION

Land is a natural gift of God to mankind. Every activity of man is carried out on land, and when man eventually dies he is buried in the land. This shows how pivotal land is to man. The high importance man attached to land and landed properties over the history, explains the reason people struggle very hard to own land and exercise allodial rights on land. In developed countries, there are legal frameworks that provide guidelines and laws on how land and its resources can be owned

and transferred from one person to another. In Nigeria, the legal framework for land ownership and regulation of dealings on land are provided by the Land Use Act Cap L.5 Laws of the Federation of Nigeria (LFN) 2004. The Law provides, among other things: the system of land ownership in Nigeria, nature of interest an individual or community can possess in land, and the system of land alienation. The Land Use Act was promulgated with several objectives which include among others to make land accessible to all Nigerians. However, the Act unwittingly created a problem of legal pluralism by establishing dual land delivery structures. It created two systems of land delivery namely; customary and state systems. Someone who wants to buy land is expected to buy from both the customary owner and the state. This encourages fraudulent land practice as unscrupulous people often sell state land to unsuspecting individuals despite the fact that they do not have right to sell such land. This practice goes a long way in hindering development of land for various uses. Most often than not, the innocent purchaser of such land, ends up in unending court proceedings with the seller instead of embarking on development of the land.

Development right is generally the legal entitlement to improve a piece of land conferred on the owner of the land. Such rights are though regulated by appropriate agency of the government that is vested with the power to regulate land use within a particular jurisdiction. Hence, planning regulations control the type of land use and development in any given location. Most often, as described by Rodger (2009), planning policy explicitly recognizes property rights and supports the rights of property owners and enables use or development of the land as they judge best. However, such use and development should be within the overall development guide as well as the prevailing policy framework of the government. Within this context, development rights may be restricted by a covenant placed in the title to the property or where rights may be held by the landowner have been exchanged, transferred or sold to another entity. The way and manner in which development right is granted impacts substantially on the supply of land for housing development.

The foregoing scenario presents formal development rights granted by town planning authorities of the government. Obtaining formal development rights notwithstanding, a developer is still expected to secure informal development rights granted by former landowning families represented by youth groups. The situation is terrible; the youth groups would not allow you to commence development unless and until their sundry fees/levies or customary fees (collectively referred to as *settlement*) are paid to them. Thus, the operational development rights are the informal one indirectly granted by the former landowning families through their youth groups. This mischief impedes access to land for housing development and has prevented many from developing their landed property. It explains why many parcels of land within developed urban areas in Anambra State are undeveloped. The enactment of the Prohibition of Fraudulent Practices on Land and Property Law Anambra State, 2012 was intended to ensure the stoppage of any form of fraudulent land practice (i.e. collection of *settlement fee* from intending developers). However, since the existence of this law, it appears that fraudulent land practices has not abated but rather

increased. This simply shows that there is a problem of enforceability of the Law. It is against this backdrop that we wish to evaluate the enforcement machinery of the Prohibition of Fraudulent Practices on Land and Property Law Anambra State, 2012 in this discourse.

Review of the Relevant Provisions of the Law

On Tuesday, April 24, 2012, the then Governor of Anambra State, His Excellency, Mr. Peter Obi (CON) accented the State Assembly processed bill on the **Prohibition of Fraudulent Practices on Land and Property Law** to tackle the unwholesome acts of miscreants in various parts of the State. Their negative conducts obstruct, disturb, impede and generally deter the needed developments on land in the State. This Law is in other words known and referred to as the *Law Against Land Grabbing in Anambra State*. The intendment of the law is aptly captured in the explanatory note where it states that the law is to specifically prohibit the activities of fraudulent persons who sell other peoples land or sell one land, to more than one person and to check the activities of touts who go about demanding various sums of illegal fees from land developers. The thrust of the Law is majorly to ensure that investors, businessmen and the general public carry on their legitimate land/property transactions and development without any hindrance, harassment or intimidation from touts'/land grabbers or persons who do not have legitimate claims on land.

Provisions Prohibiting Land Grabbing and Sanctions

The Law prohibits and makes criminal certain unwholesome conducts relating to land deals. The major ones among the prohibited acts include:

- Selling land not belonging to the vendor to another person without the consent and approval of the rightful owner.
- Selling the same parcel of land to two or more different persons by the same vendor.
- Demanding or collecting any fee not approved by law from any person developing or improving an already existing property in the State.
- Willfully damaging, destroying, pulling down or removing any beacon or structure on land belonging to another person.
- Harassment, obstruction or assault of any worker in a construction site with the intent to compel the worker or owner of the land to pay an illegal fee.

The Law also makes provisions for sanctions or penalties for the offences should one be convicted on trial.

Prohibition of Illegal Sale of Land

Illegal sale of land by persons who do not have title to land or have brief from the genuine owner to sell is one of the commonest and most dreaded evils associated with land acquisition in Anambra state. This is more pronounced where the prospective buyer is buying community land and there is no way of knowing the accredited representatives of the community or family. It is public knowledge that a lot of people forge different types of title to land where the land has written document that it takes due diligence and lots of prayer on the part of the purchaser to confirm the

authenticity of such documents. Some purported family agents unlawfully sell family land without the consent of the family head and other principal members of the family and issue counterfeit receipts.

Section 3 of the extant law holds that any person who sells or attempts to sell or otherwise transfers or attempts to transfer any land not belonging to him to any person shall be guilty of an offence and be liable to:

(a) if it is State, five (5) years imprisonment or a fine of two hundred and fifty thousand Naira (₦250,000) or both; and

(b) in any other case, four (4) years imprisonment or a fine of two hundred and fifty thousand Naira (₦250,000) or both on conviction.

We suggest uniform sanctions for both state and private lands which should be five years' imprisonment or fine of five hundred thousand Naira (₦500,000) or both.

Prohibition of Selling a Parcel of to more than One Person

It is common knowledge that some unscrupulous land owners/agents are in the business of multiple sale of the same parcel of land to different unsuspecting buyers and leaving the buyers to fight for possession of the land thereby promoting Machiavellian concept of might is right and Darwinian survival of the fittest philosophy (Ugonabo and Egolum, 2019). This was the case in COP v Paul Okechukwu MCN/56C/2007 at Chief Magistrate Court, Nteje which was later transferred to Otuocha High Court 2 as State v Paul Okechukwu: Case No OT/27C/2007. In that case, a 65 years old man, Chief Paul Okechukwu, alleged to be notorious in selling one portion of land many times over, was arraigned at Nteje Chief Magistrate Court on a two (2) Count-charge bordering on conspiracy and fraud. He was accused of defrauding Barrister Ik.Izuegbunam of the sum of #750,000 on the pretense of selling a plot of land at Amuche Village, Nkwelle Ezunaka to him. He was accused of making false presentation of allocation papers for plot Nos 509, 511,411 and 412 situated at Imeagu Onyiliajaodu Layout, Amuche Village, Nkwelle Ezunaka property of one Chikamso Nonso Okegbo of same Umeri Family with Chief Okechukwu and fraudulently collected the sum of ₦750,000 and thereby committed an offence punishable under Section 1(1)(a)(3) of Advance Fee Fraud and Other Related Offences Act, Laws of Federation of Nigeria, 2006.

He was also accused of unlawfully selling plot Nos 411 and 412, property of Chikamso Nonso Okegbo and thereby committed an offence punishable under Section 3(b) Prohibition of Fraudulent Practices on Land and Property Law of Anambra State, 2012. The case is still pending at High Court 2 but we were reliably informed that the accused has started repaying the ₦750,000 to the victim in a plea to settle the matter out of the court.

Section 4 of the Law provides that selling or purporting to sell a parcel of land to more than one person with intent to defraud is an offence and anyone found guilty and convicted on trial shall be liable to five (5) years imprisonment or a fine of five hundred thousand Naira (₦500,000) or both.

This provision is fair enough but should only be as secondary to the criminal refunding the monies he must have collected from his victims. Otherwise a miscreant who collected, say over; N20,000,000 from his victims might elect to pay the fine of N500,000 or serve five years in prison and then come out to enjoy his fraudulently accumulated fortune.

Provision on liability of agents

It is a known fact that some professionals acting as estate agents participate actively in real estate transactions. The law therefore prohibits such agents from facilitating a contractual agreement between a landowning family or prospective seller and any other person or prospective buyer in a manner that amounts to offence of aiding and abetting the commission of such offences is punishable as well. **Section 5** of the Law extends the same punishment in Sections 3 and 4 above to third person(s) who might have facilitated the deal, whether as an agent(s) or not, as they are considered to have committed the same offences. Estate agents are by this law required to do due diligence (legal search) on the title of a property for sale before accepting to market same to avoid running afoul of the law.

We suggest that contravention of this provision of Section 5 should attract five years' imprisonment or fine of five hundred thousand Naira irrespective of whether it is state or private land that is involved. In addition, professionals aiding and abetting land grabbers should face the risk of being deregistered by their professional bodies.

Prohibition of Demand and Collection of Illegal Fees

Demand and collection of fees not approved by law from persons developing or improving an already existing property by touts (land grabbers) is a common occurrence in the State especially in urban and semi-urban towns. Refusal to pay the illegal fees results in most cases to unlawful destruction of property, confiscation of the workers' tools and/or assault on site workers. These acts of intimidation and harassment are unleashed by the touts as means to coerce the land developer to bulge and pay the illegal fees. **Section 6** makes provisions for penalties regarding demanding and or collecting illegal fees from land owners/developers. The provisions are as follows:

- (a) Any person who demands or collects any fee not approved by law from any person who is developing or improving on an already existing property in the State shall be guilty of an offence and liable to five (5) years imprisonment or a fine of five hundred thousand Naira (₦500,000) or both; and
- (b) Any person who enters State land to carry out any survey without the approval of the Surveyor General of the State commits an offence and shall be liable to five (5) years imprisonment or a fine of five hundred thousand Naira (₦500,000) or both.

Section 7, on the other hand, spells out sanctions for any person who willfully damages, destroys, pulls down or removes any beacon or structure on any land or commits any nuisance on any land,

building or fence belonging to another person without lawful authority is guilty of an offence and shall be liable to ten (10) years imprisonment or a fine of one million Naira (₦1,000,000) or both. **Section 8** relates to penalties for harassing, obstructing or assaulting any worker in a construction site with intent to compel the worker or owner of the land to pay any illegal fee is guilty of an offence and liable to five (5) years imprisonment or a fine of five hundred thousand Naira (₦500,000) or both.

We are of the opinion that these sanctions are adequate to deter land grabbers from collection of illegal fees, destruction of property and assault on site workers. **Section 13** pertains to punishment for repeated committal of the crime. Any person who is found guilty of violating the provisions of this Law more than once, shall not be given an option of fine, but shall be imprisoned in accordance with the provisions of Sections 3, 4, 5, 6, 7 and 8 of the Law. The foregoing provisions of the Law are quite apt and commendably brilliant and are targeted at eliminating land grabbing menace in the State. However, one thing is good and wonderful provisions in the law; another thing is enforcement on the part of the authorities concerned to realize the spirit of the law.

Provisions for Enforcement of the Law

Section 9 empowers the Chairman of a Local Government Council or any person acting in that capacity to set up a Committee Against Fraudulent Practices on Land to be ratified by the State House of Assembly. The Committee shall carry out the following functions within the Local Government Area:

- (a) Check the activities of persons who go about exploiting land developers and property owners;
- (b) Monitor lands and property in the Local Government Area and identify persons who are breaching the provisions of this Law; and
- (c) Report any person who violates the provisions of this Law to the Police.

Membership of the Committee shall comprise of the following persons:

- (a) A Chairman;
- (b) Six other members, two of whom shall be recommended by the Local Government Traditional Council; and
- (c) A Secretary, who shall be a senior civil servant not below grade level 12 in the Local Government.

Members of the Committee shall have power to arrest any person caught violating any of the provisions of this Law and hand over such person to the Police for prosecution.

Section 10 provides that members of the Committee shall hold office for a term of two years; renewable for another term of two years and no more. This is to ensure that the Committee does not metamorphose into some untouchable group.

Section 11 empowers the Magistrate Courts, despite their subsisting powers in the State, to have the jurisdiction to try and punish all offences provided for in this Law. The Court shall, according to **Section 12**, have the powers to confiscate and sell the property or attach the monies in the bank account of any violator of this Law for the purpose of using the proceeds of such property or the monies in such bank accounts to compensate or restore the victim of such violators to his former position.

Observations and Suggestions for Effective Enforcement

Since the enactment of the Law, no such enforcement committee has ever been set up by any local government council or if there is any, its impact is not felt within the council area. In our opinion such a committee set up at the local government council level as provided by the Law may be far and not potent enough to handle high profile land grabbing cases at every community level. We suggest setting up two-level committees: one at the state level and another at the town/community level.

The state committee should comprise eminent persons of proven integrity as follows:

- i. The Attorney General of the state as Chairman
- ii. Permanent secretary lands as Vice Chairman
- iii. Commissioner of Police or his representative
- iv. Commander of the Army or his representative
- v. Commander of the Navy or his representative
- vi. Chairman of Anambra State Council of Traditional Rulers
- vii. Chairman of Anambra State President- Generals
- viii. A Secretary who shall be a Deputy Director in the civil service.

The community/town committee should comprise influential community leaders of proven integrity as follows:

- i. The President General as Chairman
- ii. A representative of Traditional Ruler (Igwe) in Council
- iii. Chairman of the Youths Association
- iv. Divisional police officer or his representative
- v. Chairman of town union vigilante services
- vi. Chairman of a village ruling council
- vii. A Secretary who shall be a senior civil servant not below grade 12 in the Local Government.

Appointments into the committees' memberships should be ratified by the State House of Assembly and inaugurated/commissioned by the Governor of the state. These dispensations will not only create awareness of inauguration of the committees but will also emphasize the prime importance attached to curbing the menace of fraudulent land practices in the state by the government.

A special tribunal of a magistrate court category should be set up to try cases of fraudulent land practices in the State for dispensation of justice instead of the regular magistrate courts that are already saddled with lots of other criminal and civil matters. Appeals on the judgements of the tribunal shall lie in the State High Court and from there further as most appropriate.

The modus operandi should be that the town committee maintains an office at the Town Hall with operational telephone lines. Victims of fraudulent land practices can either go to the office or phone to report the incidence. The committee in concert with police shall investigate each report, try to resolve same or report high profile cases to the state committee for prosecution in the special tribunal.

The state government just as it has rightly adopted the culture of governing the people directly through traditional and cultural institutions peopled with men of integrity should extend the same to fraudulent land practices. The unparalleled efficacy of the hitherto neglected institutions especially the town unions in area of security and grass root infrastructure provision in recent time is commendable. A study of security accomplishments of the state would readily reveal that far from relying on the ostensibly defective security architecture of Nigeria, the state government invests and relies more on neighborhood watch which is run by town unions. And because security is invariably a local affair, the town union have the knowledge and reach, the patriotism and integrity to raise men of sound character who fish out criminal elements from their communities and hand them over to law enforcement agents. It is our submission that the near total success achieved in security of lives and property by Anambra State Vigilante Services run by the town unions can be replicated in curbing the menace of fraudulent land practices in the state. Indeed, fighting fraudulent land practices should also be included in the terms of reference of the vigilante services. We are convinced of the efficacy of this approach as the youths and their sponsors involved in land grabbing are well known to town union leaders and the entire community. It is alleged that in some instances the village executives are in charge of this illegal extortion while the youths who raid development sites report/account to them. In such communities the proceeds from land grabbing constitute the major source of illegal income to members of the executives of the communities. In such communities, unscrupulous members are usually desperate in contesting for membership of the executive committees.

Town union leadership is the closest administrative organ to the people at the grass roots, it understands best the plight of the people and the panacea thereof. Consequently, town unions can be mandated to embark on massive enlightenment campaign on the dangers of fraudulent land practices and the attendant severe sanctions. They can disseminate information in this regard using town criers of the respective villages and urging families to forewarn their members involved in the nefarious act. By so doing all nooks and crannies of the state will be duly notified of the Law and attendant consequences of infraction.

On one hand, the town union leaders in any community with proven record of fraudulent land practices may be threatened with denial of development grants which the state government extends to towns under the community choose your own development project programme. Thus, to qualify for the grant, incidence of fraudulent land practices should not obtain in the subject town. On the other hand, traditional rulers as chief security officers of their communities should be directly responsible for any fraudulent land practices in their communities under the pain of deposition (i.e. withdrawal of their certificates of recognition by the state). By this policy some of the traditional rulers that are alleged to actively involved in the practice and indeed sponsor the youth groups into engaging in the infamous act would be checkmated.

Hope raising success achieved in the eradication of the menace of land grabbing in some estates/layouts in Onitsha metropolis with notable strong Landlords' Association indicates that the problem can be totally eliminated with strong political will. The Federal Housing Estate, Trans Nkisi, Onitsha before the formation of strong Landlords' Association used to be besieged by different Onitsha youth groups which extorted various sums of money before anyone could develop their plots. However, with the coming into place by a strong Landlords' Association and the engagement of the Army and vigilante services, the issue of land grabbing in the Estate has become a thing of the past. The Federal Housing Trans Nkisi, Onitsha case is a pointer that land grabbing menace in Anambra State can be stemmed with commitment and political will on the side of the government of the state. The state government should engage with the town unions and connect with the people with a view to addressing the basic causes predisposing youths to fraudulent land practices.

Major Causes of Fraudulent Land Practices

Though, land is always central and chore to fraudulent practices under consideration, it is essential to remark that fraudulent practices on land are often disguise upon which other societal problems manifest. Very often fraudulent land practices reflect increasing population pressure on available land resources, rural-urban drift, unemployment, youths' restiveness, land scarcity, increase in land values and bureaucratic indifference among others. In the light of these, it is of crucial importance to tackle the main problem(s) causing fraudulent land practices instead of using force to curb land grabbing activities. Strict enforcement of the law may not be successful in the long-run without addressing the underlying and fundamental causes of the menace.

Another issue is legal pluralism with regard to land system in the country. Aluko and Amidu (2006) opined that the State intervention in land ownership and administration through the promulgation of the Land Use Act (Cap L.5 LFN 2004) created a dual structure of land delivery systems. Customary and state land systems obtain in the country which consequently lead to double purchase of the same land from the state and the customary owners (land grabbers) who claim to be the rightful owners of land under customary law. This has led to a more complicated land accessibility process. Although, fully aware that they are not entitled to sell the land (though in

some cases they are entitled to use it and/or to hold it as a trustee), the customary owners do so; thus showing their lack of respect for the state as much as for their belief. The land conflict here is only the visible part of a traditional culture falling apart and a modern state not being accepted by the traditional society (Wehrmann, 2008).

CONCLUSION AND RECOMMENDATIONS

Conclusion

In conclusion, despite the enactment of this law, land fraudulent practices are still prevalent and menacing in Anambra State; meaning that the law has not been helpful. It appears that law enforcement agents collude with the touts to perpetuate the ills. It is regrettable that even with the enactment of the Prohibition of Fraudulent Practices on Land and Property Law since 2012, the youth associations one of the ills imparting vehicles are still fully operational in various towns. The underlining societal malaise causing the problem has not been addressed. There is need for a wholistic approach to the social problems than isolative attack which will more or less be a waste of time.

Recommendations

Urgent amendment of the Law to substitute the sections dealing with setting up local government enforcement committee with setting up of two - level enforcement committees: one at the state level and another at the town/community level as suggested within this paper and create special offences tribunals/courts to handle land grabbing cases to fast track dispensation of justice. The enforcement measures of sections 9, 10, 11, 12 and 13 of the Law should be made to see the light of day. Members of the enforcement committee should co-operate with the town vigilante services, police and the special tribunal/court within their jurisdictions to bring offenders to book as clearly provided by the Law.

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