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HISTORICAL DEVELOPMENT OF LAND LAW IN NIGERIA: THE JOURNEY SO FAR

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Abstract

Land law is inevitably an expression of social status and an instrument of social engineering. Quite apart from the residential dimensions, land has a huge economic significance in terms of providing security for capital, investment, business and agriculture. It is in view of the incalculable significance of land as a real estate that the need for property management arises. This paper discusses the historical development of Land Law in Nigeria and concludes with the current law which is the principal statute regulating land management in Nigeria.

Introduction

Land provides the physical substratum for all social and economic interaction. Everyone, even the truly homeless lives somewhere, and each therefore stands in some relation to the land as occupier, holder, tenant, licensee, squatter, pledgee, chargee or mortgagee. Every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the foundation of shelter, food and employment. In this way, land law impinges upon a vast area of social orderings and expectations, exerting a fundamental influence on the life style of even the

ordinary people.

Land does not just mean the ground and its subsoil, it also includes all other objects attached to the earth surface, and this includes trees, rocks, buildings, and other structures whether naturally attached or constructed by man. However, land in law even extends more than this, and it includes further abstract, rights and interests like incorporeal hereditaments, right of way, easements and profits enjoyed by persons over the property or ground belonging to other persons.

Where the transaction is regulated by a statute or law, the definition used in the statute will govern the transaction, but where there is no such definition, then the definition in the Interpretation Act is applicable. Land has been defined in the interpretation Act as "including, any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals". The definition seems to be incomplete. Because, it starts by stating that it merely includes, the others not stated in the definition is not stated, and therefore affords as many inclusion as possible. This may therefore permit addition of incorporeal hereditaments like profits, rents and easements. Temporary structures may not qualify as land, but permanent trees may be regarded as part of land. The statutory definition that has adopted the common definition of land and seems to be extensive and all inclusive is the one in the Property and Conveyancing Law. Section 2 of the law defines land to include; the earth surface and....everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.

It follows therefore that while a crop or tree is planted it forms part of land, and is regarded as land, but as soon as it is cut and removed it ceases to be land. In the same vein, where a building is standing it forms part of land, but where the building is demolished it ceases to be land.

However, the fixture must be permanently attached to the land to be regarded as forming part of the land; where the fixture is not of a permanent nature, then it is not land, and can be disposed off without affecting land.

From the foregoing definition of land, natural and artificial content of land can be distinguished. Land in its natural sense includes the developments like buildings and other structures including trees. The pertinent question had always been the ownership of the developments on land where the development was made by persons who are not the real owners of such land. The English principle is *quicquid plantatur solo solo cedit* – that is, whatever is affixed to the soil, belongs to the soil, is applicable in this circumstances.

The rule though applies under customary law, but depends on the circumstances of the case. Where a person builds a house on a land without the consent of the owner, and after the owner has protested severally, will ultimately loose the property to the owner of the land at the suit of the owner as the maxim applies.

However, under Customary Law, where the structure or building was erected with the permission of the owner of the land, the improvements remains the property of the person that constructed the building or structure in fact customary law allows the maker to continue using the building or structure as long as they remain on the land.

Meaning of Land at Common Law

At common law, land is understood to include everything upon, in or under the earth, from the surface of the earth downward to the earth's centre, and also everything above the earth up to the heavens. Land as Bennett, J, put it is 'not merely the surface, but all the land down to the centre of the earth and up to the heavens'. At common law, apart from the vertical extent of land, there is also the horizontal. The principle here is that land includes the fixtures on it. For this purpose, a fixture is seen as an article which, by its

annexation to the land, has lost its chattel nature and has become, in the eyes of the law, part and parcel of the realty. This is normally expressed in the latin maxim *quicquid plantatur solo solo cedit*. In *Lancaster v. Eve*, Williams J. asserted that there is no doubt that the *quicquid* principle applies in English law and is well established. However, for the maxim to apply, it must be shown that the article has become a 'fixture' on the land. The locus classicus on what is fixture is the case of *Holland v. Hodgson*, where the court laid down that the question whether a chattel has become a fixture depends mainly on two factors: firstly, on the intention of the original owner of the chattel as ascertained from the degree of annexation and secondly, on the purpose of the annexation.

The common law rule of fixtures forming part of the land was applied in the Nigerian case of *Ezeani v Njidike*. In that case, the defendants/appellants who were natives of Umori village in Eastern Nigeria had obtained a declaration of title to a piece of land against the people of Oraukwu village. The plaintiff/respondent was one of those from Oraukwu village who had built houses on the land. Following the court judgment against his village, he reached an agreement with the representatives of Umuori village whereby he was entitled to still live in the house for five years from the date of the agreement, on condition that he paid a yearly rent of ten shillings and on effluxion of the five years, he would either move to another piece of land where the people of Umuori might offer him or leave the village. When the five years expired, the Umuori village, acting through their solicitor, gave him notice to quit couched thus: 'this is to give you notice that you are required to remove and pack out all your belongings therefrom'. On receipt of this notice, he engaged a contractor to demolish the house and remove the materials. However, Umuori people forcibly prevented the contractor and other agents from removing the materials and instead removed them themselves. The plaintiff/respondent sued for conversion. One of the issues for determination was whether the plaintiff/respondent could detach and pack out the component parts of the house, for if the house had become a fixture, it would be part of the land and thus belong to the

occupancy by Government, where the question of payment of compensation arises. In causes or matters between private persons, the *quicquid plantatur solo solo* rule still applies.

Historical Development of Land Law in Nigeria

Before the advent of the British Administration in 1861, Nigerians operated customary land tenure system, which was indigenous to the people. Like all other customs, the customary land tenure system varied from place to place and was accepted as "a mirror of accepted usage". The system continued after the arrival of the British Administration. Although there were statutory erosions into customary law here and there, the system was allowed to maintain its essential character.

Following the enactment of the Foreign Jurisdiction Acts, 1890 to 1913, the British Government, which included Parliament and the Crown, had powers to legislate for Nigeria. A major reception legislation arising from the jurisdiction of the British Government was the Interpretation Act, and by section 45 of the Act, the English Common Law of England and the Doctrines of Equity and the statute of general application that were in force in England on the first day of January 1900 were in force in Lagos in so far as the limits of the local jurisdiction and local circumstances permitted and subject to Federal law. On the strength of the above provision of the law, the English law of real property was applicable in Nigeria, subject to the exceptions contained in the section.

Accordingly, the English common law rules relating to tenures, disposition of real property, estates, inheritance, perpetuities and a number of others became applicable in Nigeria. The same could be said of the doctrines of equity, which included the construction of wills, institution and settlement of land and the doctrine of notice. It is important to mention here that a number of pre-1900 real property statutes have been held to be of general application in Nigeria. Some of them include the Statute of Frauds 1677 and the Wills Act 1837. Others include the Real Property Act 1845, the Partition Act 1868, the Conveyancing Act 1881, the Settled Land Act 1882 and the Land

Transfer Act 1887. The Nigerian Customary tenure was and is still recognized. The impact of British colonization on land holding and land law generally varied between Northern and Southern parts of Nigeria.

Northern Nigeria

In the early nineteenth century, most of Northern Nigeria was conquered by the Fulanis in a religious war variously described as the Fulani, the Sokoto or the Usman Dan Fodio Jihad.Following the conquest, the Fulanis took over all lands in the conquered areas (apart from Sokoto and Gwandu, because those areas were already Muslim areas) in conformity with Maliki law of Islam, which stipulated that "all lands which come into possession of the faithful through conquest are tied up immediately after conquest". Such land was regarded as public property (in the sense that it was vested in Allah through the Muslim community) over which no individual could have radical title. The land was placed under the control of the Emir who was the political and judicial leader. The conquered people remained on the land but paid tribute to the Emir. Though the Emirs under the Fulani rule held up land, the Emirs merely held the land for the common benefit of the Muslim community in accordance with Islamic doctrines. They held it "in trust" for the people, with the Emirs having no beneficial interest or proprietary right to the land. The Emir was just in the same position as the Chief or Headman described by the Privy Council in *Amodu Tijani v. Secretary of Southern Nigeria.In this case one of the Idejo white –cap Chiefs, the Olowu, claimed to be the absolute owner of certain lands in Lagos by virtue of his chieftaincy. It was held that the lands of Lagos, including the one in dispute were stool lands of the king of Lagos, and as such passed to the British Crown under the treaty of cession of 1861. The right of the Idejo whitecap chiefs in Lagos lands was therefore seigniorial right giving them the ordinary rights of control and management in their capacity as white cap chiefs.*

This later fact brought about a weakening of the system of communal and land ownership as it existed prior to the Fulani rule

because the position of the Emirs who now held and allocated portions to them in return for their paying tributes or tithes can hardly be equated with that of the erstwhile family or village heads. The control by the Emirs was more centralized and each person obtained land not on the basis of his family or village bond but on individual basis. Between 1902 and 1903, the British conquered Northern Nigeria and took over the ultimate rights in the land.

When Northern Nigeria was conquered in 1902 – 1903, each of the Emirs was appointed on terms embodied in a letter of appointment, in which the ultimate rights in the land, insofar as they were held by the Fulani dynasty as conquerors were transferred to the British Crown. No attempt was made at the time to define those rights. With Lord Laggard as Governor of Northern Nigeria, succeeded by Sir Percy Girourad, land legislation was introduced in the area that commenced the statutory land tenure. The first legislation was the Public Lands Proclamation, which divided all the lands in Northern Nigeria into two, namely Crown Lands and Public Lands. Crown Lands comprised mainly the lands acquired from the Royal Niger Company and certain other lands taken up by Government for public purposes. These were placed under the direct control of government by section 4 (1) of the Crown Lands Proclamation 1902.

Public Lands, on the other hand comprised all lands, which upon conquest, the British Government took over from the Fulani leaders and included the lands held by the few ethnic groups that had successfully resisted the Fulani Jihad. The Crown Lands Proclamation of 1902 was succeeded by the Land and Native Rights Proclamation which abolished the bipartite division of lands into Crown and Public Lands and provided that all right of control over the lands of Northern Nigeria, occupied or unoccupied, have passed to the Government to be administered for the common benefit of the natives. It also provided for the requirement of Governor's consent to any alienation of land to a non-native.

Next was the Lands and Native Rights Ordinance, which revived and substantially re-enacted the Native Rights Proclamation

of 1910 and confirmed for Northern Nigeria that there could be no absolute titles to lands held by 'natives' or by 'non-natives' and that at best occupiers could only hold rights of occupancy under the law, rights which were severely limited and controlled. The Ordinance thus completed the shift in emphasis from family control of lands by family heads and community Chiefs, from local control of lands by Emirs to central control by the Governor. It lay with the Governor to grant rights of occupancy and issue certificates of occupancy to the natives and to demand a rental for such rights and to revise the rental periodically. The Lands and Native Rights Ordinance of 1916 was later revised and largely re-enacted by the Land Tenure Law following Nigeria's independence in 1960.

The few modifications to the 1916 Ordinance, which were reflected in the Land Tenure Law, were such as to reflect the socio-political changes in the Northern part of Nigeria as a result of Nigeria's independence. Thus, all lands in Northern Nigeria came under the control and subjected to the disposition of the Minister for Lands and Survey whose duty it became to administer the lands for the use and common benefit of all natives of Northern Nigeria. Under Section 6 (1) of the Land Tenure Law, the Minister was empowered to grant rights of occupancy and issue certificate of occupancy in evidence of the grant and in proof that the grantee thus had exclusive rights to the land subject to the right of occupancy against all persons other than the Minister. His consent was also now required for alienation of the land. Under Section 34(1) of the Land Tenure Law, Government could revoke the right of occupancy for "good cause" which included non-payment of rent and other dues as specified in the grant, alienation of a right contrary to the provisions of the law or where the land is to be used for public purposes.

Southern Nigeria

In the Southern part of Nigeria, customary law continued to govern land rights and transactions in Lagos until 1861 when king Dosumu ceded the Lagos territory to Britain. Before the cession of

Lagos, the Royal Niger Company had purchased lands by agreements concluded with the Chiefs of the territories in the hinterland of Southern Nigeria (outside Lagos). The company had purchased the lands through agreements in its private capacity as a commercial concern and by such agreements "absolute title" to the lands was transferred to the company by the Chiefs. The Company's claim to absolute title to those lands was doubtful because in most cases the Chiefs sold the lands, which were family property in their own individual capacity, and so the principle *nemo dat quod non habet* applied to defeat the company's claim to absolute title. In some cases too, the Chief sold lands over which title of their own family or community was in dispute meaning that the company as purchaser could not be said to have title. In *Egbuche v. Idigo*, the sale to the Royal Niger Company was done by Plaintiffs' ancestors but the defendants claimed in the suit that they were the rightful owners of the land and that they knew nothing about the sale until the suit was filed. The Supreme Court sitting on appeal from the provincial court held that the evidence adduced did not establish either the Plaintiffs or the Defendants as owners. This decision shows that even the Plaintiffs' ancestors who sold the land had no valid title to it and accordingly, the Royal Niger Company which bought the land had no valid title.

Following the official proclamation of Southern Nigeria as a British Protectorate in 1900 and its subsequent merger with Lagos in 1906 to form the colony and Protectorate of Southern Nigeria, the Colonial British Government bought over the Royal Niger Company's right to the lands. Thus the Niger Lands Transfer Ordinance of 1916 was passed and it provided as follows:

All the lands and rights within the Southern Provinces of the Protectorate belonging to the Royal Niger Company Limited...on January 1, 1900 shall be and are hereby vested as from January 1, 1900 in the Governor in trust for Her Majesty.

Despite the fact that the rights in the land were said to be "vested" in the Governor in trust for Her Majesty, thus suggesting absolute title in the Government, the native and other occupants still

had peaceful, undisturbed possession and exercised all rights to the land in accordance with customary law. Unlike in Northern Nigeria, land in the South was not at the disposal and under the control of the Governor. The colonial government showed no desire to interfere with the pre-existing customary tenure and its natural evolution.

The various communities, tribes and nations, comprised in the territory of the Southern Nigeria operated diverse land tenure systems. The basic trust of the various land tenure systems in the South was private ownership of land. Land was owned absolutely by private individuals, families or communities. This ownership was always absolute and not subject to superior control except where the occupier held an inferior title as tenant or customary tenant. Land could only be acquired through negotiation with those various land owning families, communities or persons. The radical title was vested not on a government, but in the various land owners.

However, the Privy Council in *Amodu Tijani v. Secretary Southern Nigeria* gave judicial recognition of this tenurial system. The government of the various territories of Southern Nigeria may, however, compulsorily acquire land through the Public Land Acquisition Laws applicable in the various States. Upon acquisition, compensation is paid to the previous owners and the land is used for some public purposes. Upon acquisition, the land is held by government and title thereof is vested in such government. Most of the land was however the subject of private ownership. Individuals and families had absolute liberty and discretion to sell, mortgage, lease or retain their land without reference to a superior authority.

Land Legislations during the Military Regime

Various Decrees and edicts were promulgated during the military government affecting land in Nigeria. We shall mention a few of these legislations. The Federal Military Government in response to public outcry promulgated the Rent Control Decree No. 15 of 1966; this Decree was repealed by the Rent Control (Repeal) Decree No. 50 of 1971. The impact of this Decree on the soaring rents

in the country was doubtful. The Requisition and other Powers Decree, No. 39 of 1967 was promulgated to empower the Army and Police to requisition land and other property during the period of the emergency. The Decree was amended in 1975 to create the central and state compensation committee to deal with matters of compensation. This was followed by the state lands (compensation) Decree No. 38, 1968, which deals with issues of compensation in respect of land acquired by the state. It was repealed in 1976 by the Public Lands Acquisition (miscellaneous Provisions) Decree No.33 of that year.

In 1977, in order to further streamline the various enactments and land tenure systems existing in Nigeria, the Military Government set up Land Use Panel with the following terms of reference: -

(a) To undertake an in-depth study of the various Land Tenure, Land Use, and land conservation practices in the country, and recommend steps to be taken to streamline them,
(b) To study and analyse all the implications of a uniform land policy for the entire country.
(c) To examine the feasibility of a uniform land policy for the entire country and make necessary recommendations and propose guidelines for implementation;
(d) To examine steps necessary for controlling future Land Use and also opening and developing new land for the needs of Government and Nigeria's population in both urban and rural areas and to make appropriate recommendation.

The panel's report led to the promulgation of the Land Use Act of 1978, which was later provided for in the constitution of Nigeria 1989.

The Land Use Act

The Land Use Act of 1978 or the Act is the principal Statute regulating land management in Nigeria. The Land Use Act was given a prominent mention and protection in the Constitution of the Federal Republic of Nigeria. The preamble to the Act shows the reasoning behind its enactment. It 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...

The preamble shows that "public interest" is the driving force of the Act; and "the public interest" is the right of all Nigerians to use and enjoy land in Nigeria. Since land provides the physical substratum for all social and economic interaction, land law is inevitable an expression of social status and an instrument of social engineering. Everyone live somewhere, and each therefore stands in some relation to the land as occupier, holder, tenant, licensee, squatter, pledgee, chargee or mortgagee. In this way, land law impinges upon a vast area of social orderings and expectations, expecting a fundamental influence on the lifestyles of even the ordinary people. Real property which is land is technically not merely the earth's surface, but all the land down to the centre of the earth and up to the heavens. Apart from the vertical extension, horizontally, land includes fixtures, that is things permanently, attached or annexed to land, so that by the annexation to land they have lost their chattel nature and have become, in the eye of the law, part and parcel of the land. This is important, because it means that plants, economic trees, buildings and other permanent structures planted in or affixed to the land, become part of the land. Quite apart from the residential dimension, land has a huge economic significance in terms of providing security for capital, investment, business and agriculture. It is in view of the incalculable significance of land that the Land Use Act was promulgated as the single law, which particularly defines the rights and obligations and specifies conditions precedent for any alienation or encumbrance of the land rights. The aim for imposing conditions is to restrain and control alienations of and encumbrances on land and thus enhance tenurial

security. Section 1 of the Act provides:

Subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are (sic) hereby vested in the Military 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 this Decree.

The section has the effect, particularly in the Southern part of Nigeria, of divesting the allodial title to land from communities, villages, families and individuals and expressly vesting the same in the Governors of the States in trust for the people. Thus, the "Governor", takes over the pre-allodial title to land. That is to say that the Governor becomes the Landlord for the benefit of his people. With the Act, the radical title which individuals had in their personally acquired land can no longer be acquired by them.

The Land Use Act 1978 as noted above is a fundamental statute affecting Land Tenure in Nigeria today. The Act has modified substantially the existing Land Tenure Systems in Nigeria, but the amazing aspect is that it has not abrogated or pretended to substitute them; in its provisions, it recognized the customary land tenure as a valid and subsisting law regulating land tenure in Nigeria.

The Land Use Act 1978 (the Act) has as its objectives, the following;

(a) To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating.
(b) To streamline and simplify the management and ownership of land in the country.
(c) To assist the citizenry, in respect of owing the place where he and his family will live a secure and peaceful life.
(d) To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

In this respect, the Act, by virtue of its section 1, provided that all land comprised within the territory of each state is held in trust and "administered for the use and common benefit of all Nigerians",

while therefore vesting the land in the Governor, the act recognized the existing rights of all citizens on land. In cases where the land is located in Urban areas, the land shall continue to be vested in the person in whom it was vested before the act, if the land is developed, where the land is undeveloped then, any portion in excess of half hectare will be forfeited to the government. In the non-urban areas, the section 36 of the Act provided that the occupier shall continue in occupation as if the customary right of occupancy has been granted by the occupier. Occupier is defined as any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-leases or sub-under lessee of a holder.

All existing rights in land has been converted to a right of occupancy, where it is in urban area it is deemed grant or granted by the Governor of state and referred to a statutory right of occupancy while in non-urban area it is deemed granted or granted by the appropriate local government and referred to be customary right of occupancy.

The Act has preserved the existing rights being held under customary law by the community and family who are the rightful owners of land under customary law. In section 24, the devolution of rights under customary law on the death of the holder of a right of occupancy is preserved, and thereby the family property is preserved, while section 34(4) recognize any "encumbrance or interest valid in law", and such land shall continue to be so subject and the certificate of occupancy issued". Section 35 on the issue of compensation also recognize the interest of the land holder under customary law, when it provides *inter alia:*

Section 34 of this Act shall have effect not withstanding that the land in question was held under leasehold, whether customary or otherwise.

Affirming the position, the Supreme Court per Karibi-Whyte in the case of *Ogunmola v. Eiyekole* observed as follows:

Land is still held under customary tenure even though dominium is in the Governor. The vast pervasive effect of the Land

Use Act is the diminution of the plenitude of the powers of the holders of the land. The character in which they held remains the same. Thus an owner at customary law remains owners, owners the same event though he no longer is the ultimate owner. The owner of land, now requires the consent of the Governor to alienate interests which hitherto he could do without such consent.

Clearly, the Act has only modified the customary land tenure, but the rights of the land owner under customary law whether family or communal remains intact. The right enjoyed under customary law had always being known to be absolute rights of ownership. The family or community owner has ultimate rights in the use and management of their land. However, with the coming into force of the Act, the rights had now been converted to statutory or customary right of occupancy depending on whether the land is located in urban or non-urban areas.

It should be noted that only the family has the power to alienate its land or deal with it in any manner whatsoever. However, before a legally valid title can be passed now, there must be a consent of the Governor of the State to the transaction. Section 36(5) and (6) seemed to have prohibited any transfer of land that is subject to customary right of occupancy, but the act specifically provides that any such transfer shall be void. There is a difference between allocation of land within the family members and transfer of the land to a person not being member of the family. Where it is within the family, or community, since the family or community continues as the absolute owner of land and the member only occupies the land, then there is no transfer of interest by the family, but where the transfer is to an outsider, then it will seem to be prohibited where the land is within non-urban area subject to customary right of occupancy.

The Act has not extinguished the incidents of customary ownerships of the land in Nigeria. Section 36(1) and (2) refers to "occupier" and "holder" of the land. Both may be granted the deemed customary right of occupancy. The holder is the person holding land as customary owner while the occupier is the customary tenant within the meaning of section 50 of the Act.

The Act recognized the interests of the land holder under customary law though the right that may now be enjoyed is subject to the ultimate power of the Governor, the customary land tenure is still in existence in Nigeria.

The Section 1 of the Act has transferred all land within the state to the Governor of the state to hold in trust for the people. The holders of land under customary tenure continue to hold same as if a statutory or customary right of occupancy has been granted to then by the Governor.

The Land Use Act, 1978 was enacted as a Decree and came into effect on the 29th of March, 1978. By the Adaptation of Laws, (Re- designation of Decrees, etc) Order 1980 Act, it assumed the appellation of an Act, the title suggests that the Act is designed to control land-use and thus a planning statute. The basic philosophy of the Act is, as stated in its Preamble, to make available to and preserve the right of every Nigerian to land.

Conclusion

Land is indeed basic to how physical development activities are organized in any society. Forms and patterns of distribution of structures that promote good health, accessibility, convenience and harmonious land uses in the environment are a function, to a considerable extent, of the rights and methods of dealing with the land. The land tenure system and the associated legislations set out the rights, obligations and methods of administration with regard to acquisition, exploitation, and use of specific portions of land. The tenure system, particularly in the southern states of Nigeria, before 1978 can be aptly described as one undermining effective control of land use by the government in public interest. The rapid rate of urbanization in the country and the increasing demand for the use of land both in the cities and rural areas for physical development for necessary infrastructures made land to be of high market value and a scare commodity to the government and for private sector. Land law is thus very important in physical planning and planning

administration as well. The Land Use Act 1978 has as its generally known aims, stemming the tide of land profiteering and speculation and easing the burden on government when it needs land for development. The populist preamble to the Act declares its objective to be the assertion and preservation of land rights and tenures. Paradoxically, section I of the Act vests "all land comprised in the territory of each State" in the respective State Governor, thus divesting the individuals of their proprietary rights. The Act is said to have abrogated absolute property ownership by communities, families and individuals and replaced it with a mere permissive right of occupancy. The Land Use Act has been variously described as a "controversial and yet momentous legislation", "one of the most enigmatic statutes in Nigeria", and "the most impactful of all legislations touching upon land tenurial system of this country before and after full nationhood"

Prior to the Land Use Act, right to land in Northern and Southern parts of Nigeria was controlled by different systems of law; that is the Land Tenure Law in the Northern part of Nigeria and traditional communal ownership in the south. The Land Use Act can be justifiably credited with unifying the law in this regard. The Act was the first national effort at reforms of the land tenure in Nigeria. It is a complete code regulating the rights of the people in respect to land, which the Governor of the State holds in trust. Despite the shortcomings which have been pointed out above, which are by no means exhaustive, there can be no argument that the Act is an indispensable catalyst for development. One main achievement of the Land Use Act is the harmonization of land tenure systems in the country. Apart from that, the Act has failed to achieve its declared objective as contained in section 1 of the Act, that is ensuring that land is "administered for the use and common benefit of all Nigerian". The Act has enabled some Nigerians to acquire more land, or to take others' land, and others to be rendered landless. The Act has failed to guarantee the right of Nigerians to land, and has not succeeded in settling boundary disputes and endless litigation over allodial or even usufructuary land rights. With the governor's unquestionable power

to with-hold consent, delay consent, deny consent or even refuse consent, and with his power of revocation which is often misapplied, the Land Use Act, as it is, has not aided development.

It is therefore recommended that the Land Use Act which is the Land Management Statute in Nigeria be amended. A safeguard should be built into the Act to check the gross abuse and arbitrary exercise of the powers vested in the State Governor.

The zoning of the territory of each state into urban and non-urban areas by the Act be made mandatory so as to make it unlawful for State Government to declare the whole area of his state an urban area. To this end, the Federal Government should issue guidelines which the state governors must comply with before designating an area as urban or non-urban. This is necessary in the interest of agricultural development.

The procedure for obtaining consent to the alienation of a right of occupancy should be streamlined and unified throughout the Federation. The fees charged by the various state governments for processing application for consent should be reviewed throughout the Federation.

The provision of section 36(5) of the Land Use Act barring alienation of land in non-urban areas be expunged to pave way for agricultural financing and development.

The provisions of the Land Use Act excluding the court in the determination of the adequacy or otherwise of the compensation payable in section 47 (2) should be expunged as same is in violation of the provision of fair hearing as provided for in the Constitution of the Federation.

A certificate of occupancy issued on the Land Use Act, cannot be said to be conclusive evidence of any interest or valid title to land in favour of the grantee; it is only *prima facie* evidence of such right, interest or title without more and may in appropriate cases be effectively challenged and rendered invalid, null and void.To make the certificate of occupancy truly a certificate, it is recommended that the Act should stipulate that the certificate of occupancy is conclusive proof of landed property right.

Endnotes

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[1] Essien, E. "Land Use Act and Security in Real Estate in Nigeria" in Smith, I. O. (ed) The Land Use Act- Twenty Five years After (Lagos: University of Lagos, 2003) p.279

[2] Cap 123 Laws of the Federation of Nigeria 2004.

[3] of 1959.

[4] S. 2 Cap. 100 Laws of Western Nigeria 1959

[5] See the case of Osho v. Olayioye (1966) N.M.L.R 329, Ezoni v. Ejodike (1964) All N.L.R 402.

[6] See Adebiyi v. Ogunbiyi (1965) N.M.L.R 395.

[7] Essien, E. Law of Credit and Security in Nigeria, 2nd edition (Uyo: Toplaw Publishments Ltd, 2012) p.71

[8] Re Wilson Syndicate Conveyance, Wilson v. Sharrock (1934) 3 All ER599 at 602

[9] Per Birkett, J in Hulme v. Brigham (1943) 1 k. B. 152 at 154

[10] Theobald, H. S. The Law of Land, 2nd edn (London: Saint Catherine Press, 1929) p. 215

[11] (1959) 141 ER 288 at 293

[12] (1872) LR 7 CP 328

[13] (1965) NMLR 95; (1964) 1 All NLR 402

[14] Here, the parties had agreed that English law that is common law, should govern the case

[15] Cap I23 Laws of the Federation of Nigeria, 2004, s.18 (1)

[16] Statutory definition of 'minerals' may be found in the Mineral Act, Cap M6, Laws of the Federation of Nigeria 2004, s.2.

[17] S.2 (1); S. 2(ii) of the Conveyancing Act 1881 has identical provision. Also, S. 205(i)(ix) of the Law of Property Act (England).

[18] The right either of using the land of another for certain defined purposes such as for walking or driving or the right of restraining the owner from using his land in certain defined ways such as building on it so as to obstruct the access of light or digging in it so as to let down a house.

[19] Right to pass, repass and take something from another's land.

[20] This is a tract of land cultivated as an agricultural whole and organized under aristocratic administration.

[21] This consists of perpetual rights to present an ecclesiastical living, and the owner of an advowson is known as the patron.

[22] Holdsworth, W. S. A History of English Law, vol 111 (London: Methuen and Co. Ltd, 1923) p.179

[23] S.166

[24] S. 51(1)

[25] Owoniyin v. Omotosho (1961) 1 All N.L.R. 304; Kimdey and Ors v. Military Governor of Gongola State and Ors (1988) 2 N.W.L.R. (Pt.77) 445.

[26] Lewis v. Bankole (1908) 1 N.L.R. 81.

[27] Cap 89, Laws of the Federation and Lagos

[28] Young v. Abira (1940) 6 WACA 180; Niki Tobi: Cases and Materials on Nigerian Land Law. Nigeria: Mabrochi Books, 1997, pages 1-2

[29] Essien, E. Law of Credit and Security in Nigeria. Nigeria: Golden Educational Publishers: 2000, p. 94

[30] Ruxton, F. H., Maliki Law. Oxford: O. U. P. 1916, pages 78-80.

[31] (1921) A C 399

[32] No. 13 of 1902

[33] Essien, E. Law of Credit and Security in Nigeria. Op. cit p. 96

[34] 1910

[35] 1916

[36] A. N. Allot, "Nigerian: Land Use Decrees, 1978" (1978) Vol.22, J. A. L. Pp 136-160

[37] Section 6 of 1916 Ordinance

[38] Cap 59, Laws of the Northern Nigeria, 1963

[39] Section 10 (10) Land Tenure Law, 1962

[40] Ibid

[41] By the Treaty of Cession of 1861.

[42] Nwabueze, B. O., Nigerian Land Law. p. 214. Elias,, T. O. Nigerian Land Law, (London: Sweet and Maxwell, 1971), p.27

[43] (1934) II N.L.R. 140

[44] Essien, E. Law of Credit and Security in Nigeria. Op. cit p. 106

[45] (1921) A C 399

[46] Section 326(5) thereof

[47] Cap L5, Vol. 7, Laws of the Federation of Nigeria, 2010

[48] See Constitution of the Federal Republic of Nigeria 1999, Cap P23 Laws of the Federation of Nigeria 2004, S. 315 (5) (d).

[49] Bennett, J. in Re Wilson Syndicate Conveyance, Wilson v. Shorrock (1938) All ER 599ta 602

[50] Holland v. Hodgson (1872) L. R. 7 C .P 328

[51] The Act was originally promulgated as a Decree by the Military regime (Decree No. 6 of 1978) but was, upon the exit of the military regime and taking over of government by Civilian, re-designated Act, vide Section 1 of Adaptation of Laws (Re-designation of Decrees, etc) Order No. 13 of 1980.

[52] This is quite apart from the generally known purposes/ aims of stemming the tide of land profiteering and speculation and easing the burden on government when it needs land for development.

[53] Dzungwe v. Gbishe(1985) 2 NWLR (Pt.8) 528; Savannah Bank Ltd. v. Ajilo (1989) 1N. W. L. R. (Pt. 97) 805; Salami v. Oke (1987) 4 N. W. L. R. (Pt. 63) 1

[54] (1990) 4 NWLR (pt 146) p 632 at 653

[55] Ss. 22 and 34 of the Act

[56] See Abioye v. Yakubu (1991) 5 NWLR (pt 190) 130.

[57] Sections 1 and 13 of the Act

[58] Oyesiku and Ande, "The Nigerian Environment: Utilization and Conservation" in Oyenye, O. Y. et al (eds) Nigerian Culture and Citizenship Education (Lagos, 1993) Chap. 15

[59] Cap. L5 Vol.8 Laws of the Federation of Nigeria, 2004.

[60] Per Irikefe, JSC in Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634 at 653

[61] *Adole v. Gwar, supra; Mohamoud J. Lababedi v. Lagos Metal Ind. (Nig) Ltd* (1973) NSCC. 1 at 6