



A Critical Analysis of Land Rights and Interests in Nigeria

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ABSTRACT

The issue of land ownership and possession under the Land Use Act has become a topic of debate over the years, with some jurists and writers arguing that the Act gives no absolute ownership to the people but instead vests such ownership in the Governor, who holds the land in trust, while others argue that the land is in the mere possession of the Governor and the people have the right to possess or own these lands in accordance with the Act. Unquestionably, the Land Use Act of 1978 was enacted to rectify certain land use misdeeds in Nigeria. The misdeeds have persisted despite the existence of the Act as an existing law under the Nigerian Constitution of 1999 (as amended). At times, some state governors have concealed themselves behind the law to commit all manner of mischief. In *Osho v. Foreign Finance Corporation*, for instance, the plaintiff's right of occupancy was revoked under the guise of an overriding public interest and public purpose, but the land right for the same land was subsequently granted to a private non-juridical person for its private business. In this work, it is proposed that the Land Use Act of 1978 be repealed and Nigeria return to its previous state. A new piece of legislation should be enacted to restore the absolute ownership rights and interests of communities, families, and individuals over land, but with stringent controls on land grabbing, speculation, and oppressive alienation.

Keywords: Land Use Act; land ownership; possession; Right of prescription.

1. INTRODUCTION

Since land in its physical state is incapable of ownership, it becomes extremely necessary that rights and interest on land should be governed by the law of real property. Land rights and interest in Nigeria connote title to land which rightly be classified as title to land, ownership, possession and right of prescription. This paper explores these varying levels of land rights and interest and their evolution through the pre-colonial, colonial and post-colonial Nigeria. Deficiencies in their applicability will also be explored and requisite proposals for reform will be proffered in section 6 infra.

1. LITERATURE REVIEW

1.1 Conceptual clarification

Land: Land has been variously defined at common law, by statutes and Authors. A few of these definitions are replicated hereunder. At common law, land is defined as the earth surface, subjacent things of a physical nature, everything attached to the earth surface and incorporeal rights (Onah, 2022). Under statute, land is defined as “building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals (Ajayi & Nwaechefu, 2019).

Rights: This refers to interest or title, claim in an object or property whether tangible or intangible. Rights could be personal, proprietary or possessory. Land rights in land include ownership, possession and corporal and incorporeal hereditaments.

Ownership: This is the totality of rights and powers that are capable of being exercised over a thing. The classical definition of ownership portrays it as the right to use and enjoy land (Utendi), to dispose or transfer land (Freundi) and to abuse, consume or destroy land (Abutendi) (Epstein, 2011). Holistically, ownership connotes the power of enjoyment right of possession, power to alienate inter vivos or charge as security, power to bequeath the res by will and power of residue.

Possession: It is the physical control that a person exercises over land. Nnameka-Agu, JSC explained in *Buraimoh v Bamgbose* that possession has two elements, that is, the thing possessed or corpus and

the intention to possess or appropriate to oneself the thing or animus possidendi (Olong, 2012). Possession could also be de jure possession (possession in law) and occupation of land (de facto possession). Possession was also defined in the case of *Adelekun v Iseogbekun* as the occupation or physical control of land either personally or through an agent or servant.

2. RESEARCH METHOD

The research method used in this paper is mainly doctrinal and analytical.

3. PRE-COLONIAL AND RIGHTS IN NIGERIA

Before the advent of colonialism in Nigeria in 1861 there was no nation such as Nigeria. The entities that existed in present day Nigeria consisted of empires and kingdoms such as Ibo Kingdom, Yoruba Kingdom, Bornu Kingdom, Soaghai empire etc. These empires and kingdoms were predominantly marked by communalism and commonality as a way of existence (Okafor, 2013).

Land rights in pre-colonial era were recognized under Native law and custom as communal ownership, family ownership, individual land holding and chieftaincy or stool land ownership.

3.1 Communal ownership

Under Native law and custom and customary land law was mostly communally owned. The legal implication is that land rights were vested in the tribe, clan, community, town, village or extended family. The chief or head of these units held the land in trust for the use and benefit of all the members of the units who only possessed right of occupation. Communal ownership of land in pre-colonial era seemed to preclude individual ownership. This assertion was emphasized by Lord Haldane in the celebrated case of *Amodu Tijani v Secretary to the Government of Southern Nigeria*, where he poignantly stated that “land belongs to the community, the village or family, never to the individual...” (1996, p. 53)

Contrary to Lord Haldane’s statement in the above case, individual ownership is not foreign to native ideas, infact, communities and families had

ancestors or founders who were associated with the acquisition of communal or family land. Individual ownership of land under customary law has been known to exist from the outright grants or gifts of land made by the chief or head of the family.

Communal ownership of land existed/exists in a continuum: Land belongs to the dead, the living and the unborn generations. All these members of the community have possessory rights over the communal, village or family land. Nwabueze posits that communal ownership has outlived the pre-colonial era for three reasons:

- a) Due to kingship and lineage or organization of the Nigerian society, that is, after the demise of the chief or head, the ownership of land continued in the line.
- b) The interstate system of inheritance promotes communal ownership.
- c) The presumption that native lands are communal or family lands encourages communal ownership.

3.2 Family ownership

Family has been defined as a man, his wife or wives and children. The founder of a family was the head of the family and was succeeded by his eldest son (Ozment, 2009). It need be stressed that in communal, village and family land holdings the chief or head possessed the rights of reversion over, protection of and tributes paid in respect of communal, village or family land.

3.3 Chieftaincy or stool land ownership

This is a royal land attached to the office of the head chief such as Emir, Obi, Olu, King. It is vested in the head chief or ruler as a corporate sole for the purpose of continuity and administration. Such land, however, cannot be treated by the Emir, Obi, Olu, Oba or King as his personal property, but it remains a royal land to be devolved on intestacy to his successor.

4. COLONIAL ERA

Communal, village and family ownership of land was not abolished in Nigeria by the colonial masters. In addition, state ownership of land was introduced through the Treaty of Cession of 1861 when King Dosumu of Lagos ceded the foreshore

land of Lagos territory to the Queen of England without understanding the legal import of his cession. The lands that King Dosumu ceded to the Queen of England were designated as crown lands. The Queen hid under the 1861 Treaty to acquire lands in Nigeria through conquest, *Bona vacantia* and private grants (Adekoya, 2016).

The colonial government introduced England Land Law into Nigeria, but before the introduction of English law, all lands in Nigeria were held under customary law as adumbrated earlier. Quality of land tenure in Nigeria was introduced with the advent of colonialism: customary land law and English land law. These sources of land law have continued to co-exist since 1861 till date. Land law in Nigeria has since then been regulated by customary law, the received English statutes and case law and local statutes and case law.

The English law introduced many innovations into the Nigerian land law which include compulsory acquisition of land, the doctrine of estate: freehold, fee simple, fee tail, life estate, prescriptions, leases and tenancies. These are explored hereunder:

4.1 Compulsory Acquisition of Land

This has been constitutionally guaranteed in Nigeria, to the effect that a property owner in the country cannot be divested of his proprietary right over his property compulsorily by the government except with the authority of a written law and upon the payment of adequate compensation. Acquisition of such private land must be informed by overriding public interest. However, the owner of the acquired land has the right of appeal to the High Court in case of disagreement over the amount of compensation. Evidence has shown that some unscrupulous governments have time and again paid pittances to land owners under the guise of compensation.

4.2 The Doctrine of Estate

The concept of ownership to land is alien to English law, as only possession or seisin is practiced in Great Britain. The Estate owned by a person represents the measure of his right to seisin, and entitles him to exercise proprietary rights over the land for the prescribed period subject to the observance of the tenurial duties. The seisin may be disposed as freely as any other subject matter of ownership. A man may

be entitled to both immediate and future seisin rights over land.

Estate can be categorized into Estate of freehold and Estate less than freehold.

- a) **Estate of freehold:** This is not governed by a superior title; it is subdivided into freehold of inheritance and freehold not of inheritance. The only difference between them is that freehold of inheritance is devisable or transmissible while the latter is not. Freehold of inheritance includes estates in fee simple and fee tail or life estates and estate pur autre vie.

Fee Simple Estate is granted to a man and his heirs and has the largest duration, that is, it can last forever, spanning from when the grantee is granted, the lifespans of his heirs. Contextually, "fee" connotes inheritability while "simple" refers to the inheritance by general heirs of the grantee or owner whether they are ascendants, descendants or collaterals. Fee simple is usually created through the use of limitation words such as "to X or "Ade" and his heirs."

It need be pointed out that before the enactment of the 1882 Conveyancing Act the common law rule on creation of the fee simple estate was Soygid by insisting that before a fee simple estate could be created, words such as, "To "X" and his heirs" only should be used (Dale, 1882). Any other words used to the contrary would create only a life estate, for instance, "To X and his assignees" would for all intents and purposes only create a life estate. The Conveyancing Act 1882 cured this rigidity of the said common law rule through its provision that "the expression "fee simple" when used as the words of inheritance should be sufficient to convey a fee simple in land". In short, the Conveyancing Act 1882 and the Wills Act of 1837 dispensed with the use of technical words in creating estates in fee simple. The extant rule of dispensing with the use of technical words in creating fee simple estates has been replicated in Nigerian statutes, for example the defunct Western and Midwestern states' property and Conveyance Law 1959. The PCL Wills Laws in Oyo, Osun, Ondo, Ekiti, Delta and Edo States limit the land through expressions such as "To "A" in fee simple" or "To "A" and his heirs." The position of the law in other parts of Nigeria defers because the limitation of the fee simple estate is only contained in Conveyance

and not a will, for example, "To "X" in fee simple" or "To "X" and his heirs."

Fee Tail: This is an inheritable estate by specified descendants of the original owner but excludes his ascendants. Such estate can only be inherited by the grantee's lineal issue and not his collateral relatives. It does not and cannot exist in perpetuity like fee simple. It can be created through such limited expressions as "To X and the heirs of his body". The common law has always restricted the use of phrases to only "heirs" and "his body"; it abhors the use of such expressions as "seed", "offspring", "descendants", "issue" etc in creating fee simple or fee tail.

The rule in the Wills Act 1837 in the use of phraseology in a devise of an estate is distinct from that used in the Conveyancing Act 1882 (Browne, 2019). The Wills Act 1837 permits the devise of an entailed interest, hence the use of phrases such as "x and his seed", "Band his offspring", "x and his family according to seniority", "X and his Issue" and "X and his posterity are permissible under the Wills Act 1837."

Entailed interest can enlarge fee tail estate into fee simple estate in two ways, namely: processes of barring and statutory conversion.

Barring: This is the right of an entailed tenant whether entitled to possession, remainder, contingency or otherwise to dispose of the land in fee simple or for any lesser estate. This right cannot be curtailed even at law.

Statutory conversion: This can be found under section 3 of the Property and Conveyancing Law 1959 which applied in the old western state of Nigeria which limits the fee tail estate that existed before or after the commencement of the law to a conveyance of the fee simple estate absolute in possession. An example is the life estate which creates a life interest in favour of the grantee by express limitation or by operation of law. The rules in Wild's and Shelley's cases are also instructive.

c)

4.3 Right of prescription

This refers to accrual right of action over ownership or possession of land. At common law, time runs in favour of an adverse possessor and the exercise of possessory rights over a long period of time may account to ownership by prescription, unless it is proved that the alleged true owner had no

knowledge, actual or constructive of the adverse possession. Prescription is regulated by limitation laws of all the states in Nigeria. For instance, under these laws an action in respect of recovery of land or declaration of title thereon is statute barred after 20 years in relation to an action by a state government and 12 years in the case of private persons. It is necessary to point out that time starts running from the date when the right of action accrued or where the right of action is concealed; from the time the owner discovered the truth or could have done so with reasonable diligence. The action also accrues when the owner of land was either first disposed or first discontinued possession.

The rule of prescription are also recognized by the courts under Customary/Islamic law to protect an adverse possessor in the interest of fairness and justice. The rule of prescription in Customary/Islamic is not regulated by statutes of limitation and applies to the effect that the established owner does not necessarily lose his title to an adverse possessor by merely going out of possession for a long period of time.

4.4 Lease and tenancies

Leases are contractual arrangements by a land owner to grant the right of exclusive possession of his land or part of it to another person to hold under the owner or grantor for a fixed term of years (Wilkie, et al., 1997). Under such arrangements the grantor becomes the lessor or landlord while the grantee is the lessee or tenant, and contractual arrangement is termed lease, demise or tenancy and term of years is the period of time. The land, however, retains the reversionary interest over his land or part of its leased out to the land at the expiration of the lease. The lessor acquires exclusive possession of the lessor's land for the term of years.

The validity of leases and tenancies is characterized by these ingredients, namely, certainty of parties, certainty of property, certainty of term, certainty of terms or covenants, and right to exclusive possession by the lessee. Tenancies could be vitiated by fraud, unlawful purpose or if they are contrary to public policy.

Leases and tenancies can be created by holders of right of occupancy, tenants in general, yearly tenants, holders of Power of Attorney. A

lease created by an infant at common law is voidable and may be avoided by him or her within a reasonable time after attaining majority. The infant can also repudiate the lease when he attains majority, but within a reasonable time else he will assume liability for arrears of rent and performance of the covenants in the lease. Persons of unsound mind can create leases that could be binding on them unless the lessees knew of their insanity at the time the leases were created, or an order made under the insane man's estate, hence the lease must be granted by the receiver under an order made for that purpose.

Under the Married Women's Act 1882, a married woman can create a lease of property (Staves, 1990). Corporations may grant leases provided the leases are under their seals, as well as take leases. Registered companies under the Companies and Allied Matters Act 2020 (CAMA 2020) may grant or take leases. Partnerships can jointly create or take leases, associations or registered trustees under CAMA 2020 can also grant and take leases. Under the settled Land Act, 1882 trustees who hold land on trust for sale can also grant leases but to subject to consent that is specified under the trust for sale.

Leases can be created by either oral or in writing. Oral lease is valid, if it is to taken effect in possession, reserves the best rent attainable and to last not more than 3 years. Leases that last longer than 3 years must be evidenced by writing or deed. A deed that lasts more than 3 years that is not evidenced in writing is enforceable in equity.

The foregoing rights and interests in land that existed in Nigeria prior to the enactment of the Land Use Act 1978 were transplanted onto the Nigerian land law through common law and equity principles, Statutes of General Application in England on January 1, 1990 and local enactments. It has been vehemently canvassed that the legal maze which is reminiscent of the English Law of Real Property which Nigeria received which still applies in almost all, if not all the Nigerian states is a mystifying labyrinth of common law rules of grant antiquity with sprinkling in their interstices of doctrines of equity to temper the rigours of the common law coupled with premeal statutes to simplify some of the more intricate and demystify some of the more incomprehensible rules of common law. The common rules and doctrines of equity relating to the

English law of real property seem to be “shrouded in mystery, numerous often intractable and generally bewildering not only to the public at large, but also to members of the learned profession. Nigeria is also said to have inherited this branch of English law hook, line and sinker.

The post-colonial period of land tenure system was dual in nature as earlier articulated. This period presented a lot of challenges and problems to both grantors and grantees of real property in Nigeria. The mechanisms for effective land control in the country was lacking. This gave rent to a myriad of problems in land transactions and control by government, which were informed by post-independence socio-economic forces prevalent in Nigeria. The inflexibility of rules of alienation, uncertainty and insecurity of title and unmarketability of land in some parts of the country compounded effective land, control by government and transactions by private persons. Although the indigenous land tenure law and the imported English Land Law that were co-existing assisted in development the rules of alienation, conferment of valid title to purchasers were cumbersome, erratic and incapable of precise definition. Indeed many men bound brought their land twice from rival claimants or from two sections of a family. Other problems prevalent in Nigeria in relation land tenure systems were speculations by land grantors, prohibitive costs of government acquisition of public lands and acquisitions by industrial entrepreneurs and businesses. This hindered socio-economic development and industrialization in Nigeria hence the promulgation of Public Lands Acquisition (Miscellaneous Provision) Act No 33 of 1976, which divided Nigeria into zones and fixed maximum compensations that could be paid by government in the different zones. Partition of family and community lands elicited fragmentation of land holdings as well hindered agriculture and industrialization. Customary tenure system during this period attracted a plethora of cases that determine void and voidables; and chiefs and elders that acted as heads or trustees of family and community wantonly engaged on a voyage of evictions of their members and customary tenants. This is because some of the grounds for the evictions were not tenable.

The era of the Land Use Act or contemporary land tenure system in Nigeria

The enactment of the Land Use Act 1978 (LUA) was provoked by the menacing socio-economic forces and challenges adumbrated above. This era can be described as the modern period in the post-colonial land tenure system in Nigeria. The enactment of LUA 1978 was a deliberate government public policy to engender effective control of land acquisition by government industrial entrepreneurs, businessmen and private persons. LUA 1978 can, aptly be described as a paradigm shift in the case free attitude reminiscent of dualism in land tenure in Southern Nigeria and a modification of the inherited policy of paternalism in the Northern states to the concept of trusteeship (Schneider, 2006). It is not an existing law under the 1999 constitution (as amended) that introduced uniform land tenure system in Nigeria.

LUA 1978 has 8 parts and 51 sections. The provisions are critically explored hereunder. LUA vests all lands in the states in the Governors who hold such lands in trust and administer them for the use and common benefit of all Nigerians in accordance with the provisions of the Act. This is the preamble and contains the policy behind the Act. The concept of trust imposed on the Governors is vague and is not coterminous with the English concept of trust. It is rather used in the Act in a loose sense to promote unity amongst Nigerian citizens.

LUA 1978 places the control and management of all lands in a state under the Governor of the state and all other land, subject to the Act, under the local government within the area of jurisdiction of which the land is situated (Ebeku, 2002). The Act also established Land Use Allocation Committee in each state to:

- Advise the Governor on any matter connected with the management of land in urban areas;
- Advise the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and
- Determine disputes as to the amount of compensable payable under the Act for the improvements on land.

The Act also establishes land Allocation Advisory committee for each Local Government in Nigeria to advise its local government on any matter connected with the management of rural areas. The Governor is mandated to designate lands in his state

which would constitute urban areas subject to such general conditions as may be specified by the National Council of States.

LUA 1978 retains existing land laws prior to its enactment, such as the defunct Northern Nigeria's Land Tenure Law and state land laws in Southern Nigeria, subject to the provisions of the Act and when their provisions are incorporated into LUA 1978 (Okonkwo, 2013). The Act empowers to the Governor to grant statutory rights of occupancy in the entire state to any person for all purposes, easements appurtenant to statutory right of occupancy demand rents for any such land granted to any person as well as revise such rents at such intervals as may be specified in the certificate of occupancy or at intervals not specified in the certificate of occupancy but during the term of the statutory right of occupancy.

The Governor is also mandated to impose penal rents for (a) breach of any covenant in a certificate of occupancy that required the holder to develop or effect improvement on the land. (b) breach of any condition, express or implied which precludes the holder of a statutory right of occupancy from alienating the right of occupancy. (c) waive wholly or partially except as otherwise prescribed, all or any of the covenants or conditions to which a statutory right of occupancy is subject where compliance is impossible due to impossibility or great hardship would be imposed on the holder. The grant of statutory right of occupancy to any person for all purposes, and grant of easements appurtenant to statutory rights of occupancy extinguish all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy.

LUA 1978 also mandates local governments to (a) grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural residential or other purposes; (b) grant customary right of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in that local government area (Ghebru & Okumo, 2017). The caveat is that in granting such lands local government shall not grant more than 500 hectares for agricultural purposes and 5000 for grazing purpose except with the consent of the Governor.

The Act empowers local government to enter upon, use and occupy or acquire any land within its jurisdiction for public purposes. Such land must not fall within an area declared to be urban area, such to statutory right of occupancy, not within any area compulsorily acquired by the federal or state government, or mining areas. LUA 1978 also empowers the local government with exclusive rights over such land so occupied against all persons except the Governor, and can revoke customary right of occupancy over such land. Upon revocation of any right of occupancy by the local government to any land, the holder and occupier of such land must be paid compensation for the value at the date of revocation of their unexhausted improvements, or be allocated with alternative land, if the acquired land was used for agricultural purposes. If the local government refuses or neglects within a reasonable time to pay compensation to a holder and an occupier as specified under subsection 5 of section 6, the Governor may proceed to order the assessment of compensation as stipulated under section 29 of the Act, and direct the local government to pay the amount of such compensation to the holder and occupier according to their respective interests.

The Act restricts the Governor from granting statutory right of occupancy or consent to the assignment or subletting of statutory right of occupancy to a person under the age of 21 years, except a person whom a guardian or trustee has duly appointed for (Oti-Onyema, 2018). A person under the age of 21 years upon whom a statutory right of occupancy devolves on the death of a holder, shall have the same liabilities and obligations in respect of the deceased right of occupancy, as if he were of full age and notwithstanding that no guardian or trustee has been appointed for him.

The Act creates special contracts for statutory right of occupancy granted under section 5(1) (a). The Act provides for the issuance of certificate of occupancy in respect of all statutory rights of occupancy and customary rights of occupancy in a state by the Governor to holders such rights of occupancy. The certificate of occupancy evidences such right of occupancy, and shall be issued by the Governor upon the payment of a prescribed fee.

The certificate contains implied conditions and provisions such as payment of fees for unexhausted improvements existing on the land at the time of the holder's entering into occupation and

payment of fixed rent to the Governor which the holder binds himself to pay and any rent which may be agreed or fixed on revision in accord with section 16 of the Act.

The Act mandates the occupier to grant the Governor or any public officer duly authorized by him to enter upon and inspect the land comprised in any statutory right of occupancy or any improvements effected thereon at any reasonable hours in the day and time. The Governor is empowered by the Act to grant licence to any person to enter upon any land, subject to his statutory right of occupancy, mining right or prospecting licence granted under the Minerals and Mining Act 2007, and remove or extract there from any stone, gravel, clay, sand or any other similar substances apart from minerals. Such licenses granted may be for a period and subject to conditions as the Governor may think proper, and are not transferable without the consent of the Governor.

LUA 1978 imposed duties on and grants rights to the occupier of a statutory right of occupancy (Alkali, 2022). The occupier has the duty to at all times maintain in good and substantial repair to the satisfaction of the Governor or of such public officer appointed by the Governor, all beacons or other land marks of the boundaries of his land as comprised in his statutory right of occupancy. If he defaults he would be served with notice by the Governor or public officer appointed, he would be liable to pay the expenses (if any) incurred by the Governor in defining the boundaries. The occupier has the exclusive rights to the land the subject of the statutory right of occupancy against the whole world except the Governor, exclusive right to and absolute possession of all the improvements on the land, transfer, assign or mortgage any improvements on the land effected pursuant to the terms and conditions of the certificate of occupancy on the land, but subject to the Governor's consent.

The Governor can grant statutory right of occupancy that attracts fixed rent and also one that is free of rent or reduced rent in the public interest. Section 19 provides for pencil rents to be paid by holders who covenant with the Governor the certificate of occupancy to develop their lands or effect improvements on their land. Section 20 prohibits and imposes additional penal rent on

unlawful alienation of land by holders of statutory right of occupancy in lieu of revocation. The penal rent shall be payable on demand and recoverable as rent. Alienation of customary right of occupancy is prohibited, except with requisite consent of the Governor (Suleiman & Adewale, 2021). Such alienation includes assignment mortgage, transfer of possession, sublease. Consent is, however, statutorily dispensed with, if the assignment or mortgage or transfer of possession is ordered by court under the provision of the applicable sheriffs and civil process Act or law. Alienation of statutory right of occupancy is also prohibited if it is affected without the consent of the Governor (Suleiman & Adewale, 2021). However, the Governor's consent is not required for the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor. In *SOLANKE V ABED*, the vendor who failed to obtain the consent wanted the transaction set aside, but Supreme Court held that he could not rely on his own wrongful act to defeat the transaction. The same Supreme Court held a transaction on mortgage by parties without the Governor's consent to be void in *SAVANNAH V AJILO*.

The Act empowers the holder of the statutory right of occupancy in sub-lease to demise by way of sub-underlease to another person but with the concurrent consent of the Governor and himself. The Act recognizes the potency of customary law allowing devolution of rights of occupancy of a holder in the case of customary right of occupancy to be governed by the customary law existing in the locality in which the land is situated or non-customary law if the holders statutory rights of occupancy. all land transactions and instruments which purport to vest interests or rights over land that are inconsistent with provisions of LUA 1978 are null and void.

The Act mandates the Governor to revoke rights of occupancy for overriding public interest, for the following reasons: (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sub-lease or otherwise without the consent of the Governor; (b) requirement of land by the Federal State or Local Government for Public purposes of the federation; (c) requirement of land for mining purposes or oil pipelines or for any

purpose connected therewith. The Act also provides for compensation by the Governor on revocation of rights of occupancy as follows:

- a) Revocation of right of occupancy in accordance with the provisions of section 28(2) and (3) the holder and occupier will be entitled to compensation as stipulated by the Minerals and Mining Act or the Petroleum Act or the extant legislations.
- b) Compensation to a community would be an amount that is equal to the rent, if any, paid by the occupier(s) during the year in which the right of occupancy was revoked.

In case of a dispute in relation to the amount of compensation calculated in accordance with the provisions of section 28 of the Act, such dispute shall be referred to the appropriate Land Use and Allocation Committee in the State. The Act ousts the application of the provisions of the Public Lands Acquisition (miscellaneous provisions) Act in relation to revocation of rights of occupancy and compulsory acquisition of land by the federal or local government in Nigeria.

From the foregoing, it can be discerned that LUA 1978 did not abolish the pre-existing land tenure system(s), but established uniform land policy in Nigeria, reduced the problems that bedeviled title to land before its enactment in 1978 and as well as made land readily available for industrial development and agricultural purposes by abolishing absolute rights and interests of Nigerians over land: see also the case of *OGUNOLA v EIYEKOLE & ORS* where the Supreme Court held that "land is held under customary tenure even though dominium is in the Governor. The most pervasive effect of the Land Use Act is the diminution of the plenitude of the powers of the holders of land. The character in which they hold remain substantially the same". LUA 1978 preserves and protects customary land owner's title, customary right of control and management of land, transfer or alienation of land by customary land owners: Customary pledge, customary tenancy and entitlement to compensation by customary land owners in lieu of revocation of the rights of occupancy by the Governor.

LUA 1978 was enacted with the following objectives: (a) to make land available at low costs to every Nigerian; (b) to preserve third party rights; (c) efficient control and management of land in Nigeria; (d) to expand the public sector housing

programmes by both federal and state governments; (e) to contribute to planning and environmental protection; (f) to reduce the incidence of land litigations (Ghebru, et al., 2014).

It is evidently doubtful, if the Act has achieved all these objectives. The Act has not succeeded in removing obstacles to land use in Nigeria. For instance, agricultural co-operatives have been experiencing difficulties in many parts of Nigeria in acquiring land for large scale farming, access to land by both indigenes and non-indigenes has become more difficult than before 1978. Fuller utilization of land resources through mobility of labour skills personnel, speculations stoppage have not been achieved. The Act appears to increase the problems associated with government's acquisition, because Nigerian citizens vehemently opposed the rights of occupancy created under the Act. The costs of purchasing land have rather increased. The trusteeship vested in the Governor is vague as the state vested in him is equally ambiguous. Land litigations in Nigeria do not seem to have reduced.

It is undoubtedly true that LUA 1978 succeeded in introducing uniform land tenure legislation in Nigeria, but without uniform management and administration of land. The Act was promulgated by Obasanjo's military regime with specific objectives which include:

- i) Making land accessible to all Nigerians
- ii) Preventing speculative purchases of communal land
- iii) Streamlining and simplifying the management and ownership of land
- iv) Making land available to all tiers of government in Nigeria, and
- v) Providing a system of government administration of rights that should promote and enhance land tenure security and sustainability to benefit the present and future generations.

Whether these objectives have been attained by the Act in the 21st century leaves almost nothing to be desired. Juxtaposing LUA 1978's objectives and the parameters for good urban land policy as articulated by Doebele which include efficiency, equity, compatibility and continuity, it would be less gratifying to observe that LUA 1978 has created more problems than the ones it was meant to solve (Onyebueke, et al., 2020). For instance, the provision on compulsory acquisition of people's lands for

public purposes and overriding public interest has engendered many problems such as:

- i) It has distorted small holders production of crops.
- ii) It has impacted negatively on the socio-economic fortunes of farmers.
- iii) It has reduced the productivity of rural farmers.
- iv) Compensation paid by government for compulsorily acquiring land is nominal. The impact on oil-producing communities are also enormous. They include:

- Unemployment of youths and farmers
- Degraded land fertility in the Niger Delta region
- It has intensified the destruction of perishable crops.
- It has accelerated the cost of living and poverty
- Oil spills have caused damage to land

LUA 1978 has debased property rights of Nigerians as it reduced their absolute ownership of land to a mere right to occupy and use land. Property rights involve

- i) Occupy, enjoy and use
- ii) Cultivate and use productively
- iii) Restrict or exclude others
- iv) Transfer, sell, purchase, grant, loan
- v) Inherit and bequeath
- vi) Develop or improve
- vii) Rent and sublet
- viii) Benefit from increased property values or rental income.

The right of occupancy and use of land under LUA 1978 has thus whittled down these property rights that Nigerians enjoyed before the promulgation of the Act.

6. CONCLUSION

It is indisputable that the Land Use Act 1978 was promulgated to cure some mischiefs surrounding land use in Nigeria. Even with the existence of the Act as an existing law under the 1999 Constitution of Nigeria (as amended), the mischiefs have refused to go away. Some state governors have, at times, hidden under the legislation to perpetrate all kinds of havoc. For instance, in *Osho v. Foreign Finance Corporation*, the plaintiff's right of occupancy was revoked on

the pretext of overriding public interest and public purpose, but the land right in respect of the same land was later granted to a private non-juristic person for its private business.

It is proposed that the Land Use Act 1978 should be repealed and that Nigeria should revert to the status quo. A new piece of legislation that would restore the absolute ownership rights and interests of communities, families, and individuals over land should be enacted, but with stringent mechanisms to control land grabbers, speculation, and abusive alienation.

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