



AN EVALUATION OF THE EXTENT OF JUDICIAL INTERVENTION IN LAND USE IN NIGERIA

Felix C. Amadi (PhD)<sup>1</sup>

&

Charles Enwugweshi Amala<sup>2</sup>

ABSTRACT

*Land in Nigeria is one of the most valuable asset for both individuals, corporations, local, state and federal governments. Land for economic, social and recreational development has been a disturbing and burning issue in Nigeria since the inception of governance and human existence. This issue has compelled various legal and administrative systems to enact laws, rules and regulations to aid in the control and management of land by both individuals, corporations and governments at different levels in the country. These enactments, rules and regulations empower persons, authorities or entities to act in certain ways in carrying out the stated functions of their offices and places duties and obligations on them as to how to carry out these functions. In course of implementing and exercising their duties and functions as laid down in the enabling laws, rules and regulations, there are bound to be issues and differences among interested parties. This is where the courts were called upon and empowered to consider the conflicting interests and adjudicate on them. This work seeks to consider those instances where the courts have been so called to intervene in matters relating to the use, management and control of land in Nigeria. The paper will consider the enabling laws, the implementation and interpretation of these laws and the attitude of the court towards these laws, rules and regulations. The paper shall consider whether such intervention has aided or retarded the growth and development of the laws and or advanced the principles of land control and management within the period under review.*

*Keywords:* Land, Management, control and judicial intervention..

1. INTRODUCTION

Land is a priced commodity the world over and it is indeed limited considering the various demands for it. Specific demands for land for agriculture, housing and infrastructural development such as roads, recreational parks, reserves, etc., have made the value and prospect of having the same so compelling that there has arisen persons whose specialty has become prospecting and dealing in landed properties resulting in the unreasonable hike in the prices of land and landed properties in Nigeria. There is also the difficulties faced by governments at all levels to procure land for the needed developmental projects and the refusal of communities to make them readily available for the

<sup>1</sup> LL.B; B.L; LL.M; Ph.D; Lecturer, Department of Private & Property Law, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt, Nigeria

<sup>2</sup> LL.B, BL, Legal Practitioner, Nigeria

developmental needs of the society resulting in some challenges and disputes. It is in the quest to resolve some of these disputes and challenges faced especially by the governments at various levels in Nigeria that resulted in the promulgation of the extant legislation for the control and management of affairs relating to the use and development of land in Nigeria<sup>3</sup>. This legislation is however not without its challenges in respect of implementation and enforcement. Some of these challenges have been addressed by the courts whenever called upon to intervene by contending parties.

The purpose of this article is to examine some of the time and periods when the court had had cause to intervene in matters relating to the use, control and management of land in Nigeria between 2008 and 2018. It shall consider the decisions of the courts on those occasions to determine its opinion of the enabling Act, rules and regulations with a view to forming opinions of whether these acts, laws, rules or regulations, met or meets the purpose(s) of its creation.

Land may be defined to mean an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it; or an estate or interest in real property<sup>4</sup>. The word "Control" can be defined as to exercise power or influence over; or to regulate or govern; or to have controlling interest in<sup>5</sup>, while Judicial Intervention may be defined to mean the powers of the Judiciary to make pronouncements on matters before it; or to examine, find and resolve dispute before a court or tribunal<sup>6</sup>.

## 2. LAND CONTROL IN NIGERIA AND ITS CHALLENGES

Land policies in Nigeria for long were tied to the traditional land tenure systems and later statutory land laws of the Southern and Northern Nigeria<sup>7</sup>. These were preceded by Land and Native Rights Proclamation, 1910. The shortcomings of the above enactments in meeting with the demands of the governments and individuals for use, control and management of available land led to the promulgation of the Land Use Act, (LUA) in 1978<sup>8</sup>. The LUA was principally enacted to unify land policies through-out Nigeria and to eradicate land speculation so as to protect the rights of all Nigerians to land; to make land easily and cheaply available to the citizens and avoid/prevent fraudulent land practices in the country. It was done for the public interest of all Nigerians and for the use and enjoyment of the same by them. The policies of land control and management are tied to the needs of the government for developmental purposes.

The LUA, 1978 places the control and management of all lands in urban areas of a State under the control and management of the State Governor and those at the Local Government Areas under the control and management of the Local Government Councils<sup>9</sup>. The governor of the state was expected to implement the LUA in accordance with the applicable Land Tenure Law or Land Law of that State with such modifications as would bring those laws into conformity with the Act or its general intent<sup>10</sup>. There was established a State Land Use and Allocation Committee whose responsibilities shall include advising the governor on any matter relating to lands in urban areas of the state; advise the governor on matters relating to resettlement of persons affected by any revocation of right of occupancy done on the grounds of public interest; and the determination of dispute as to the amount of compensation payable for improvement on land<sup>11</sup>. The composition of the State Land Use and Allocation Committee was to be any number of persons as the governor deems fit but shall

---

<sup>3</sup> Land Use Act, 1978

<sup>4</sup> Bryan A. Garner "Black's Law Dictionary" (9<sup>th</sup> Ed., West Publishing C., 2009) 955.

<sup>5</sup> Bryan A. Garner "Black's Law Dictionary" (9<sup>th</sup> Ed., West Publishing C., 2009) 955.

<sup>6</sup> Ibid 378

<sup>7</sup> Ibid 897

<sup>8</sup> Public Lands Acquisition Act, No. 36, 1976: Land Tenure Law, Cap 59, Laws of Northern Nigerian, 1963.

<sup>9</sup> Cap 202, Laws of the Federation of Nigeria, (LFN), 2004

<sup>10</sup> S.2(1) (a) (b) LUA, 1978

<sup>11</sup> Ibid S.4 (a) (b)

include not less than two (2) persons from the civil service who are qualified as estate surveyor or land officers of at least five years standing and a legal practitioner<sup>12</sup>. It shall be presided over by such person as to be designated by the governor and would have powers to regulate its procedures<sup>13</sup>. There was to be established for each local government area of the federation a body to be known as the Land Allocation Advisory Committee to be consisted of any number of persons to be determined by the governor in consultation with the Local Government and shall be responsible for advising the local government in relation to matters concerning land in the local government area<sup>14</sup>. The Governor is also empowered under the Act to designate any part of the state as an urban area and to publish same in the State Gazette<sup>15</sup>.

The LUA vested all lands in the territory of a State in the Governor and indicates that he was to hold same in trust and administer it for the use and common benefit of all Nigerians in accordance with the provisions of the Act<sup>16</sup>. The purport of this provision it seems was to nationalize all the land in the country, leaving citizens with mere interests in land and mere rights of occupancy<sup>17</sup>. It may be further argued that the implementation of the LUA by its operation seems to have extinguished all prior rights to land of all Nigerians and substituted previous alienable rights with two types of rights of occupancy to land, to wit: a statutory right granted under statutory law and a customary right granted under customary law<sup>18</sup>. The downgrading of these alienable rights previously enjoyed by the citizens by the LUA to rights of occupancy it appears has served to limit the protection of the property rights of individual and the lack of protection for individual private property rights is even compounded by the facts that the LUA does not define the meaning of the term “rights of occupancy” in the Act adding to the confusion and challenges the operation of the LUA as brought upon the citizenry as they are left to input varied meaning to the term whether rightly or otherwise.

In the past and before the advent of the LUA, it does appear that land was rarely owned by the individual save where became seized of same by conquest, devolution, allocation or partition to him by the groups, extended family, village or community in whom same was vested in and was assigned on a freehold basis to a party by the principal members of the group or the head of the family or community and a significant feature was that land was rarely and hardly sold<sup>19</sup>. This system was religiously adhered to such that even in later years alienation would have been taken for granted thus the sale of land by an individual without the consent of the family was *void ab initio*<sup>20</sup> and family land were protected and preserved for the entire family<sup>21</sup>. It was during the colonial period that individual ownership was introduced especially in the territory of Lagos and there emerged the two forms of ownership of land in Nigeria to wit: individual and communal land tenure. However, with the introduction of the LUA, the individual ownership of land was disallowed and the governor(s) of the various states in Nigeria became the controlling force over lands replacing the chief, family head or emir, this was made to make the acquisition of land by government easier in principle; reduce the issues of indigenous control of land in urban areas; encourage non-indigenous ownership of land; and reduce land speculation by limiting the amount of land owned by individuals. In practice however, these objectives seemed not to have been accomplished as individuals still speculate on land and own as much land as they possibly can. The acquisition of land by individuals and organizations under the LUA however is not as easy as envisaged by the Act due to high government bureaucratic processes and corruption. Ownership of land without the authority of the state or local government would be seen as illegal and in most cases are compulsorily acquired by the state government for developmental

<sup>12</sup> Ibid S.2 (a) – (c)

<sup>13</sup> S.2 (3) (a) (b) LUA 1978

<sup>14</sup> Ibid S.2 (4)

<sup>15</sup> Ibid S. 2 (5)

<sup>16</sup> Ibid S. 3

<sup>17</sup> Ibid S. 1

<sup>18</sup> Per Kayode Eso, JSC in *Nkwocha v. Governor of Anambra State* (1984) 6 SC @404

<sup>19</sup> SS.5 (1) (a) LUA, 1978

<sup>20</sup> Chris C. Wigwe “Land Use and Management Law” (Mountcrest University Press 2016)28

<sup>21</sup> *Ekipendu v. Erika* (1959) 4 FSC 79; *Onyeneyin v. Akinkugbe* LOR (22/1/2010)

purposes with or without adequate compensation for it<sup>22</sup>. The LUA provides to the effect that all existing laws relating to the registration of title to, or interest in land or the transfer of title to or any interest in land was to have effect subject to such modifications (whether by way of additional, alteration or omission) as the case may be, in order to bring those laws into conformity with the Act or its general intendment<sup>23</sup>. The LUA also excludes persons under 21 years of age from holding land save where a guardian or trustee has been appointed for him and where land has devolved on him by virtue of inheritance<sup>24</sup>.

It appears that in course of the operation of the land use Act and the resultant challenges the LUA has foisted on the individual, corporation, community and government that disputes have arisen which demands the intervention of the judiciary in order to interpret the provisions of the Act and in some cases award damages and adequate compensation to parties or declare acts done in consonance with the LUA valid or invalid or inconsistent with other laws or the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Some incidents when the courts had had cause to intervene in the use, control and management of land and land development in Nigeria would now be considered.

### 3. OWNERSHIP, COMPULSORY ACQUISITION OF LAND AND COMPENSATION

This is about the largest single area where the courts in Nigeria have been called upon to adjudicate on matters between parties as it relates to the ownership of land in both urban and rural areas of the country. The courts had had to deal with lands with statutory or customary titles helping and advancing the shape, structure and context of land law and policies in Nigeria.

Ownership has been defined to mean a bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others<sup>25</sup>. It implies the right to possess a thing, regardless of any actual or constructive control and such rights are general, permanent and heritable<sup>26</sup>. Prior to the enactment of the LUA, 1978, it has long been decided by the court in the case of *Amodu Tijani v. Secretary, Southern Nigeria*<sup>27</sup> that land belonged to the community, village or family, never to the individual. The court held further that where title to a piece or portion of land was vested in a community, village or family, no single individual of that community, village or family can lay claim to it until it is partitioned and granted to him. The land is communally owned by the community, village or family with every member having a right to it. The chief or family head had supervisory and administrative authority over the land as trustees to the people and members of the community, village or family<sup>28</sup>.

The courts in the case of *Christopher Ejiamike v. Lucy Chibogu Ejiamike*<sup>29</sup>, observed that the "Okpala" in Onitsha society occupies a position akin to that of a trustee or a manager or at the lowest a care-taker. The Supreme Court has held that the chief or similar position in the community or family is akin to a corporate sole, which never dies. This is because the inanimate institution remains while the mortal incumbents come and go. Therefore the land normally vested in the chief is not vested in him beneficially or as absolute owner, but in his representative capacity<sup>30</sup>. Communal law has been held by the Supreme Courts in *Salusi v. Mobolaji*<sup>31</sup> as land belonging to a vast family of which many are dead, few are living and countless members are unborn, communal land belong to a community past, present and future. Communal belongs to the community and is vested in the leader of the community only as

<sup>22</sup> Wigwe (n18) 28

<sup>23</sup> SS. 5,6,9,10,28,29,30, LUA, 1978.

<sup>24</sup> Ibid S. 48

<sup>25</sup> S.6 Constitution of the Federal Republic of Nigeria (199) (as amended)

<sup>26</sup> Garner (n2) 1215

<sup>27</sup> Ibid

<sup>28</sup> (1921) 2A.C 399, 404

<sup>29</sup> Nsirim v. Nwakerendu, 15 W.A.C.A 71

<sup>30</sup> (1972) 2 E.C.S.L.R. (Pt. 1), 18 per Oputa, J (as he then was); Raji Akano n. Alhaji Yisan Ajuwon (1967) N.M.L.R. 7.

<sup>31</sup> Alli v. Ikusebiala 91985) 5 S.C. 93, pp. 118-119 91985) 1 NWLR 9Pt. 4) 630, pp. 634-639

a sort of trustee. That a party claiming communal ownership of land must necessarily plead the following certain requirements:

- a) Who founded the land or originally owned the land;
- b) That they are descendants of the founder;
- c) How the land became a communal land<sup>32</sup>.

The Supreme court further held in the *Salusi v. Mobolaji case* that this rule which makes it mandatory for a party relying on traditional history to plead successive persons on whom land has devolved before he could prove ownership by traditional history, will not apply where the land remains as communal land on the death of the founder of the land.

In Northern Nigeria the land tenure system was regulated as far back as 1910<sup>33</sup> after the North had ceded to British rule under the leadership of Lord Lugard in 1903<sup>34</sup>. By 1910 and 1916 the Land and Native Rights Ordinances respectively were promulgated<sup>35</sup>. In 1962 the Northern Region re-enacted the 1916 Ordinance as the Land Tenure Law<sup>36</sup>. The Land Tenure Law<sup>37</sup> recognized, protected and preserved the existing customary rights of the natives to the use and enjoyment of the land in the region under the regulation and control of the emirs for the common good of the people. It is noteworthy to observe here that between the LUA and the Land Tenure Law of the Northern Nigeria lies a significant feature in that while the Land Tenure Law defined what a “right of occupancy” is to mean “a right to use and occupation of land<sup>38</sup>, the LUA 1978 does however does not contain any such provision. It does appear that the Land Tenure Law also places on the emirs a status of trustee over the land in the region for the benefit of the natives.

Under the Law there were designated area mapped out as “Native-land” and were placed under the control of the Minister for lands and survey who was empowered to grant the right of occupancy to natives while the occupation and enjoyment by non-natives must be with the consent and approval of the Minister<sup>39</sup>. It has been argued that the difference in the rights of the natives and non-natives seems not to be clear as a native has to be granted a right of occupancy before he can fully enjoy the use of the land while anon-native cannot enjoy the right to the land without the consent of the minister<sup>40</sup>. It is argued further that the consent granted the non-native is a form of right of occupancy and thus brings him at par with the native despite his not being from any known tribe from the North and that both parties are bound to obtain consent of the minister in form of a certificate of occupancy before they could legitimately make use of any parcel of land<sup>41</sup>.

It does appear as a recognized and almost universally accepted custom all over Nigeria that once land is allocated to an individual by the community or family, he enjoys absolute and exclusive right over the land<sup>42</sup>. The Supreme Court in determining the implication of partition of family land held in the case of *Alafia v. Gbode Ventures (Nig.) Ltd*<sup>43</sup> that partitioning of family land means a permanent division of the land for the purposes not only of use but ownership. That a party to whom such land is partitioned has an exclusive right over that portion and can so deal with same in any way he deems fit to the exclusion of the world. In the words of the court, “the partitioning of family property is one of the methods by which family property can be determined in favour of constituent

<sup>32</sup> (2016) 15 NWLR 9pt. 1535)242; *Sanni v. Ademiluye* (2003) 3 NWLR (pt. 807) 381

<sup>33</sup> *Echi v. Nnamani* (2000)8 NWLR (pt. 667) 1; *Iwuoha v. NIPOST Ltd.* (2005) 8 NWLR (pt. 823) 308

<sup>34</sup> Land Right Ordinance, 1910

<sup>35</sup> *Wigwe* (n17) 29

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> Cap. 59, Laws of Northern Nigeria, 1962

<sup>39</sup> S 2 of the Land Tenure Law 1962

<sup>40</sup> *Ibid* SS 5 & 6

<sup>41</sup> *Wigwe* (n17) 29

<sup>42</sup> *Ibid*

<sup>43</sup> *Adewoye v. Adeyeye* (1963) 1 All NLR 52; *Oragbeide v. Onitiju* (1962) 1 All ALR 33; *Odofin v. Ayoola* (1984) 1 SC. 72

members or branches of the family. The effect of partitioning family land is that the property that had hitherto belonged to the family as a whole is split up into ownership by constituent members of the family. It puts an end to the communal ownership. Where the division is among constituent branches of the family, a new family ownership is hereby created in as many places as the property is divided, each branch becoming the owner of the portion or position partitioned to it".

The courts have held that occupation of land for a long time may operate to oust the title of the real owner where the occupation is adverse and the owner has been guilty of laches and acquiescence.<sup>44</sup> The period of limitation to actions relating to land in Nigeria is 10 years and in such a condition, the matter is said to be statute barred<sup>45</sup>. The effect of the matter being statute barred is that no legal right or action can be brought against the defaulting party in respect of such transaction<sup>46</sup>. The time is calculated to begin to run from the date when the cause of action occurred<sup>47</sup>.

The court in the case of *Opoto v. Anaun*<sup>48</sup> held that the proof of ownership of land can only be prima facie proof of possession of land if there is no evidence that another person is in possession. That where two parties claim to be in possession of land, possession is ascribed to the one with a better title<sup>49</sup>. The Supreme court on determination of the issue as to possession by a party where title reside in another held in the case of *Wachukwu v. Owunwanne*<sup>50</sup> that where title to land is found to reside in the plaintiff the possession of the defendant of the disputed land can only be an adverse possession, an evidence of trespass except the defendant proves that he or somebody else have superior title to the land in dispute. The court also held in *Amadi v. Amadi*<sup>51</sup> that a tenant or customary tenant does not, because of long possession, become the owner of the land he was permitted by the land owner to enter and farm on. The moment the tenant set up rival title to defeat the allodial right of the overlord, he commits a serious misconduct and becomes a trespasser liable to forfeiture. The court went further in the case of *Elewa v. Guffanti (Nig. Plc)*<sup>52</sup> to hold that by Section 170 of the Evidence Act, 2011, a tenant is not permitted to deny the title of his landlord in respect of the property in which he is tenant. It is an act of misconduct or gross misconduct for a tenant to turn around to renounce his landlord's title and set up a rival title to compete with his landlord's title, as the respondent did in this case by applying for and obtaining from the Rivers State Government a Certificate of Occupancy in respect of the same land.

The court have held that a tenant can be compelled to keep to a term or terms in the tenancy agreement or may be restrained by injunction from using the premises for purposes other than those for which it was initially given out for<sup>53</sup>. The court in the case of *Ahmed Debs v. Cenico Nig. Ltd*<sup>54</sup> held that a landlord may also claim for Mense Profit against a tenant who stays over on the property at the expiration of the tenancy without renewing the same and followed by the courts in other subsequent cases<sup>55</sup>. However the Court of Appeal on the liability of a tenant who holds over after his tenancy had been determined held in the case of *Chaka v. Messrs. Aerobeli (Nig.) Ltd*<sup>56</sup> that a tenant who holds over after his tenancy has been determined will only be liable for damages for his use and occupation of the land or premises in question. He is not liable to pay rent because in the absence of a demise, he no longer has an estate. That he is also not liable to pay mense profits because he is not an adjudged trespasser. In the circumstances, an award against him for mense profits for use and

<sup>44</sup> (2016)7 NWLR (1510) 116

<sup>45</sup> *Adedeji v. Oloso* 92007) 5 NWLR 9Pt. 1026) SC 133.

<sup>46</sup> *Williams v. Williams* (2008) 10 NWLR 9Pt. 1095) SC 364,387

<sup>47</sup> *Adekoye v. F.H.A* (2008) 11 NWLR (Pt. 1099) SC 539

<sup>48</sup> *Ibid* 539

<sup>49</sup> (2016) 16 NWLR 915390 437; *Eze v. Obiefuna* (1995) 6 NWLR (404) 639

<sup>50</sup> *Aromire v. Awoyemi* 91972) 1 All NLR 101

<sup>51</sup> (2011) 14 NWLR (pt. 1266) SC 1

<sup>52</sup> (2011) 15 NWLR (pt. 1271) 437; *Osiniwo v. Gbamgboye* (1940) 7 WACA 69

<sup>53</sup> (2017) 2 NWLR (1549)233; *Olugbode v. Sangodeyi* (1996) 4 NWLR (Pt. 444) 500

<sup>54</sup> *Vee Gee (Nig.) Ltd. v. Contact (Overseas) Ltd.*, (1992) 9 NWLR (Pt. 266) 503

<sup>55</sup> (1986) 3 NWLR (Pt. 32) 847

<sup>56</sup> *Omotosho v. Oloriegbe* (1988) 4 NWLR (Pt. 87) 225; *Ude v. Ize* (1990) 2 NWLR (Pt. 132) 357

occupation will be wrong. In facts in that case is that the respondent sued the appellant for possession of an apartment; Mense profit for use and occupation of the premises; and cost of the action. The grounds for the prayer were for substantial renovation and personal use. Parties joined issues and the matter went to trial. Thereafter the trial court delivered its judgement and found in favour of the respondent and made awards of mense profit and damages for the use and occupation. Aggrieved the appellant appealed to the Court of Appeal. The respondent also filed a notice of cross-appeal. The appeal was allowed in part. This appears a departure from the previous held position by the courts in the earlier cases with the rationale for the departure being the present status of the tenant haven been stripped of all contractual rights and liabilities under the initial agreement thus he is only liable for damages for the use and occupation of the property and not mense profit.

The court decided in the case of *Ogunjemila v. Ajibade*<sup>57</sup> to the effect that customary tenancy does not need customary lease or agreement before a valid customary tenancy exists. What needs to be proved to establish that landlord and tenant relationship exist is that one party pays land rent to the other. It went further to say that courts are not allowed to infer or speculate on life issue of whetherin customary tenancy, customary lease requires any written documentfor it to constitute a valid instrument of grant of land. Customary lease can either be written or oral, there is no straight jacket rule on this principle. A party alleging to be the landlord is expected to put proper document before the trial court to show ownership of the land<sup>58</sup>.

As regards compulsory acquisition of land, the Court of Appeal held in the case of *Edebiri v. Daniel*<sup>59</sup> that compulsory acquisition of land by the government at any level must be done by due process and procedure and not a matter of course especially where it involves the displacement of individuals. The courts have also held that no one including the government can deprive a holder or occupier of his land unless the land is acquired compulsorily in accordance with the provisions of the Act and payment of compensation is a condition precedent to the validity of such compensation<sup>60</sup>. That a proper and valid acquisition of land must be subject to strict compliance with the relevant provisions of the Act as to acquisition of land<sup>61</sup>.

By virtue of the LUA, the right or interest of a person in a piece of land is extinguishedonce a notice signed by a public officer authorized by the Governor in that behalf is served on the holder of the right of occupancy<sup>62</sup>. This notice must be given to the holder of a right of occupancy before the revocation of his right of occupancy and in accordance with the provisions of section 44 of the Act<sup>63</sup>. We shall now consider some instances when the court has intervened in cases of revocation of certificates of occupancy and compensation paid thereof.

#### 4. REVOCATION OF CERTIFICATE OF OCCUPANCY AND COMPENSATION

The Courts of Appeal held in *Edebiri v. Daniel*<sup>64</sup> case that the Land Use Act (LUA) gives a right of occupancy to an occupier, but does not associate the certificate with title. The court stated thus “A Certificate of Occupancy raises a prima facie presumption in favour of the holder, albeit a rebuttable presumption that the holder has a right of occupancy. A Certificate is therefore *prima facie* evidence of exclusive possession by a party. It is not associated with title.in order words, a Certificate of Occupancy is not conclusive evidence of any right, interest or valid title, and thus in appropriate cases can be challenged”.

<sup>57</sup> (2012) 12 NWLR (Pt. 1314) 296; African Petroleum Ltd. v. Owodunni (1991) 8 NWLR (Pt. 210) 391

<sup>58</sup> (2010) 11 NWLR (1206) 559

<sup>59</sup> Dashi v. Satlong (2009) 5 NWLR (Pt. 1134) 281

<sup>60</sup> (2009)8NWLR (Pt. 1142)15 @ 30

<sup>61</sup> Ononuji v. AG Anambra State (2009) 10 NWLR (Pt. 1148)182 @ 208; Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745

<sup>62</sup> Ononuji v. AG Anambra State (2009) 10 NWLR (Pt. 1148)182 @ 211; Okeowo v. Attorney-General Ogun State (2010) 16 NWLR (Pt. 1219) 327

<sup>63</sup> S. 28 (6) & (7) LUA, 1978

<sup>64</sup> Boye Ind. Ltd v. Sowemimo 92009) 10 NWLR (Pt. 1148) 136 @ 152

The LUA provides that where a right of occupancy is revoked the holder and occupier shall be entitled to compensation for the value at the date of the revocation for the unexhausted improvement on the land<sup>65</sup>. The said owner or occupier may in certain circumstances be given an alternative land or accommodation<sup>66</sup>. The power of the Governor to revoke a right of occupancy by the provisions of the LUA<sup>67</sup> would be on the grounds of a breach of any of the provisions which a certificate of occupancy is deemed to be granted<sup>68</sup> or in any special contract made under section 8 of the LUA; or a refusal or neglect to accept and pay for a certificate, which was issued in evidence of a right of occupancy but has been cancelled by the Governor under section 9(3) of the Act<sup>69</sup>. Compensation is payable for the unexhausted improvements on the land like building, installation or improvement, the requirement of the land for mining purposes or oil pipelines or for any purposes connected therewith, the requirement of the land for the extraction of building materials and for crops<sup>70</sup>.

By virtue of section 28 (1) of the LUA, the Governor of a State has powers to revoke a right of occupancy for overriding public interest<sup>71</sup>. The court held in the case of *Lateju v. Fabayo*<sup>72</sup> that by virtue of section 28(6) and (7) of the Land Use Act, the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereby shall be given to the holder. The title of the holder shall be extinguished on receipt by him of the notice issued under section 28(6) or on such later date as may be stated on the notice. That there cannot be a valid revocation of a right of occupancy where the holder of the land has not been served with the revocation notice, duly signed under section 28(6) of the Land Use Act<sup>73</sup>.

The Court of Appeal in determining the need for proper revocation of a right of occupancy before another one is issued in its place held in the case of *Mu’Azu v. Unity Bank Plc*<sup>74</sup> that where a statutory right of occupancy is issued when a deemed right exists and has not been revoked, the statutory right becomes a worthless document because there cannot exist concurrently two title holders over one and the same piece of land. One must of necessity be invalid and the invalid one must be the later right granted without first revoking the former one. That the right of an existing holder or occupier of a parcel of land is not automatically extinguished by the mere issuance of a Certificate of Occupancy to another person. This is because a statutory right of occupancy, deemed or actual, existing over a parcel of land must first be properly revoked or nullified before another one can be issued in its place<sup>75</sup>. Another case similar to the Mu’Azu’s case is the *Administrators/Executors, Estate of General Sani Abacha v Eke-Spiff*<sup>76</sup>, the Supreme Court held in that case that the revocation of the right of occupancy of the Respondent and the subsequent re-allocation of the same to Gen Sani Abacha could not be assimilated to an action taken for an overriding public interest and therefore did not satisfy the provisions of section 28 (1) & (2) LUA. It is also a requirement of the law that notice of revocation of the right of occupancy must be given to the holder<sup>77</sup> and that failure to serve such notice of the revocation on the holder was held by the court to be fatal and smacked of fraud on the part of the Appellant<sup>78</sup>. The Supreme Court in deciding the status of a dead person in law held in the case of

<sup>65</sup> (n59)

<sup>66</sup> (n59)

<sup>67</sup> S.51 (1) LUA 1978

<sup>68</sup> S.28 (5) LUA, 1978

<sup>69</sup> S.10 LUA 1978

<sup>70</sup> *B. Manfag (Nig.) Ltd v. M/S.O.I Ltd* (2007) 14 NWLR (Pt. 1053) SC 109; *C.S.S Bookshops Ltd v. R.T.M.C.R.S* (2006)11 NWLR (Pt. 992)530

<sup>71</sup> *Osho v. Foreign Finance Corp.* (1991) 4 NWLR (Pt. 184), 157 at 197

<sup>72</sup> *Lateju v. Fabayo* (2012) 9 NWLR 159

<sup>73</sup> *Ibid* 159; *CSS Bookshop Ltd. V. R.T.M.C RS* (2006)11 NWLR (Pt. 992)530

<sup>74</sup> *Jegede v. Citicon (Nig.) Ltd.* (2001)4 NWLR (Pt. 702) 112

<sup>75</sup> (2014) 3 NWLR (pt. 1395)512; *Edohoeket v. Inyang* (2010) 7 NWLR (pt. 1192) 25; *Omiyale v. Macaulay* (2009) 7 NWLR (PT. 1141)597

<sup>76</sup> *Adole v. Gwar* (2008) 11 NWLR (PT. 1099) 562; *Regd. Trustees of Apostolic Church v. Olowoleni* (1990)6 NWLR (PT. 158) 514

<sup>77</sup> (2009) 7NWLR (PT. 1139)37 @130

<sup>78</sup> S.28 (6) LUA 1978

*Mulima v. Usman*<sup>79</sup> a certificate of occupancy cannot be issued to a dead person. Where a person applies for certificate of occupancy but dies before the issuance thereof, the certificate of occupancy ought to be issued to his legal representatives on a proper application to that effect.

## 6. LEGAL INSTRUMENTS IN LAND TRANSACTIONS

It is the practice in Nigeria that land transactions are to be registered in accordance with the relevant laws of the state of the federation<sup>80</sup>. These land transactions in Nigeria are in the forms of Mortgages, Deeds, leases and tenancies. Before the LUA the need to investigate title to land before conveyance or sale was to ensure that there were no encumbrances existing on the land and that the purchaser would remain on and enjoy the land without any disturbance and that he would be able to (where need be) transfer a good title to a third party when he sells<sup>81</sup>. The beginning of documentation of instrument affecting land in Nigeria can be traced back to the Compulsory Registration Ordinance of 1883 which was promulgated for the colony of Lagos and the Gold Coast. The main objective of that Ordinance was to provide for the registration of instruments affecting land in the Gold Coast<sup>82</sup>. The Land Registry Proclamation, 1900<sup>83</sup> introduced registration of instruments for the protectorate of Southern Nigeria while the Land Registry Proclamation, 1910<sup>84</sup> did the same for the Northern protectorate. These laws were unified by the Land Registration Ordinance, 1915<sup>85</sup> which was reenacted in 1924<sup>86</sup>. This Act was then codified by the various regions of Nigeria in 1963<sup>87</sup> and presently domesticated by the various states in Nigeria. The LUA recognizes State Law as essential tools for the management and control of land in Nigeria<sup>88</sup> and in Rivers State the applicable law is the Land Instruments (Preparation and Registration) Law<sup>89</sup>.

The Rivers State law makes it mandatory for all instruments executed before (which has not been registered) and after its commencement to be registered<sup>90</sup>. On what meaning can be attributed to instrument under the Land Instrument Registration Law, the courts have held “instrument” to mean a document affecting land in a State whereby one party usually called the grantor confers, transfers, limits, charges or extinguishes in favour of another party called the grantee any rights or title to or interest in the said land<sup>91</sup>. The Court of Appeal in the case of *Gbinjije v. Odi*<sup>92</sup> held that in determining whether a document is an instrument or not, the court will look at the content of the document and determine what the document is supposed to achieve. If it transfers right or title to land, the document is an instrument, but if it is evidence of some transaction future or past, the document is more likely a memorandum; which in the context of land cases is a piece of evidence showing that some other transaction has taken place or will take place in respect of the land, and that some other thing will be done to confer a legal title or right on the land. The court went further to state that the effect of non-registration of a registrable instrument is that such instrument cannot be pleaded or given in evidence in any court as affecting any land unless same is registered<sup>93</sup>. The effect of non registration is that an unregistered instrument cannot be pleaded or tendered or produced in evidence, if it is admitted

<sup>79</sup> (n76)130

<sup>80</sup> (2014)16NWLR(Pt. 1432)160

<sup>81</sup> S.3 Land Instrument (Preparation and Registration) Law Cap. 74, Laws of Rivers State of Nigeria, 1999

<sup>82</sup> *Ekipendu v. Erika* (1950) 4 SC 76

<sup>83</sup> Preamble to the Compulsory Registration Ordinance, 1883

<sup>84</sup> No. 16 of 1900

<sup>85</sup> No 10 of 1910

<sup>86</sup> No 12 of 1915

<sup>87</sup> No 34 of 1924

<sup>88</sup> Land Instrument Registration Law 1963

<sup>89</sup> S.4 (b) LUA 1978

<sup>90</sup> Cap. 74, Laws of Rivers State of Nigeria, 1999

<sup>91</sup> *Ibid* SS. 9 &10

<sup>92</sup> *Akinduro v. Alaya* (2007)12NWLR(Pt. 1057)SC 312 @330 (Paras. G-H); *Etajata v. Ologbo* (2007)16 NWLR (Pt. 1061) SC 554 (pp. 585-586, paras G-B)

<sup>93</sup> (2011)4NWLR (Pt. 1236) 103; *Uzoegbu v. Ifekandu* (2001)17 NWLR (Pt. 741)49

through an oversight or inadvertence or because no objection was taken as to its admissibility, it still stands to be expunged by the court since its inclusion is enjoined by law<sup>94</sup>.

The Supreme Court in deciding on the nature of interests acquired by a purchaser of land in possession by virtue of an unregistered registerable instrument had however in an earlier case of *Nsiegbe v. Mgbemenu*<sup>95</sup> held that such a purchaser has acquired an equitable interest which is as good as a legal estate. In other words, the possession of a receipt of payment for the sale of land and the possession of the land by the party raises an equitable interest which can be converted into legal estate by specific performance. The equitable interest can only be defeated by a purchaser of the land for value without notice of the prior equity<sup>96</sup>. This registerable instrument which has not been registered is however admissible in evidence in proof of an equitable interest and proof of payment of purchase price or rent<sup>97</sup>. The court has also held in the case of *Gbinijie v. Odji*<sup>98</sup> that where a purchaser of land or lease is in possession of land by virtue of a registerable instrument, which has not been registered, and has paid the purchase money or rent to the vendor or lessor, the purchaser or lessee has acquired an equitable interest in the land which is as good as a legal estate and to prove the payment of purchase or rent.

An interest in land which can be registered at the Land Registry includes Conveyances, Leases/Subleases, Power of Attorney, Assignment of registered land for any consideration, Deeds of gift, Court Orders, Probate or Letter of Administration, Assignment of unregistered land, Legal Mortgage, Easement and Government acquisition<sup>99</sup>. The courts in deciding on the efficacy of a Deed of Conveyance in transferring title to land, have held in the case of *Oyebamiji v. Lawanson*<sup>100</sup> that a duly executed deed of conveyance is adequate and sufficient proof or evidence in support of an award of title to a land in a dispute. Where a certified true copy of a registered deed of conveyance or any other instrument is produced in court in any proceedings, it would be sufficient proof of due execution of the instrument by the parties<sup>101</sup>.

The provisions of the Survey (Amendment) Act<sup>102</sup> have been construed by the Supreme Court to mean that as far back as 1974, the provision for the Surveyor-General to counter sign survey plan before they are admitted in evidence had been dispensed with throughout the Federation<sup>103</sup>. Before that amendment, it was an issue for the court to admit in evidence survey plans not counter signed by the Surveyor-General except the party intending to use same showed good cause for its admittance. The requirement of counter signing was a matter of evidence and plans which were deficient for want of the prescribed signatures were not void and inadmissible<sup>104</sup>. The courts have held that onus lies on the party who seeks a declaration of title to show by sufficient description and illustration the extent of the land to which his claim relates and this is best achieved with the help of a survey plan<sup>105</sup>. Courts have also held that it is not in all matters that a survey plan is needed in the adjudication of a dispute over land<sup>106</sup>. The courts have also held that where there are conflicting survey plans by the parties and these cannot be resolved by evidence and cross examination of the witnesses, the trial court should resolve

<sup>94</sup> *Comm. Of Land and Housing, Kwara State v. Atanda* (2007) 2 NWLR (PT. 1018)360; *Akinduro v. Alaye* (2007) 15 NWLR (pt. 1057)312

<sup>95</sup> *W.A.C Ltd. V. Yankara* (2007)4NWLR (pt. 1077)323; *Savannah Bank Plc v. Ibrahim* (2000)6NWLR (Pt. 662)585

<sup>96</sup> (2007) 10NWLR (Pt. 1042)SC 364

<sup>97</sup> *Ibid* 364

<sup>98</sup> *Ibid* 364; *Alafia v. Gbode Ventures (Nig.) Ltd.* (2016)7NWLR (pt. 1510)116; *Etajata v.*

<sup>99</sup> (n92) 103; *Isitor v. Fakorede* (2008) 1 NWLR (PT. 1069)602 *Ologbo* (2007)16 NWLR (Pt. 1061) SC 554 (PP. 585-586, paras G-B); *Agunedu v. Onwumere* (1994)1 NWLR (PT.321)375

<sup>100</sup> *John K. Synger, The Nigerian Land Use Handbook* (Odeade Publishers 2016),69

<sup>101</sup> (2008) NWLR (PT. 1109) SC 122

<sup>102</sup> *Jules v. Ajani* (1980) 5-7 SC 96

<sup>103</sup> No. 34 of 1934

<sup>104</sup> *Oseni v. Dawode* (1994)4NWLR (Pt. 339)390

<sup>105</sup> *Racheal v. Ezi* (2015) 12 NWLR (Pt. 1472)39; *Ogun v. Akinyelu* (2004)NWLR (Pt. 905)362

<sup>106</sup> *Ojibah v. Ojibah* (1991)5 NWLR (Pt. 191)296 *Ibid* 311; *Olorunfemi v. Ojo* (1993)8NWLR (Pt. 313)542

the same by a visit to the *locus-in-quo*<sup>107</sup>. The court is duty bound to look at the survey plans tendered during the trial to consider the boundaries and location of the land on one survey plan with those in the other<sup>108</sup>. In *Okunada v. Olawale*<sup>109</sup> the Court of Appeal held that where there is dispute as to the areas and boundaries of land, in other words, if these are put in issue, the plaintiff who relies on a plan must show that his plan corresponds with the area claimed or in dispute. He may do this by showing that the description of the land in his pleading and as given in evidence in support is in complete accord with the plan filed along with the statement of claim relied on by him. This is to show that the land is certain both in size or boundary and location.

The courts have held in the case of *Yaro v Arewa Construction Ltd*<sup>110</sup> that the deposit of a title deed of the mortgagor with a bank as security for a loan as an equitable mortgage while transferring of a legal estate or interest by deed is a legal mortgage. The courts have held that in deciding on the rights of the parties to a mortgage, a court cannot compel a mortgagee to part with his security unless he has received his money. This is so even where the mortgagor and any other party having interests in the equity of redemption are entitled to redeem the mortgage<sup>111</sup>. The mortgagor's equity of redemption is his right to redeem in default before foreclosure sale by paying up the principal, interest and other costs that are due. He has this limited right, up and until foreclosure sale, to reimburse the mortgagee and cure the default; this he must do to prevent the mortgagee from exercising his right of sale under the mortgage<sup>112</sup>. The court held in the case of *Jolasun v. Bamgboye*<sup>113</sup> that a mortgagor has a legal right to redeem his property once the mortgage debt is fully paid. When this is done, the mortgagee should execute a deed of release for the mortgage. In the case of *Salami v. Wema Bank (Nig.) Plc*<sup>114</sup> that a mortgagee is not a fiduciary of the mortgagor. The only obligation a mortgagee owes a mortgagor is to act in good faith. It is irrelevant that a better price could be obtained if a mortgagee exercises his power of sale *bonafide* for the purpose of realizing his debt and without collusion with the purchaser, the court will not interfere even though the sale be very disadvantageous, unless the price is so low as in itself be evidence of fraud. Further, the court in the case of *Agboola v. JJ.B.A Plc*<sup>115</sup> held that a purchaser who bought a property sold by a legal mortgagee in exercise of the power of sale under a mortgage upon the default and repayment of loan by the mortgagor is not a trespasser.

## 7. CONCLUSION AND RECOMMENDATIONS

This paper has considered some of the relevant issues and challenges confronting the control and management of land in Nigeria pre and post the Land Use Act, 1978 especially as it relates to the instances where the courts have been called upon to intervene in the disputes and challenges faced by governments, individuals and corporations as it relates to the control and management of land in Nigeria. It is the view of this paper that the courts have contributed immensely to the growth of this area of the law. The extent of the court's intervention in the area of discourse has been tremendous

<sup>107</sup> Ibid 311; *Olorunfemi v. Ojo* (1993)8NWLR (Pt. 313)542 *Briggs v. Briggs* (1992)3NWLR (Pt. 228)128; *Onwujuba v. Obienu* (1991)4NWLR (Pt. 183)16

<sup>108</sup> *Briggs v. Briggs* (1992)3NWLR (Pt. 228)128; *Onwujuba v. Obienu* (1991)4NWLR (Pt. 183)16 *Idundun v. Okumagba* (1976)9-10 SC 227; *Latinwo v. Ajao* (1973)2SC 99,109

<sup>109</sup> *Idundun v. Okumagba* (1976)9-10 SC 227; *Latinwo v. Ajao* (1973)2SC 99,109 (2014)10 NWLR (Pt. 1415)207; *Adenle v. Olude* (2002)18 NWLR (pt. 799)413

<sup>110</sup> (2014)10 NWLR (Pt. 1415)207; *Adenle v. Olude* (2002)18 NWLR (pt. 799)413 (2007)17NWLR (Pt.1063) SC 333; *Ogundiani v. Araba* (1978)6-7 SC 55; *Barclays Bank of Nigeria Ltd., v. Ashiru* (1978)6-7 SC 99

<sup>111</sup> (2007)17NWLR (Pt.1063) SC 333; *Ogundiani v. Araba* (1978)6-7 SC 55; *Barclays Bank of Nigeria Ltd., v. Ashiru* (1978)6-7 SC 99

<sup>112</sup> *Barclays Bank of Nigeria Ltd., v. Ashiru* (1978)6-7 SC 99, 375 *Ejikeme v. Okonkwo* (1994)8 NWLR (Pt. 362), 266; *Ogiorio v. Igbinovia* (1998)13 NWLR (Pt. 582)426,441-442.

<sup>113</sup> *Ejikeme v. Okonkwo* (1994)8 NWLR (Pt. 362), 266; *Ogiorio v. Igbinovia* (1998)13 NWLR (Pt. 582)426,441-442.

<sup>114</sup> (2010)18NWLR (Pt. 1225)285 (2010)6NWLR (Pt. 1190) 341; *Eka-Eteh v. Nigeria Housing Development Society Ltd.* (1973)6 SC 183

<sup>115</sup> (2010)6NWLR (Pt. 1190) 341; *Eka-Eteh v. Nigeria Housing Development Society Ltd.* (1973)6 SC 183

taking into cognizance the landmark decisions and pronouncements by the courts in various areas of the law as it relates to the management and control of land in both urban and rural areas and more especially in dealing with some of the challenges posed by the introduction of the revolutionary Land Use Act, 1978. The Courts have lived up to their callings in most cases boldly asserting the relevant laws to the cases before them and ensuring parties are given their due rights and serving justice to all manners of individuals. This paper humbly makes the following recommendations:

- a) That the Land Use Act would work better if some challenges associated with it like trusteeship; beneficiaries of compensation and use of title documents for financial transactions are adequately dealt with in the Act.
- b) That the inclusion of the Land Use Act in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) with strict procedures for its amendment is a hindrance the much needed critical amendments which the Act needs.
- c) That some of the initial challenges which the Land Use Act, 1978, intended to cure are still much in force under the regime of the Act, such as, land speculating and prospecting; difficulty is obtaining or assessing land and its huge financial cost save for government compulsory acquisition of land is still subsisting, conscientious efforts such as development incentives and payment of adequate compensation should be encourage to discourage sale of land to speculators under the guise and fear of compulsory acquisition by government without payment of reasonable compensation.
- d) The Power of the Governor under the Land Use Act as the sole repository of the ownership of land in their respective states make for arbitrary actions. Certificates of Occupancy have been revoked for private interests masquerading as public interest. The absolute powers of the governor should be further checked by the introduction of statutory independent bodies to manage the assessment of compensations payable for land acquisition.
- e) The ouster of the courts in the issues of compensation is another setback of the act which is undemocratic. The Act must be made to conform to democratic tenets, thus making it more user friendlier.

*Abstracting and Indexing in:*

*GIGA - The Electronic Journals Library of the German Institute of Global and Area Studies, Information Centre, Hamburg; Google Scholar; Global Development Network (GDNet); Social Science Research Network (SSRN); Econlit - The American Economic Association's Index (ECONLIT); EBSCO; IndexCopernicus USA; British International Libraries; Anton's Weekly Digest; International Abstracts in Operations Research; Environmental Science and Pollution Management; Research Alert*

[www.juliapublishers.com](http://www.juliapublishers.com)

---