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The Land Use Act, 1978 and Grant of Right of Occupancy in Nigeria

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Abstract

On 28th March 1978, by Decree No. 6 of 1978, the Land Use Decree now Act, was promulgated into law. The circumstances of the enactment were simply controversial. It thus caused uproar and controversies in the land and till date, it has most of the time been eliciting negative comments and the summary of the contention of learned writers is a call for not just a review of the Act but an outright abrogation of same. Viewed from the background of the importance of land to man, having no substitutes, the call is understandable. This work has attempted to sort the wheat from the chaff of the various comments and controversies surrounding the Act by critically examining the relevant provisions of the THE LAND USE ACT, 1978 as it relates to GRANT OF RIGHT OF OCCUPANCY IN NIGERIA This paper shall adopt the doctrinal methodology by examining the impact of the Act on the grant of right of occupancy in Nigeria.

Introduction

Land which is a primary capital asset and generally the most durable, serving as an almost unlimited reservoir of sustenance for the man who has the use and enjoyment of a useable portion of it, is looked upon as the nucleus of man's livelihood and survival. All Nigerians in their respective communities are entitled to obtain land for specific purposes of exploitation and residence. Individuals achieve this under native law and custom by a fairly simple method through a member of, or residing with kinship group, village or tribe and sometimes through contractual relations such as loans, sales, pledges, gift and leases. Under statutory laws, land is required by a grant from the state or local government in Nigeria. This does not mean that everybody holds equal rights or equal amounts of land, nor does it imply that everybody secures these rights with the same implications. In order to provide for these different methods of land occupation and rights thereof, there is need for properly laid down rules of how to create these interests in land which everybody is entitled.[1]

In view of the above, land has not been easy to define due to the multifarious activities undertaken on land by man. In spite of the difficulties, a few attempts have been made to define it with very few statutory definitions guiding scholars of law and the courts in particular. For instance, the legal conception of land under customary law has been a

[1] Egute M A, Essentials on Nigerian Land Law (Onaivi Printing and Publishing Company, Makurdi, (2002) at p.1

matter of controversy among writers. Obi,[2] maintains that a remarkable aspect of African Customary law is the fact that land does not include things growing on, or attached to the soil and neither economic trees nor houses form a part of the land on which they stand. Lloyd,[3] on his own part claims that in Yoruba customary law, a distinction is drawn between land (the soil) and improvements thereon. It must be noted here that Lloyd's understanding of what land is, conflict or is at variance with the concept of ***quicquid plantatur solo cedit,*** a principle of English, as well as of Nigerian property law, which literally means that all permanent fixtures made on the land accede to the land.[4]

Statement of the problem and objective of the Research

THE LAND USE ACT, 1978 is a substantive law that governs management and administration of land resources in Nigeria. It vests all land comprised in all the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the State who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Government. This is contrary to Customary Land Law which vests all the land to the communities in which such land is situate and to individuals in accordance to customary land tenure. How does THE LAND USE ACT fare in the face of Costomary land law? The article examines GRANT OF RIGHT OF OCCUPANCY IN NIGERIA as an aspect of THE LAND USE ACT, 1978. The objective of the research therefore is to prove legal information and analysis on the provisions of THE LAND USE ACT relating to GRANT OF RIGHT OF OCCUPANCY

Review of related literature

The only statute that attempted to define land in Nigerian was the former Western Region Property and Conveyance Law, 1959. It provided as follows.[5] "Land includes land of any tenure, building or parts of building (whether the division is horizontally, vertical or made in any other way, and other incorporeal hereditaments, also a rent and other incorporeal hereditments, and an easement, right, privilege or benefit in, over, or derived from land".

Suffice it to mention that this statutory definition ought to have been the most appropriate one but unfortunately; ordinary persons will hardly accept it. For, land in the definition appears to encompass every bit of interest or rights derived from land. However, the definition seemed to have been for a particular purpose. The above statutory definition therefore may fit very well under the Roman and English Laws of land tenure. This, however, is not the same in Nigeria.

A more meaningful and better definition of land in the absence of a statutory definition that wins general acceptance seems to have been given by Olawoye[6] when he said:

... As conceived by law, land includes the surface of the earth, the subsoil and the airspace above it, as well as things that are permanently attached to the soil. It also

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[2] In his book, The Ibo Law of Property, (Sweet and Maxwell, London (1963). P. 32

[3] Yoruba Land Law, (Oxford University Press, London (1962). P. 60

[4] *Francis V. Ibitoye* [1966] NMLR 329; *Ezeani and others V. Ejidike* [1964] 1 All NLR 402; *Otogbolu V. Okekuwa and Ors.* [1981] 6-7 S.C., 99

[5] S. 2 of the Law, cap 100

[6] Title to Land in (Nigeria Evans Bros. Ltd. Ibadan (1974) at p.9

includes streams and ponds. On the other hand, things placed on land, whether made of the product of the soil or not, do not constitute land.[7]

The researcher therefore endorses the above definition and adds further that land also includes even abstract incorporeal right like a right of way and other easements as well as profits enjoyed by one person over the ground and building belonging to another.

But Coker[8] states categorically that in any application of the term, 'land' includes building thereon. Coker's definition is still not helpful, as it does not take cognizance of the air space, sunshine and water all of which form part of the land.

Grant of right of occupancy

According to s.50 of the Act, a right of occupancy is defined as the "right to the use and occupation of land". It could also be defined as a title to the use and occupation of land. The holder of a right of occupancy enjoys a number of rights, powers and privileges in and with reference to the land. These include the use, occupation and beneficial enjoyment, possession and disposition.[9] Suffice to mention here that the Land Use Act provides for two different rights of occupancy, being statutory and customary right of occupancy.

The first right which is a statutory right of occupancy means under s.50 (1), a right of occupancy granted by the Governor pursuant to s.3 of the Act. Section 5 of the Act empowers the Governor to grant statutory right of occupancy in respect of land in any part of the state to any person for all purposes. Any part of the state as mentioned above refers to land whether or not in an urban area. This has judicially been recognized in the case of *Titiloye V. Olupe,*[10] by the Supreme Court of Nigeria.

It must be noted here s.5 which empowers the Governor to grant a statutory right of occupancy to anybody in any part of the state is unfair to Local Governments. For instance, having loftily stated in s.2 (1)[11] that the Governor should designate the land between himself and the Local Governments, so that each can effectively manage its own area, s.5 empowers the Governor again to enter into that which belongs to the Local Governments and grant to any person a statutory right of occupancy. This is like giving to the Local Governments with the right hand and receiving it back with the left hand. Thus, this can sometimes lead to misuse and abuse of powers particularly where the Governor and local governments are from different political parties. Thus, there is the need to completely eliminate s.5 from the Act, to ensure fairness, equity and justice.

The above criticism notwithstanding, it must be pointed out here that the governor's right to grant a right of occupancy is one of the most important aspect of the role played by the state governor in administering the land for the use and common benefit of all Nigerians as a trustee, as enshrined in s.1. This is so as it has to deal with the issuance of titles to individuals and organizations on land pursuant to the Act. The State governor undertakes this role through the agency of the ministry charged with the responsibility of all land matters in the state or himself. In most states, the ministry is known as the Ministry

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[7] Also the definition given by the United Nations Conference, (on Rural and Urban Land Tenure, New York (1948) pp. 5-6.

[8] Family Property Among the Yorubas, (Oxford University press London (1921) p. 45

[9] Egute M. A. op. cit. at p.117

[10] [2003] 2 N.L.L.C. 4 & 3 at 497-498

[11] It provides:

a. All land in the Urban areas shall be under the control and management of the Governor of each State; and
b. All other land shall, subject to this Act, be under the control and management of the Local Government within the area of jurisdiction of which the land is situated.

of Lands and Survey, although in some states, the name varies. For instance, in Benue State, it is the Ministry of Lands and Survey. The grant of a statutory right of occupancy is in most cases for a definite period of time, ranging from 5-99 years and the right is renewable. It must then be noted that since 1978, the Act is only about 27 years old and the truth of the above assertion is yet to be proved.

Having granted a right of occupancy, the governor shall then issue a certificate of occupancy otherwise known as a "C of O" in accordance with s.9 (1) (C). To be noted is the fact that the certificate of occupancy shall be issued by the Governor under his own hand. Despite this provision, most state governor today have empowered their Commissioners of the Ministry of Lands and Survey or the Bureau of Lands and Survey to issue such rights and certificates of occupancy in their names. This of course must be gazetted, without which the powers of such officers shall be null and void. Thus, today the question whether a piece of land is a subject of statutory or customary right of occupancy under the Land Use Act, as the case may be, does not depend on the character of the tenure but rather on the location of the land itself.[12] This now takes us to the customary right of occupancy.

The other hand, a customary right of occupancy according to s.50 (1), means the right of a person or a community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act.

The Local Government is empowered by s.6, to grant such a right in respect of land in non-urban areas to any person or organization for the use of land in the Local Government Area for agriculture, residential, grazing and other purposes. It is therefore submitted that it is by virtue of this power that the objective of the Act to make land available to every Nigerian can be realized in non-urban areas.

The practice of Local Governments is some states for instance, and perhaps all over the country reveals that the grant of a customary right of occupancy is nothing more than mere confirmation of an existing right in land in question, especially to person who already had some right of beneficial ownership over the land constituting the subject matter of the grant. Consequently, the provisions of s.6 cannot be considered in isolation from those of s.36 which support the contention that the grant of a customary right of occupancy by the Local Government in accordance with s.6 is nothing more than a mere confirmation of an existing right in the land in question, to persons who already had some right of beneficial ownership over the land.

A critical analysis of the provisions of s.6 and s.36 reveals that the Act has preserved the customary landlord and customary tenant in respect of land use for agricultural purposes by its provisions in s.36 (1) – (4) relating to the rights of occupier and holder. It has not robbed the holder of his rights to tributes from the occupier of land used for agricultural purposes.[13]

In the same vein, it is clear that even s.1 of the Act, which has vested the land in each state in the Governor in trust for the use and common benefit of all Nigerians, has created a bare trust and no more. It has not taken away the right of customary owners to enjoyment of the tributes. Rather, it left it untouched. This view and the discussion surrounding s.36 (1) – (4) above were authoritatively supported and recognized by the

[12] *Alhaji Rufai V. Alhaji Olugbaja* [1986] 5 N.W.L.R. 162
[13] See Egute M. A. op. cit. at 119

Nigerian Supreme Court in the celebrated and recent case of *Abioye V. Yakubu.*[14]

However, the local Government in granting a customary right of occupancy to an applicant in accordance with s.6 (1) in respect of land not within an urban area is equally prohibited by s.6 (2) not to grant any customary right of occupancy to any person or organization in respect of an area of land in excess of 500 hectares if granted for agricultural purposes or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor. Again, the prohibitive provisions of s.6 (2) are not fair enough on the opinion of the researcher.

The fact that the local government is expected to seek and obtain the consent of the governor before granting any right for grazing purposes in excess of 5,000 hectares or excess of 500 hectares for agricultural purposes appears to be an encroachment of the Governor on what does not belong to him. Thus, land allocated to the local government should be exclusive to it to ensure speedy development of the local government area. As earlier argued, it is possible that such consent may never be given where the requesting local government belongs to a political party different from that of the Governor. In this light the intents and purposes of the Act, to make land available to all Nigerians will be defeated. Consequently, it is the candid submission of the researcher that s.6 (2) should be expunged since its implementation could create hardship to the Local Governments and applicants of rights for farming and grazing respectively.

In spite of the wide powers given to the governor and local governments to grant rights of occupancy in accordance with section 5 and 6 respectively, the exercise of such powers is however subject to judicial review and determination. Thus, the courts can set aside a grant, which is irregular, or a grant made in error or by fraud not in compliance with the provisions of the Act. Accordingly, in the case of *Teniola V. Olohunkun,*[15] it was held that the provisions of sections 5 (2) and 6 (3) of the Act would not preclude the court from setting aside the grant of a statutory right of occupancy in appropriate cases such as, for instance, when it has been issued in error or has been obtained by fraud. Similarly, in the very important case of *Uche V. Eke,*[16] The Nigerian Supreme Court set aside the certificate of occupancy in the following words:

Any grant of land whether by private treaty or by statutory right of occupancy evidenced by a certificate of occupancy will be a mere piece of paper notwithstanding anything if the root of the title to make the conveyance is not vested in the vendor. If this is not so, all a person has to do is to go to the land office of the Government and obtain a right of occupancy in respect of a family who may not know that their land has been given to a complete stranger.

Consequently, it must be borne in mind that upon the grant of a statutory or customary right of occupancy in accordance with the provisions of the Act, all other existing rights to the use and occupation are extinguished.[17] In such situations, the previous occupier is only entitled to be compensated for unexhausted improvements.[18]

Fixing of rents

Another important function seemingly performed by the governor while controlling

[14] [2000] 1 N.L.L.C. pg 18-19
[15] [1999] 68 L.R.C.N. 671
[16] [1998] 8 S.C.N.J.I at 7
[17] For instance s.5 (2)
[18] Yakubu M. G., Notes on the Land Use Act, (Zaria A.B.U. Printing Press (1988) at p.18

the land under the Act is the power to fix rents. The Black's Law Dictionary[19] vividly defines rent as "consideration paid, usually periodically, for the use or occupancy of property, (especially real property)".

Thus, it follows as well as by virtue of s.5, already discussed above, the governor is not only empowered to grant a statutory right of occupancy to any person, for any purpose over any land, be it urban or not, but also has an absolute power to deal with rents the way he deems fit. Such absolute powers extend to the right to fix rents, revise rents, impose penal rents and waive them and determines the time they will be paid.[20]

It is therefore the opinion of the researcher that the powers granted to the governor with regard to fixing of rents is too sweeping and thus could be abused. This is particularly so where he fixes the rents payable revises and imposes penal rents. This means that the rents payable by individual vary from those payable by another individual, as there is no uniformity. It goes without saying that where there is no uniformity, arbitrariness becomes the order of the day and where there is arbitrariness, there is no equality, fairness and justice. Consequently, it is possible that the governor could impose high rents and even penal rents as he deems fit on either his opponents or political contestants. Thus, rents could become a weapon of settling scores rather than serving as an avenue for raising revenue for the state governors and local governments.

Thus, it may not be arguable that the imposition of very high and penal rents on some people and the waiving or reduction to some other people will serve as an avenue for raising funds. Rather, it leads to financial crisis and social unrest. Therefore, the Act ought to have provided for an imposition of uniform and affordable rents in line with the realities of the day. For instance, what is happening in the Federal Capital Territory, Abuja today is most unfortunate? Most of the ground rents chargeable by the Minister is unaffordable. More so, the power to impose penal rents has been visited with no human feelings as this has even led to the revocation of most rights and certificates of occupancy on the grounds of failure to pay rents or comply with the conditions of grant. By this act, most people, churches and companies have had their buildings demolished without paying compensation to the people in accordance with s.29 of the Act. This has led to social unrest, economic hardship and lost of confidence in the government. Thus, it is the researcher's candid believe that s.5 (i) (e) (f) and (g) should also be amended so that the Governor's power could be curtailed.

On the part of the local governments, the Act appears to be silent when it comes to fixing of rents. Despite this silence, it is contended that the local government in practical terms can also fix and collect rents, revised rents and even impose penal rents as well where the need arises. Thus, the discussion done above for state governors is adopted here. This now takes us to the important duty to grant consent.

The grant of consent

The grant of consent is another power exercisable by the governor and local governments to any valid alienation of rights of occupancy over their respective lands. The word alienation is not specifically defined in the Act but according to Mozley & Whiteley's Law Dictionary,[21] alienation is a transfer of property or the voluntary resignation of an estate by one man, and its acceptance by another. This can be by sale, mortgage, pledge, lease and even by gift. This illuminating aspect is provided under

[19] 7th Edition (West Group, St. Paul, Minnesota (19999) at p.1299
[20] Particular s.5(1) (e) (f) and (g)
[21] Saunders J.B. (London Butterworths Publishers 9th Edition (1977) at 186

section 21 and 22 of the Act respectively. While s.21 provides that it shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage transfer of possession, sub-lease without the approval of the appropriate local government, s.22 equally makes it mandatory for the consent of the Governor to be sought and obtained by the holder of a statutory right of occupancy who wishes to alienate it or any part thereof, through the above mentioned means. This is only on condition that the said right is granted by the local government or governor respectively.

The most crucial aspect of section 21 and 22 is the fact that the consents must be obtained before any valid alienation can be effected. Therefore an alienation of customary or statutory right of occupancy without the approval or consent of the appropriate authority is null and void. Thus, in the very important but highly debatable case of *Savannah Bank of Nigeria Ltd. V. Ajilo*[22] the Nigerian Supreme Court inter alia, had that the purported mortgage transaction between the plaintiffs and the defendant was null and void as the plaintiffs failed to obtain the consent of the Governor in accordance with s.22 before mortgaging their property to Savanna Bank.

Similarly, in the case of *Union Bank Plc V. Ayo Dare & Sons Ltd.*[23] Union Bank gave out some credit facilities to Ayo Dare & Sons Ltd., a limited liability company. The company mortgaged two of its properties to the Bank covered by customary and statutory rights of occupancy respectively. When the company defaulted to pay its debt to the Bank, the Bank then decided to sell the properties by auction sale. An objection was raised on the grounds that at the time of creating the legal mortgage by the company, being the owner of properties, the consent of the granting authorities was not sought and obtained. Therefore the transaction was viod ab initio as s.26 of the Land Use Act and s.22 were not complied with. In this light the Appeal by Union Bank was dismissed.

The Court of Appeal equally held that by the provision of s.22 of the Act, a holder of a right of occupancy statutory or otherwise is prevented from alienating his right of occupancy's or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise without the consent of the appropriate authority, first had and obtained.[24]

A burning question to be asked here is, what is the effect of a transaction concluded without the consent of the appropriate authority where the defendant has derived benefit there from? Though it is despicable and morally wrong for a party who had initiated wrong doing and after obtaining benefit to resile from the same, yet, the law under peculiar facts of the case, must be applied.[25] The transaction in this case is null and void. In the light of the foregoing, the provisions of s.26 of the Act are mandatory and must be strictly interpreted.

According to the section, "any transaction or any instrument which purports to confer on or vest any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void". Thus, with due regard to section 21 and 22, and with the recent development in the case of OWONIBOYS TECHNICAL SERVICES LTD. V. UBN[26] is to the extent that, if failure to obtain consent is the fault of

[22] [1989] 1 N.W.L.R (pt.97) at 305
[23] [2000] F.W.L.R (pt.12) at 1971, C.A
[24] For further reading, see equally the very important cases of *Adedeji V. N.B.N Ltd.* [1991] 1 N.W.L.R. (pt.96) 212; *Ugochukwu V. C.C.B. (Nig.) Ltd.* [1996] 6 N.W.L.R. (pt.450); *F.M.B.N. V. Babatunde* [1999] 12 N.W.L.R. (pt.632) 638
[25] Egute M. A. op. cit at 124
[26] (2003) 40 WRNI SC

the party whose duty is to obtain consent, he cannot take advantage of these sections.

It should be noted that while it is mandatory for the holder of a right of occupancy to obtain the governor's or local government's consent before any valid alienation can be done, both the governor and local government can withhold consent, their power to grant consent is not mandatory. This is because the power appears to be discretionary as section 21 and 22 are couched in such a way as to make the exercise of the power discretionary on the part of the granting authorities. This position finds support in the views of YAKUBU M.G.[27]

Furthermore, it is doubtful whether any of the granting authorities could be compelled by any of the prerogative writs like mandamus to grant consent. The issue was tackled and laid to rest in the very important case of *R. V. Minister of Land and Survey,*[28] a case decided under s.11 of the Land and Native Rights Ordinance, 1916 which had the same provision with sections 21 and 22 of the Act. In that case, the appellant petitioned to the court to order the governor under the provision. The court held that the order of mandamus did not lie against the governor in this circumstance. Reed A.G., S.P.J., the application in the following words:

We find that the plain and ordinary meaning of this section is to confer on the governor a discretionary power to grant or withhold his consent to the alienation by any means of occupancy. We agree that cases arise where words apparently permissive really impose a duty and that in such cases the courts may and will interpret them as mandatory. But we are unable to agree that the words of the section insofar as they relate to the Governor's consent would possibly be interpreted as imposing a duty.

The above authority is not to be understood as sanctioning arbitrariness nor relieving the governor and local governments from exercising their discretionary powers properly and appropriately. Discretion in all cases must be exercised judiciously and judicially and not erratically. Thus, in the case of Majiyagbe *V. A.G. & Ors.,*[29] the court held that the discretionary power was not properly exercised and it was set aside.

Another pertinent question that may arise is, when is consent required for a person who intends to alienate his right of occupancy. Is it at the agreement stage or at the contract stage? The problem one encounters in answering the above question is as to the difficulty in distinguishing between the agreement stage and the contract stage. According to Barnsley,[30] a transfer or sale of an estate in land is divided into two distinct stages. (i) The contract stage, ending with the formation of a binding contract for sale, (ii) the conveyance stage, culminating in the legal title vesting in the purchaser by means of the appropriate under seal.

Bearing the foregoing in mind, it follows therefore that, it is only after a binding contract for sale is arrived at that the need to pursue the procedure for acquiring title will arise. That is when the obtaining of the necessary consent to alienate the property becomes an issue in order to make the alienation valid. This contention was authoritatively approved by the Supreme Court in the celebrated case of *I.T.I.(Nig.) Ltd. V. Aderemi,*[31] in the following words:

The position of s.22 of the Act is clearly this, a holder of a right of occupancy

[27] Op. cit. at p.33
[28] [1963] N.R.N.N.L.R. 58
[29] [1957] N.R.N.L.R. 158
[30] Conveyancing Law and Procedure 5th Ed. (Oxford University Press London (1973) page 4
[31] [2000] 1 N.L.L.C275

may enter into an agreement or contract with a view to alienating his said right of occupancy. To enter into such an agreement or contract, he does not need the consent of the Governor. He merely operates within the first stage of a transfer or sale of an estate in land which stage ends with the formation of a binding contract for a sale constituting an estate contract at best. But when he becomes to embark on the next stage of alienating or transferring his right of occupancy which is done by a conveyance or deed, culminating in vesting the said right in the 'purchaser', he must obtain the consent of the governor to make the transaction valid. If he fails to, then the transaction is null and void under s.26.

Closely related to the above issue is the distinction between agreement to alienate land and the instrument by which the actual alienation takes place. This issue came for determination in *Awojugbabe Light Industries Ltd. V. Chinukwe,*[32] and the Supreme Court held that a conditional agreement executed by parties prior to the receipt of the Governor's consent is valid and that it is not illegal to execute documents in preparation of the transaction before the receipt of the consent.

Finally, the rule that the consent of the granting authority must be first had and obtained before any transfer of right over land can be effected is perhaps the most potent of the provisions of the Act which enhances security of title. By requiring the consent of the granting authorities to such transfers, it will be possible to control and regulate them and with proper records of all transfers being kept. This can operate as another form of registration of titles.

THE ACHIEVEMENT AND FAILURES OF THE LAND USE ACT

The achievement of **LAND USE ACT relating to Grant of Right of Occupancy can be listed and analyzed as follows:**

Certainty of titles.

The land use Act has to a large extent provided certainty of tittles obtained by Nigerians in respect of their land and this is a major achievement of the Act. This is done by the grant of rights of occupancy evidenced by certificates, of occupancy, which are duly registered in the land Registry. All existing rights under customary law are deemed to be customary or statutory rights of occupancy subject to the control of their the Governor or the appropriate local Government. This power is contained in sections 6 and 9 of the Act.

With the registration of all certificates of occupancy either at the State or Local Government levels, further illegal or illicit deals on a piece of land have been eliminating or curtailed. The requirement of consent to alienate land also ensures that illegal dealings are checked as all such applications for consent or the grant of such consent are also similarly registered. A purchaser of land only needs to conduct searches in the appropriate land registry to know the state of the land and its rightful owner.

Before promulgation of the Act, uncertainty and in-security of titles especially under the customary tenure made it imperative that there should be a change. Conferments of valid titles to purchasers were cumbersome, erratic and incapable of precise definition. For example, a man who wished to purchase or lease land could not find out whom the right vendors were to convey it to him. Others bought their land twice rival claimants or from sections of a family.[33] One good example that sums up the obnoxious situation is the case

[32] [1995] 4 N.W.L.R. (op.390) 379

[33] Lloyd: Committee on the Registration of Title to Land in the old Western Nigeria Sectional paper No. 2 of 1961 Para. 2

of *Ogunbambi V. Abowaba,*[34] where verity Ag. P. said, inter alia:

The case is indeed in this respect like many which come before this court, one in which the Oloto family either by inadvertence or design sell or purports to sell the same piece of land at different times to different persons. It passes my comprehension how in these days when such disputes have come before this court over and over again any person will purchase land from this family without careful investigation, for more often than not they purchase a lawsuit, and very often that is all they get.

When followed, it is seen that the provisions of the Acts are anti-fraud and ensure certainty of titles that pass to a purchaser. Closely related is the right of revocation by the Governor or the Local Government. This is a potent weapon in the hands of the appropriate authority, which can be used against any offending dealing in land. This also eliminates the incidence of selling one piece of land to multiple buyers. Once the law is followed, this cannot happen. The Act has achieved much in this regard in spite of several abuses by people who act as if law does not exist.

Checking of land speculation and land grabbing

Another lofty achievement of the Act came through a check or the halt to land speculation, racketeering and grabbling. The activities of some chiefs who colluded with some members of the community and families to illegally deal in land were also checked.[35]

Thus, before the promulgation of the Act, there was a scramble for land, not only in the urban areas but also in the rural areas by big time farmers' communities, families, villages, entrepreneur and other influential individuals. The situation was more aptly described by Hon. Justice Adeloye, thus:[36]

As much as five hundred to a thousand acres could be owned by an individual depending on how fast his agent could make a deal. The new middle class trying to find their feet, mostly salary earners and some of them, descendants of illustrates who disposed of family land, depended on the city gentries in order to be able to secure a plot of land for residential building… (Land speculation and grabbing) in the rural areas took different form from what was happening in the cities. The earlier arrivals in the jungles prevented others from farming at any close distance. They laid claims either as communities, families or individuals to a jungle around them and later arrivals could only secure land for farming on condition that they paid cash or made return in kind annually for cultivating the land.

In the light of the foregoing, it is therefore arguable that the Federal Government was therefore justified in taking steps to curb the disturbing situation by promulgating the Act. In an attempt to solve the problem of the land speculation and grabbing. The Act provides ins.6 (2) that "no single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5000 hectares if granted for grazing purposes, except with the consent of the Governor." While in s.34 (5) (a), it is provided that sequel to the coming into effect of the Act, where a person had undeveloped land vested in him in urban areas, one portion or plot of land not exceeding half hectare, shall continue to be held by such a person as if a statutory right of occupancy has been granted to him by the governor in respect of that plot or portion.

The reality on the ground in most Nigeria cities may lead to the above optimism as being misplaced as allocation or re-allocation of land has not in reality been cheaper and

[34] (1951) 13 W.A.C.A. 222 at 223

[35] Egute M. A. op. cit. at 13

[36] Adeloye S. P. "Some Aspects of the Land Use Act". Nigerian Current Law Review, Oct. 1982 at 313

affordable. In the big cities of Lagos, Abuja for instance, the government sells a plot of land for not less than ₦500, 000.00. In the more developed areas of these towns, the prices more than triple the above. This has still made land speculators at their best, particularly where government acquires peoples' land and allocates to them at prohibitive cost. This becomes undesirable and unacceptable. How many ordinary Nigerians can acquire a plot of land at the above price in either Lagos or Abuja and some of the state capitals within the Federation?

The conclusion then is that it is disputable whether land has become affordable to Nigerians and the activities of land speculators and racketeers done away with since the promulgation of the Land Use Act. The provisions of the Act are such as should achieve this and it in fact did but the "Nigerian factor" has been the devil of all good legislations in this country and the Act has not been exempted.

Failure of the Land Use Act

As it relates to Grant of Right of Occupancy, the following failures shall be highlighted and discussed:

Administrative machinery and enforcement

According to R. W. James,[37] there is agreement in Nigeria that whatever benefits are provided by current policies of land administration, they have been obtained at great direct and indirect costs. Most of the criticisms are directed at (i) The inordinate delays in allocation of land and in their availability for occupation in some states. (ii) Exorbitant charges and fees. (iii) Delays in processing applications for approval of land transactions. He also criticizes the large areas of administrative discretion, which are prone to abuse.[38] Further, even though the primary objective of the Act was to provide for equitable distribution of land, it is common knowledge in Nigeria today that individuals now hold several plots of land in clear violation of the Act, but curiously however, consent is still granted to such transactions.

While it is generally agreed that certainty of title was a prerequisite to securing the benefits of a stable economic environment, the Act introduced no machinery to remove the uncertainties. The fact that the appropriate authority is empowered to make a grant to an apparent owner of land which is made only after advertising the name of the claimant, that may not operate to divest the interest of an undisclosed rights holder.[39]

Jurisdiction Problems

Sections 39, 40, 41 and 42 of the Act confer jurisdiction on High Courts and Magistrate Courts to hear cases dealing with land in urban areas, non urban areas and claims for rent respectively. However, these provisions have created tremendous conflict and confusion. Section 39 (1) vest exclusive jurisdiction in the High Courts to hear cases relating to land held under the Act in Urban areas. The problem has always been whether the High Court as a court of "unlimited jurisdiction" has the powers to hear cases in non-urban areas. A plethora of authorities including *Rossek and Ors. V. African Continental Bank*[40] have held that the High Court had no jurisdiction. But after several years of applying this precedent and subjecting land holders to severe hardship in courts, the Supreme Court in the recent

[37] Nigeria Land Use Act: Policy and Principles (University of the Ife Press (1987) at 181
[38] For instance, s.3 of the Act
[39] R. W. James op. cit. at 180
[40] [1993] 8 NWLR (pt. 382) at 493

case of *Adisa V. Oyinwola and Ors.,*[41] held that the decision id *Rossek Case* was reached per incariam, and held inter alia that the High Court has jurisdiction to hear cases in both urban and non urban areas as s.41 of the Act did not use the word "exclusive" in conferring jurisdiction on Area and Customary Courts. Their Lordship also overruled the earlier decisions in *Oyeniran V. Egbetola*[42] and *Sadiku V. Dalori.*[43] It should be emphasized that because of the hurry with which this Act was passed, similar vague and nebulous provisions still pervade it.[44]

Summary, Conclusion and Recommendation

Even though the promulgation of the Land Use Act, was greeted with a lot of mixed feelings particularly by the chiefs of the South who saw the Act as a revolution and called for its immediate abrogation, the Act was equally seen by some Nigerians as a relief. These were particularly the landless, the poor and strangers who prior to the Land Use Act, could not acquire land due to some customary law practices prevalent in most states.

The Act has also checked the unwholesome activities of land racketeers of some chiefs who colluded with some members of their communities to illegally deal in land.

The Act has equally facilitated the emerging development plans of Government by making it easier for Government to obtain land for over-riding public interest from private individuals and land racketeers who sold the land at very high exorbitant prices. It is recommended that the failures of the Act as it relates to Grant of Right of Occupancy should be fine-tuned by an amendment of the Act by the National Assembly.

[41] [2000] 2 N.S.C. at 464
[42] [1997] 5 S.C.N.J at 94
[43] [1996] 4 S.C.N.J. at 94
[44] For example, s.2 which vest all lands in the governor and sections 34 and 36 which allow land to "occupier" and a person in whom land is "vested".