SUSTAINABLE LAND USE IN NIGERIA: HAS THE LAND USE ACT 1978 OUTLIVED ITS USEFULNESS?

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Abstract

Land is fundamental to the sustainable development of any nation. It is more so in Nigeria because agriculture, mining, oil and gas and other means of sustaining the economy are based on sustainable land use. The Nigerian Land Use Act (LUA) enacted in 1978 principally has the goal of achieving sustainable land use through an enhanced registration, security of title to land and making land available for government use and for public purposes. There are ongoing debates for the review, reforms or repeal of the LUA because of its restrictive norms and ineffective institutional policies. This paper examines the central question implicit in the debate as to whether or not the LUA has cured the mischief to which it was directed and if not whether it has outlived its usefulness. The paper compared the LUA with the position in Malawi, Kenya and other jurisdictions and concludes that outright repeal of the LUA would not lead to sustainable land use for economic and national development; rather the recondite aspects of the Act relating to registration of title, quick dispensation of land related disputes and necessary amendments should be addressed to bring it in line with global best practices.

Key Words: Sustainable Land Use, Land Use Act, Land Use Objectives, Availability of Land

1. Introduction

The importance of land to man on earth through all ages can hardly be over emphasized. Land though representing only about two fifth of the earth's surfaces provides a platform on which man's activities are predicted. However, while the world population increases, the land in supply appears to be receding. Hence land is never thought to be sufficiently available to meet the needs of man in the society and owners of land religiously guard their properties against conversion; wars are fought, territories are conquered and annexed to assert and preserve the ownership of land.

In the African setting we have the spirit of brotherhood. Those who did not have land and lacked money to buy any usually sought permission from those who did own land to allow them the use of some portion for farming, residence and other purposes, most times with an agreement to pay rent or tribute in any form agreed upon. This tribute in the Southwest is called *Ishakole*. It is this agreement that gave birth to the concept today known as Customary Tenancy.[1] However as the relationships between the overlords and customary tenants continued to deteriorate as a result of the efforts of the overlord to assert authority or gain everything, problems such as racketeering and speculation became the order of the day. Exorbitant compensations were demanded by land owners whenever the government require land for developmental purposes. Thus, the acquisition of land by government or individual became almost impossible in Nigeria. Owing to the above

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[1] Smith, I.O. Practical Approach to Law of Real Property in Nigeria, Ecowatch Publications Ltd. 1999. P. 58.

situations, the Federal Military Government decided to break the barrier and monopoly of the overlord by constituting two panels, to consider how best to solve the problems associated with Customary tenancy and Land tenure administration in Nigeria. The report of one of the panels, Land use panel of 1977 eventually formed the basis for Land Use Act 1978.[2]

2. The Land Use Act

The Land Use Decree (now Act) was promulgated on the 29th of March, 1978 by the Federal Military Government to exercise control over all lands in the country. Four objectives have been claimed for the enactment of the Land Use Act.[3] They are:

(a) To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating.

(b) To streamline and simplify the management and ownership of land in the country.

(c) To assist the citizenry, irrespective of his status, to realise his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life.

(d) To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

As good as the intention of the Government was, no legislation promulgated in this country has elicited as much controversy and criticism in the interpretation of its provisions as the Land Use Act. This is because in a bid to achieve its objectives, the Land Use Act vested all land comprised in 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 also administer such land for the common benefit of all Nigerians.[4] For proper understanding of this paper we will critically analyze some contentious provisions of the Land Use Act.

2.1 Salient Provisions of the Act

Section 1 of the Act vests all land comprised in the territory of each state in the federation in the Governor of that State, to hold such land in trust and administer it for the use and common benefit of all Nigerians in accordance with the provisions of this Act. By this section the Governors could be said to have stepped into the shoes of the heads of communities or heads of families and the rule that the Governor's consent must be obtained for valid land transfers is similar to the Customary Law rule requiring the consent of the chiefs or heads of a family to any alienation of communal or family land.

It is submitted that the provisions of section 1 are too extreme because private lands need not be vested in the Governor in order for him to administer it for the benefit of the state. The Governor could still acquire land for developmental purposes without the vesting of the state land in him. This submission agrees with the decision of the Supreme Court in *Ogunloye v Oni* [5] delivered by Belgore J.S.C. when he said:

[2] James, R.W., Nigerian Land Use Act: Policy and Principles, University of Ife Press Ltd. Ile-Ife, Nigeria, 1987 P.2.
[3] Niki Tobi, Cases and Materials on Nigerian land law, Mabrochi Books, 1992. P. 170.
[4] Section 1 of the Land Use Act, 1978.
[5] (1990) All N.L.R. P. 341.

> It is true that the Act is revolutionary and it was meant to streamline land use and management in the entire federation. The preamble to that decree was revolutionary enough. But I must say right now that the law should not be constructed, despite its revolutionary nature, as vesting in the "Governor" of each state the land within the state "to be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provision of the decree.

It at once seems that nobody holds any land again but only the Governor. That is not correct law and not the intention of the Act. Section 5 – Powers of the Governor in relation to land –

> It shall be lawful for the Governor in respect of land, whether or not in an urban area
>
> (a) to grant statutory rights of occupancy to any person for all purposes;
>
> (b) to demand rental for any such land granted to any person;
>
> (c) to revise the said rental –

Since the advent of the Land Use Act in 1978, the Certificate of Occupancy has become the trust and the main title document that most land owners hold or seek to hold. Prior to the enactment of the Land Use Act, title documents like Land Certificate, Purchase receipt and Registered Conveyance were in use and they all conferred on their holders' freehold interest in the landed properties in question, Certificate of Occupancy only confers leasehold of a specific term on its holder. Thus, while holders of a Registered Conveyance for example own the land absolutely, a holder of a Certificate of Occupancy only holds the land for a period of 99 years. This same section also subjects the holder of a Statutory Right of Occupancy to pay rent to the Governor at the expiration of his tenancy (possibly at the expiration of 99 years), thus making a land owner becoming a tenant on his land. This is despicable.

In fact since the passage of the Land Use Act, the practice is that a holder of a Registered Conveyance would apply for a Certificates of Occupancy and where it is granted, it means in principle that he has converted his freehold interest into leasehold interest even though the law does not mandate a holder of a Registered Conveyance to apply for Certificate of Occupancy. Hence, Certificate of occupancy had become the most popular piece of evidence of title. Reason for this is not farfetched. It is statutorily provided as evidence of title, since the Land Use Act now vests all land in a given state in Nigeria in the Governor of such state. It then follows that whosoever lays claim to any land must do so with the consent of its owner (the Governor). Also, the financial institutions regard landed property as the most reliable form of collateral for its facilities and as such have preference for Certificate of Occupancy over other documents.

However, the Courts have held in *Sunmonu Olohunde & Another v Professors S.K. Adeyoju*[6] and *Ogunleye v Oni*[7] that a Certificate of Occupancy is not a conclusive evidence of title in favour of its holder, when it stated that –

> The point must be stressed that a Certificate of Statutory or Customary right of Occupancy issued under the Land Use Act, 1978 cannot be said to be

[6] (2000) 6SC NJ P.47 or (2000) SC. (Part III) P. 118.
[7] (1990) 2 NWLR Pt. 745.

> conclusive evidence of any right, interest or valid title to land in favour of the grantee. It is at best, only a prima facie evidence of such right, interest or title without more and may inappropriate cases be effectively challenged and rendered invalid and null and void.

Section 22 also prohibits the alienation of statutory right of occupancy without consent of Governor. The requirement of consent in the case of an alienation is strict and applies to actual as well as deemed grants.

It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained.

Consent of the Governor to alienation of interest in land in Nigeria has its philosophical basis in the concept of ownership[8]. Since alienation is one of the incidents of ownership, one can therefore alienate his interest in land without the consent of anyone. However with the introduction of the Land Use Act, the radical title in all lands in a state became vested in the Governor as a trustee for all Nigerians in his state and the erstwhile absolute owner can no longer alienate or dispose of as he wishes contrary to concept of ownership. Actually the issue of obtaining the consent of the Governor has been a serious inhibiting factor affecting commercial transactions. In a situation where the Governor refuses his consent, what happens? This may simply mean that the alienation is unlawful. Looking through the provision there is no compulsion on the Governor to give his consent to any alienation of a right of Occupancy.

The court had decided in the case of *Savannah Bank Ltd V Ajilo & Another*[9] that mortgage transaction entered into by the parties without Governor's consent is void. In this above mentioned case, the plaintiffs had executed a Deed of Mortgage in favour of the 1st Defendant upon default by the plaintiffs the 1st defendant sought to sell the property involved by advertising the auction sale. The plaintiff sued for declaration that the Deed of Mortgage was void and also that the Deed of Mortgage was void and also that the Auction Notice was also void majorly because the consent of the Governor of Lagos State ought to have been first sought and obtained.

The emphasis here is the stifling effect which the consent provisions has on commercial transactions. It may be observed that part of the underlying objectives of the Act is to ensure that land is made available to all those who are willing, ready and able to use it for all purposes in the interest of economy.[10] Adigun and Utuama expressed the same opinion when they said "The existence of consent provisions in the Act have made land transaction more difficult and less economic... consequently, capital formation has not been satisfactory so also is the general development process in the country adversely affected."[11] It is our view that the Land Use Act be

[8] Onuoha, Reginald Akujobi, The Land Use Act:- Twenty five years after, (Ed.) by Smith, J.D of published by Department of Private and Property Law of Lagos, Nigeria. P. 199.
[9] (1989) 1 NWLR (pt. 97) P. 305.
[10] This was stated in an address by the Head of State Gen. Olusegun Obasanjo published in the Daily Times of 30th March, 1978.
[11] Adigun and Utuama, "A decade of Land Reform in Nigeria; The Land Use Act 1978 in perspective" in proceedings of the 26th Annual Conference of the National association of Law Teachers (1988) P. 31 – 48.

amended for easy transferability of land and the resultant effect will positively rub off on economic transactions and capital formation.

Another provision of the Land Use Act which is very controversial is Section 28(13) which gives the Governor of a state the power to revoke a right of occupancy for overriding public interest. Such revocation must also comply with the statutory procedure for revocation.[12] What constitutes public purpose is listed in section 51 of the Act to include the use of land for:

(a) exclusive Governor's use or for general public use,

(b) use by anybody Corporate established by law or by anybody Corporate registered under the Companies and Allied Matters Act as respect which the Government owns shares, stocks or debentures,

(c) For in connection with sanitary improvements of any kind;

(d) For obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;

(e) For obtaining control over land required for or in connection with development of telecommunications or provisions of electricity;

(f) For obtaining control over land required for or in connection with mining purposes.

(g) For obtaining control over land required for or in connection with planned urban or rural development or settlement;

(h) For obtaining control over land required for or in connection with economic, industrial or agricultural development;

(i) For educational and other social services.

Generally, every power has legal limit howsoever wide the language of the empowering Act. So the power granted by section 28(13) to the Governor to revoke the proprietary interest in land is not without limitation which must be observed. In the interpretation of the Land Use Act particularly as it affects the revocation of interest of private citizens, the courts have given a restrictive interpretation to the provisions of Section 28. The judicial attitude towards revocation cases is not to attack the power of the Governor to revoke interest in land and acquire land for "public purpose" but on the strict compliance with statutory procedure to revoke. Once there is compliance with the relevant provisions of the Act, the Governor's act will be valid however it may be declared void or invalid by the court if the acquisition was not made to fulfil the legitimate ends of Government as contained in the Notice of revocation particularly where the acquired land is transferred to an individual or group of persons. In *Osho v Foreign Finance Corporation*,[13] the plaintiff's right of occupancy was revoked for overriding public interest but the land was however granted to a private person for its private business. The court held the revocation invalid and remarked that the Governor has no right to revoke a statutory right of occupancy and grant the same to a private person for any other purpose than those specified by Section 28 (2) of the Act. A similar decision was reached in *Lawson & others v Ajibulu.*[14]

[12] Section 28 (6) of the Land Use Act 1978.
[13] (1991) 4 NWLR (pt. 184) P. 157.
[14] (1991) 6 NWLR (pt. 195) P. 44.

It should be noted that the Court will still hold an acquisition of land to be invalid even where the third party intends to use the land for the purpose similar to that of the State. The question here is that where there is a failure of purpose what should happen to the acquired land; should the land revert to the original owner or that the Governor be allowed to hold on to the land in trust until when land will be required for similar public purpose? It is suggested here that Government because of sustainable development should only acquire land needed for a particular project and should immediately put such land into use and that the idea of acquiring large expanse of land everywhere and abandoning same as if such lands are not needed for other useful purposes should be stopped. Where an acquiring authority no longer finds a public purpose for the land acquired, then it should be de-acquired and let same revert to the person in whom it was formerly vested.

Another very contentious provision of the Act is compensation that must be paid to the holder of statutory right of occupancy whose right is revoked for an overriding public interest. Section 29(1)[15] provides that "if a right of occupancy is revoked ..... the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvement. The pertinent questions arising here are:

(i) What happens when the land acquired is not developed?

(ii) How promptly is the holder of land compensated?

(iii) Who works out the assessment of the compensation payable to the holder of land?

(iv) How are disputes on compensation settled?

(i) What happens when the land acquired is not developed? Going by section 29(1)[16] a holder and occupier can only be compensated for the value of the unexhausted improvement on his land at the date of revocation. Unexhausted improvement is defined in the Act as:

> anything of any quality permanently attached to the land directly by resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing, wells, roads, and irrigation or reclamation works but does not include the result of ordinary cultivation other than growing produce."

It is clear from the above that compensation is not payable on the compulsorily acquired land if the land is a vacant or undeveloped land. This simply means that no value is attached to land itself without any development. This is a great injustice to the holder or occupier of the land considering the importance attached to land by Africans. Going by the provisions of Section 44(1)(a)[17] of the Constitution which makes payment of compensation a pre requisite to compulsory acquisition, it is submitted that the holder or occupier of a land either developed or undeveloped should be compensated as far as money can do it for him to be in the same position as if his land had not been taken from him.

[15] Land Use Act 1978.
[16] Land Use Act 1978.
[17] 1999 Constitution of the Federal Republic of Nigeria.

(ii) How promptly is the holder of land compensated? Though the Land Use Act[18] and the Constitution[19] provides for prompt payment of compensation upon compulsory acquisition yet most times this is more observed in breach in that payment is usually delayed and or nor paid at all. In Abeokuta the Ogun State capital in Nigeria, some lands were acquired for the expansion and dualisation of Abeokuta Township roads by the then government of Governor Ibikunle Amosun in 2011 and till date some of the land owners have not been compensated. It is submitted that any time land is acquired for public purpose the acquiring authority should compensate the land owners promptly as provided for by Section 44(1) (a) of the Constitution.

(iii) Who works out the Assessment of the Compensation payable? By Section 4(b) of the Act, the assessment of the compensation payable is determined by the appropriate officer. The appropriate officer here is an agent or employee of the government. In other words it is whatever the officer decides that will be paid to the land holder. This is not fair because the land holder is operating from a very weak side, justice and fair play demands that he or his attorney should be involved in the assessment of whatever amount would be paid to him and an independent private estate valuation procured.

(iv) How are disputes on compensation settled? Section 30 of the Act provides that disputes arising from amount of compensation calculated in accordance with Section 29 of the Act should be referred to the appropriate Land Use and Allocation Committee. The Committee has the exclusive responsibility for determining dispute on the amount of compensation under the Act for improvements made on land. The Act by its provision ousts the jurisdiction of Courts on the determination of adequacy or otherwise of Compensation. A situation where the acquiring authority is in position to solely dictate the compensation payable will ultimately lead to executive tyranny and oppression against the people.

Furthermore, there is nothing to suggest that delay or outright non-compensation could invalidate a valid revocation. In the event of failure to pay compensation by an acquiring authority, the only option left to the holder of the Land would be to seek legal redress compelling the payment of compensation in respect of the unexhausted improvement on the land.[20]

3. Have the Objectives of the Land Use Act Been Achieved?

The question to be asked now is whether the objectives for the enactment of the Land Use Act have been achieved twenty-nine years after its making? The answer is neither here nor there. The success of the Land Use Act would be judged in terms of the following:

(i) the availability of land at low charges to every Nigerian;

(ii) the expansion of the public sector housing programmes by both state and federal governments;

(iii) its contribution to planning and environment protection; and

(iv) the reduction of the incidence of land litigation.

[18] Land Use Act 1978.
[19] 1999 Constitution of the Federal Republic of Nigeria.
[20] Section 44 (1) (9) (b) of the 1999 Constitution of the Federal Republic of Nigeria.

3.1 Availability of Land to Nigerians at Low Charges

One of the objectives of the Land Use Act 1978 was to assist the citizenry, irrespective of his social status to realise his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life. This objective as good as it appears the governments either federal or state have not done anything or taking any step to ensure the realization of this objective either through the establishment of Social Trust Funds or any other Social policy through which Nigerians could assess loan to realise this great and tall ambition. Majority of Nigerians because of their low income are unable to financially meet the high cost of land particularly in the Urban Centres like Abuja, Lagos, Port-Harcourt, Warri and so on. Only rich Nigerians are able to acquire land. This has made it difficult for Nigerians to realise this objective.

3.2 The Expansion of the Public Sector Housing Programmes

Of a truth, Government at the federal and state levels have been involved in the provisions of Housing programmes. In Nigeria this Housing programmes came under several names like Low Costs Housing Estate, Medium Housing Estate and so on. But one thing that is common to all the Housing Estate programmes is that it is always beyond the reach of the masses which are the supposed target and beneficiaries.

3.3 Contribution to Planning and Environmental Protection

The Land Use Act enable the Government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and Zoning programmes for particular uses. The Act in this area has only achieved little even after its coming into effect in 1978. Planning directives are not followed and flouted because buildings are just springing up in most cities in Nigeria without proper planning. The most frustrating is that the officials at the planning offices who are to enforce the rules most times compromise their positions. The effect is poor planning of the major cities.

3.4 Reduction of the Incidence of Land Litigation

One other objective of the Land Use Act is to remove the bitter controversies, resulting at times in loss of lives and limbs which land is known to be generating. The Act has also achieved very little in this area. Nothing has really changed. People still take other people's lives over land tussles particularly in the Eastern part of Nigeria, South South and the South West. Land grabbers put hoodlums on land to assault and kill any uncompromising claimant to land. The rampancy of this and the need to secure the lives of Nigerians made the Lagos State House of Assembly to legislate a law titled "Land Grabbers Law"[21]. That is the law to check the incessant taking of lives and thuggery on land. The law created several offences and also prescribes punishments for the violation of the law. The Ogun State House of Assembly made a similar law to check thuggery on land in the State.[22] It must be stated here that litigation on land has been on the increase rather than abating. Land cases in various High Courts particularly in the South East, South South and South West are very overwhelming, they form up to 70% of the whole cases in courts.

[21] Law of Lagos State, 2015.
[22] Forcible Entry and Occupation of Land Properties Ogun Prohibition Law 2016.

4. Comparing Nigeria's Land Regime with Malawi and Kenya

4.1 Malawi National Land Policy

In Malawi, the radical title to land is vested in the State, traditional authorities and in some cases individuals and families.[23] Government land comprises of land acquired and privately owned by the government and dedicated to a specified national use or made available for private uses at the discretion of the government. Public land is land held in trust and managed by the Government or Traditional Authorities. The public land designation applies to all lands vested in the Government as a result of uncertain ownership, abandonment and land that is unusable for one reason or another. Within the Traditional Authority, the community's public land includes all lands within the boundaries of the Traditional Authority not allocated exclusively to any group, individual or family. Such unallocated customary lands reserved for the community are regarded as public only to members of that community and will be protected. However under section 24 of the Registered Land Act, a person or group being registered as the proprietor of any land makes that person or group the owners of private land.

In Malawi like in other nations, Government also acquires land for government use or for redevelopment including land held privately and the government pay compensation to the land owners to assuage their loses. In the payment of consideration three issues are considered [24]

(a) The consideration which the person entitled to the land paid in acquiring it;

(b) The value of unexhausted improvements to the land made at the expense of the person entitled thereto since the date of his acquisition thereof; and

(c) Any other appreciation in the value of the land since the date of such acquisition.

4.1 The Land Act in Kenya

By Section 8 of the Kenyan Land Act[25] it is the responsibility of the National Land Commission[26] to manage the public land on behalf of the National and country governments. Section 15(1) of the Land Act[27] empowers the Commission in consultation with the national government and the country governments to reserve public land located within the surface of the earth and the subsurface rock; anybody of water on or under the surface; marine waters in the territorial sea and exclusive economic zone; natural resources completed contained on or under the surface; and the air space above the surface, for one or more purposes in the public interest. To avoid abuse, Section 15(2)[28] of the Land Act mandates the Commission to use the reserved land for the purpose set out by the Commission.

Section 107 of the Land Act[29] make provisions for compulsory acquisition of interests in land and for payment of compensation to persons whose interest in the land have been determined.

[23] Malawi National Land Policy 2002.
[24] Act No. 21 of 1970. Lands Acquisition on Malawi.
[25] No. 6 of 2012 Laws of Kenya.
[26] Established by Article 67 of the Constitution of Kenya.
[27] Supra.
[28] Supra.
[29] Supra.

It is however disheartening that like in Nigeria, it is also the responsibility of the Commission to make rules that will regulate the assessment of the compensation payable.

5. Conclusion

The Land Use Act of 1978 admittedly is not a perfect document as it has not fully achieved its objectives but it has however marked a defining moment in the history of land development in Nigeria because hitherto, Southern and Northern Nigeria had different laws regulating the administration of their land tenure systems. The Land Use Act remains a well-intentioned legislation that sought to reduce inequalities and avarice – in acquisition of land. Despite the setbacks of the Land Use Act already discussed in the body of this work, it cannot be concluded with a wave of hand that the Land Use Act of 1978 has outlived its usefulness as the Yoruba adage in Southwest of Nigeria put it that "You do not throw away the baby with the bathing water."

Therefore, what is required at this stage is to carry out a reform on the Land Use Act. The first critical step is to remove the Land Use Act 1978 out of the Constitution and make it an ordinary law that can be amended or changed like any other legislation. Secondly, the provision requiring the consent of the Governor for alienation should be removed as some Governors abuse their position by failing to give their consent when they have interest in the property or if the holder belongs to a rival political party. Thirdly, where the purpose of revocations fails, the land should revert to the original holder. Fourthly, on compensation, a holder of land should be compensated whether the land is developed or not. Also the holder should be involved in the negotiation and assessment of the amount to be paid. Lastly, the provision of Section 5 of the Land Use Act on the granting of Statutory right of Occupancy to the holder of land should be removed from the Act and replaced with freehold interest.

If the suggestions above are considered and worked upon with other good ideas, the Act will still be a good working document until its objectives are fully achieved.