RETHINKING LAND ADMINISTRATION IN THE KWARA STATE OF NIGERIA: TOWARDS ENHANCING THE RIGHT OF ACCESS TO LAND

by

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DECLARATION

I, **Yahaya Jimoh**, (student number **67073794**) hereby declare that '**Rethinking land administration in the Kwara State of Nigeria: Towards enhancing the right of access to land**' is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I have not previously submitted this work, or part of it, for examination at UNISA for another qualification or at any other higher education institution. I have also obtained Ethical Clearance for this study, the reference number being ST6-2021 on the Ethical Clearance Certificate dated 4 February 2021.

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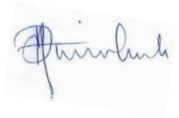
Signature: 

Date: 20 February 2022

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Date: 20 February 2022

DEDICATION

This thesis is dedicated to Almighty Allah.

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I thank Almighty Allah for His mercies and blessings on me at all times.

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SUMMARY

Fundamental reform of the current system of access to land in Nigeria is imperative to ensure a process of land administration that is simple, accessible and sufficiently comprehensive to redress the impact of colonisation on the land tenure system that operates at present. Focus must be placed on the local government as well as the respective state in Nigeria because all the powers to confer access to land by individuals are concentrated in their hands. The Land Use Act of 1978 held the promise of bringing the much-needed reform. However, the *status quo* remains that the acquisition of a right of occupancy and a customary right of occupancy are the only title that is able to be held over land in Nigeria. This system has also been fraught with abuse, which is an issue that the Nigerian judiciary have repeatedly had to pronounce on. In this thesis, the historical evolution of registration of title to land and the effect of non-registration open up a new chapter in the quest for proper administration and access to land in the entire country. The entire system is held hostage by the requirement of obtaining consent from the Governor and the further impact of the family or village head serving as the trustee of the land, thus obstructing transactions on land involving transfer of interest in such land. Unfortunately, this results in economic prejudice to individuals and the country alike. For this reason, implementable solutions and recommendations as to how land reform could be enhanced in Nigeria are advanced.

Keywords

Land; Human Rights; Allocation; Acquisition; Revocation; Title; Alienation; Right of Occupancy; Ownership; Possession

CHAPTER ONE: CONTEXT OF THE ISSUE OF ACCESS TO LAND

1.1 GENERAL INTRODUCTION

Prior to colonisation, the land in the territory that later became known as Nigeria, was held absolutely under the indigenous tenure system of the people on that land. Land was vested either in individuals, or in the family or community, with the family head or chiefs, *obas* and *emirs* as trustees, for the benefit of the people. Thus, transfer or sale of land was largely not a common practice. Land had a significantly larger sentimental value compared to economic value, representing the permanent residence of the ancestors, a place to construct shrines to worship the ancestors, and providing comfortable residence.

Colonisation somewhat altered that original position imposing foreign laws and practices. Law guiding the management of land or as it is otherwise known, the law of real property, is related with the rights, interests and responsibilities regarding land and buildings; how they are created, entered, assigned and alienated or extinguished.[1] Before the implementation of the Land Use Act of 1978 in Nigeria, land management was governed by the respective customary laws of the place where the land was situated which provided for absolute ownership[2] of land – a legacy of colonisation that endured after independence.[3] This idea of absolute ownership of land before 1978 was seen by the drafters of the 1978 Nigerian Land Use Act as an unsustainable means of managing land resources, which is not renewable. Those who drafted the 1978 Land Use Act believed that if the perception of absolute ownership is maintained, it would deny the majority of citizens access to land which will negatively impact the country's development and undermine the dignity of Nigerians.[4] This is an issue that is particularly acute in the African context where colonial laws and practices continue to

1 ES Green, J Harcup and N Henderson *Green and Henderson: Land Law* (Sweet & Maxwell 1995) 1.

2 Land Tenure Law No 25 of 1962.

3 RJ Miller 'The international law of colonialism: a comparative analysis' (2011) 15 *Lewis & Clark Law Review* 849. Described here is the process where colonial settlers arrived from Europe and systematically acquired property rights over the lands upon which they settled, thereby gaining political, governmental, and commercial rights which were exercised over the indigenous inhabitants without their knowledge or informed consent.

4 See generally, G Arnold *Africa: A Modern History* (Atlantic Books 2005).

intrude on the traditional African emphasis on the importance of land as representing the circle of life: the place where ancestors are buried and where future generations can be sustained.[5] Seeking to create better equilibrium in preserving traditional values alongside the unavoidable changes caused by colonisation, the idea of ensuring that all Nigerians have equal access to land is emphasised in the preamble to the 1978 Land Use Act as thus:

> … it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law; … it is also in public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved.

Simultaneously, though, the enactment of the Act was not intended to eradicate current title or rights of possession before its enactment.[6] It is in light of the above that this thesis seeks to find a better approach to land administration that will truly guarantee equal access to land through a radical change in the institutional and legal framework.

1.2 PROBLEM STATEMENT

The challenge of access to land that the land reform process initiated in 1978 sought to address is largely yet to be achieved, over forty years post-enactment of the Land Use Act. Numerous difficulties are still bedevilling access to land due to the poor implementation of the Act. Compounding this problem is the fact that Nigerians cannot pursue their rights to access land from the government because of the provisions of the constitution that makes such a right non-enforceable. Thus, the peculiarity of the right guaranteed under the Act is not the major obstacle militating against access; rather, it is the ineffective implementation of the Act and continued control over the land by certain owners that is denying Nigerians their equitable access to land. As a result, the government and the indigenous landowners have not lived up to the obligations and expectations imposed on them. This study focuses specifically on Kwara State as a case study in finding solution to the above-mentioned problems.

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5 See in particular, the cases of Social and Economic Rights Action Centre and another v Nigeria, African Human Rights Law Reports 60 (ACHPR 2001) and Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v Kenya, African Human Rights Law Reports 75 (ACHPR 2009).

6 *Adole v Bonface* (2008) II Nigeria Weekly Law Reports (Pt 1099) 562 at 588 and 606.

In pursuit of clarifying the legal position so that effective implementation and enforcement of the law can be achieved, the researcher seeks to answer the following questions:

i. Has land reform in terms of the Land Use Act enhanced adequate access to land in Nigeria?
ii. What is the process of land administration in the State and what are the challenges faced by the appropriate authority in registration of land?
iii. What are the steps taken by the Kwara State Government in proffering adequate access to land to the public; and what is the nexus between the implementation of the Land Use Act as it was conceived when juxtaposed against the Kwara State laws in respect of the administration of land?

1.3 METHODOLOGY AND THEORETICAL FOUNDATION

The researcher bases this research on the 'Utilitarian theory of private property' propounded by the Positivist School of Thought.[7] The theory regarding property (including land) is that 'a positive right is created by human beings and enshrined in law to attain broader social and economic goals. Property is characterised as a positive right; not a natural right'.[8] The benefit of a positive right is that it is suggested by valid and published laws enacted by the state; that is, 'the right is both given and protected by state', as articulated by Jeremy Bentham who postulated 'that the total or average happiness of a given society cannot be maximised unless there exists the right to appropriate, use and transfer objects of value or interest'.[9]

The research relies on a doctrinal research approach involving a critical analysis of the prevailing laws and establishing why implementation of same appears unachieved. This will involve the consultation of primary sources, such as legislation, case law and international instruments as well as secondary sources, such as textbooks, journal

7 R Cryer, T Hervey and B Sokhi-Bulley *Research Methodologies in EU and International Law* (Hart 2011) 37.
8 S Panesar 'Theories of private property in modern property law' (2000) 15 *Denning Law Journal* 113.
9 J Bentham *The Theory of Legislation* (Trubner 1871) 15.

articles, newspaper publications, and internet sources. Accordingly, this research is premised on the following assumptions:

a) The Land Use Act was passed to give all Nigerians equal access to land irrespective of their circumstances.
b) The Land Use Act was enacted to bring uniformity to land administration.
c) All state laws must conform to the principles of the Land Use Act.
d) The Land Use Act recognises the customary title as a valid title to land.

1.4 OBJECTIVE OF THE STUDY

Setting out and investigating the challenges that confront the smooth implementation of the land reform process that started in Nigeria in 1978 is the primary objective. Ancillary objectives include suggesting better ways in which land administration could be carried out to guarantee equitable and fair access to land so that the rationale behind land reform can be achieved in Kwara State, Nigeria. Specifically, the broad objective will be achieved by undertaking to the following tasks:

1) To set out the difficulties in achieving the goals of land reform.
2) To understand the challenges confronting Kwara State and the local government in enforcing the Land Use Act.
3) To find out how indigenous landowners have fared under the 1978 Land Use Act.
4) To determine how adequate access could be better guaranteed in Kwara State.

1.5 SCOPE OF THE STUDY

This research focuses on the 1978 Land Use Act, the only national law on land applicable in Nigeria. The focus shall be on the Kwara State since 1978. Kwara State was created in 1976 and it is situated in the north-central part of Nigeria. It consists of sixteen local government areas and has Ilorin as the State capital. The state implements its land policy through the Bureau of Land, with a Director-General as its head, while the local government has a department that handles its land activities with the head of department answerable to the Chairman that holds office through democratic means every three years. For purposes of this research, the Bureau of

Lands that controls the management and use of land in urban areas will be focused on, whereas Ilorin West Local Government will be the focus concerning land administration in rural areas.

1.6 SIGNIFICANCE, ORIGINALITY AND BENEFIT OF THE STUDY

The significance of this study is to critically assess the administration of land in Kwara State. Despite the Land Use Act of 1978 being enacted for the regulation and administration of land in Nigeria – including the individual land owners and Governor that serves as trustee of the said land for and on behalf of the people of Kwara State, as a secular part of the country has been administering the Act alongside the laws enacted in Kwara State for the control and management of land in the State generally. The challenges experienced by the customary land owners in respect of the sale of land in Kwara seem to make the operation of the Land Use Act 1978 ineffective as more than half of the land bought by individuals in the State is not covered by a Statutory Right of Occupancy. Therefore, those owning the land have a precarious right over the land rather than having a legal right of possession under the Act, which has prompted litigation on this problematic issue of access to land issue in the courts of law in Kwara State.

The main benefit of this research is to suggest a better way of implementing government policies on land administration in Kwara State in order to guarantee sustainable use and development. The research will specifically analyse the outcome of the incessant litigation and will make recommendations on how the activities of the family and family head could better be regulated. The difficulties associated with ensuring access to land are complicated further by the fact that the local government, that is expected to control the use and management of land in rural areas, does not have any by-laws on registration of title and agreement on land. This research recommends that the process of obtaining secure land rights should be fee-based which in the long term, will invariably increase the internally generated revenue of the local government.

Importantly, the research outcome, if implemented, will create synergy between the administration of land in urban and rural areas by the State government and the local government respectively. Finally, the research will also address the forms of corruption that are bedevilling land administration[10] by suggesting a transparent system that would enhance access to land,[11] while also generating income as a result of the implementation of the recommendation of the outcome of the research. For instance, land agreements are taxable documents but because the registration of land instruments is only implemented when there is the application for title (certificate of occupancy) most agreements evade stamp duty. The researcher's recommendations will proffer ways by which every single document evidencing a land transaction will not be able to evade tax and as such, revenue will increase. Investors are discouraged by the cumbersome process of obtaining title to land. This research will suggest a better and faster way that the land administrators can adopt in achieving the global standard and a specific time-period to obtain title to land. Ultimately, the implementation of the outcome of this research will reduce poverty in the sense that other titles, aside the certificate of occupancy, could serve as collateral for a loan, unlike what is obtainable now where the title granted by the state alone is acceptable as collateral.

1.7 STRUCTURE OF THE THESIS

This thesis is divided into eight chapters and further broken down into three distinct components, with the initial chapter providing an overview and clarifying the problem requiring resolution. Chapter one locates the study within its theoretical framework of legal positivism which is connected to wider

> theoretical perspectives of positivism which hold that human knowledge is based upon that which can be experienced through the senses or through empirical observation. Law is thus the observable phenomenon of legislation, custom, adjudication by courts and other legal institutions.[12]

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[10] Unfortunately, Nigeria has been associated with corruption for decades. This is revealed in various sources, a non-exhaustive list of which includes: R van der Veen *What Went Wrong with Africa* (KIT Publishing 2004) 108; W Maathai *The Challenge for Africa: A New Vision* (William Heinemann 2009) 48; T Burgis *The Looting Machine: Warlords, Tycoons, Smugglers, and the Systematic Theft of Africa's Wealth* (Harper Collins 2015).

[11] Viljoen comments that more direct or indirect access to resources such as land (in a transparent manner so that corruption is eliminated) is imperative in order to eradicate poverty. F Viljoen *International Human Rights Law in Africa* (Oxford University Press 2012) 544.

[12] Cryer et al (n 7 above) 38.

Chapter one elucidates that notwithstanding the existence of legislation, adjudication by courts of the inaccessibility of access to title to land has become a common occurrence. For this reason, this chapter outlines in broad terms the recommended methods of resolving what appears to be an intractable problem.

Forming a substantial part of the study is the second component, being the content of chapters two, three, four and five as they relate to Nigeria's historical evolution regarding land law; the impact of colonisation on Nigerian land law; and then a thorough investigation of the content of the current land legislation (the Land Act 1978) as it is applied in Kwara State as well as within Illorin (local government). Logically, chapter six highlights the numerous flaws and weaknesses in the provisions and implementation of the Land Use Act 1978. Chapter seven presents possible remedies and interventions that Nigeria could consider employing. Having a somewhat similar background regarding land law, the example of Tanzania's land law reform is explained, followed by innovative judicial methods that have been developed in South Africa to ensure effectiveness.

The final component is chapter eight which summarises the study, provides recommendations and motivates for these recommendations to be adopted based on the understanding that if effectively implemented, the right of access to land in Kwara State will be exponentially advance and enhanced.

CHAPTER TWO: THE NATURE OF LAND LAW

2.1 INTRODUCING THE CONCEPT OF THE RIGHT TO LAND

Every state or society (regardless of political orientation or culture)[13] has established a system for regulating the possession of land and property rights.[14] As a legal and institutional framework, the land system facilitates decision-making with respect to the use of land, while simultaneously encompassing customary arrangements whereby individuals, partners, families or entities acquire access to socio economic opportunities via ownership or possession of land. Any land system is substantive and procedural in nature: it articulates the regulations and processes that guide the rights and duties of individuals or groups as it pertains to acquisition, control over and use of land. Nigeria is not an exception to this rule.

As an essential right that ensures survival and a dignified existence, 'the right to land in Nigeria is a constitutional right' which according to Justice Kayode Eso in the case of *Ransome-Kuti v Attorney General of the Federation*[15] 'is a right which stands above the ordinary laws of the land and which, in fact, is "antecedent to the political society itself"'. Therefore, the core concern of the legislature is the proper amendment of the Constitution in order to reflect these rights so as to enhance their effective implementation as per the design of the Constitution.[16] However, section 6(6)(c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) declares that the right provided for under 16(2)(d) of the Constitution is not justiciable. There have been several pronouncements by courts in Nigeria that not only section 16(2)(d), but the whole of Chapter Two of the Constitution, is non-justiciable.[17]

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13 G Van Maanen 'Ownership as a constitutional right in South Africa – Articles 14 & 15 of the Grundgesetz: The German Experience' (1993) *Recht & Kritiek* 74.

14 The Dutch legal scholar and philosopher, Grotius, is largely credited with establishing the Roman Dutch conception of the law of property. See, for example, H Grotius *Inleidinge tot de Hollandsche Rechtsgeleerdheid met aantekeningen van SJ Fockema Adraea* (Arenhem S Gouda Quint 1939).

15 (1985) 2 Nigeria Weekly Law Reports (Pt 61) 211 at 230.

16 E Chegwe 'The Right of Housing in the Context of Nigerian Law and Human Rights Practice' (2014) *AGORA International Journal of Juridical Sciences* 12.

17 *A-G Federation v Abubakar* (2007) 8 Nigeria Weekly Law Reports (Pt 1035) 107.

The Land Use Decree (now Land Use Act) was adopted in March 1978. Its central theme is to regulate enjoyment of land rights through legislation in Nigeria given that Nigeria's history of land rights has two 'roots': firstly, the *laissez faire* policy typical of colonial rule where dualism operated in the Southern States of Nigeria; and secondly the imposed policy of 'paternalism'[18] under the Land Tenure Law. However, these systems were characterised by insecurity of title, promotion and advancement of land speculation, prohibitive costs of land and general inaccessibility of land. Secure access to land was further compromised by the government's right to expropriate land in the public interest.[19] This inevitably resulted in the enactment of the Land Use Act of 1978. An expectation was created that this legislation would be the vehicle through which transformative land reform would take place and ensure wealth, prosperity and security[20] by providing for a justiciable right to access land.

2.2 NIGERIA'S HISTORICAL EVOLUTION OF LAND LAW

Prior to the imposition of the British government in Nigerian territory in 1861, Nigerians operated under a system of customary land tenure that was indigenous to the people.[21] Land was completely inalienable.[22] This system remained largely unaffected subsequent to the arrival of the British. Despite some statutes undermining customary law in places, the system retained its essential characteristics.[23] However, the adoption of the Treaty of Cession of 1861 ceded the land and the territory of Lagos to Queen Victoria of England, thus, laying the foundation for colonial hegemony for the next 99 years.[24] The Colonial Administration wasted no time in regulating the acquisition of land for public purposes. It started with the Public Lands Ordinance of 1876 (thereafter re-

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18 RW James *Modern Land Law of Nigeria* (University of Ife Press 1973) 1.

19 Land ownership is high on the agenda of thought leaders in post-colonial Africa. A good example is Maathai (n 10 above) who dedicates a chapter to land, titled 'Land Ownership: Whose Land Is It, Anyway?' 227.

20 This general proposition is convincingly made by Roberts who contends that laws are designed by states to 'advance human rights for the population that is subject to their authority'. See A Roberts *Strategies for Governing: Reinventing Public Administration for a Dangerous Century* (Cornell University Press 2019) 24.

21 BT Aluko, EO Omisore and A Amidu 'Valuation of Yoruba Sacred Shrines, Monuments, and Groves for Compensation' *Indigenous Peoples and Real Estate Valuation* (Springer 2008) 145-173.

22 RN Nwabueze 'The dynamics and genius of Nigeria's indigenous legal order' *Indigenous LJ* 1 (2002) 153.

23 *Lewis v Bankole* (1909) 1 Nigeria Law Reports 81.

24 W Abugu, Land Use and Reform in Nigeria: Law and Practice (Immaculate Prints 2012) 18.

established as the Public Lands Acquisition Act of 1917). This Ordinance later became regional (and later state) law after the introduction of the federal structure. The Public Lands Acquisition Act of 1917 gave the government the ability to "acquire land compulsorily for a public purpose, based on the payment of compensation to the expropriated owners, but with the Governor's consent before alienation could occur".[25] The Crown thus relinquished its right to the land so acquired and it therefore became the property of the government. This approach of the government extricates land from the predominant customary land tenure system that restricted land ownership and holding to the family and community instead of to individuals. The condition was that the land had to be needed for developmental purposes in order for it to be expropriated by the government. The State's Land laws allow the government to lease state land to private individuals, completely free from any communal land claims.

The enactment of the Foreign Jurisdictions Act also fundamentally altered the traditional legal position in Nigeria. Between 1890 to 1913, the British Parliament and the Crown arrogated to itself, the powers to legislate on any matter pertaining to Nigeria.[26] An example of received law emanating from the jurisdiction of the British government was the Interpretation Act, Cap 89 of the Laws of the Federation and Lagos.[27] According to section 45 of the Act, with effect from 1 January 1900, the law that would forthwith apply in Lagos was the English Common Law, the Statutes of General Application and the Doctrines of Equity. The only caveats were the confines of the local jurisdiction and the local conditions. Moreover, this law was subject to Federal Law. The following statutes were deemed to be Statutes of General Application in Nigeria: Statute of Frauds of 1677, the Wills Act of 1837, the Limitation Acts of 1882, the Real Property Act of 1845, the Partition Act of 1868. Other laws passed included the Conveyancing Act of 1881, the Settled Land Act of 1882, and the Land Transfer Act of 1887.[28] Pursuant to section 45, the English Law of Real Property became applicable in Nigeria. These English Common Law rules related to tenure, alienation and dispossession of real property,

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25 AMD Olong *Land law in Nigeria* (2 ed Malthouse Press Limited 2012).

26 O Duru 'Historical Evolution of Land Law in Nigeria' (2016) at <http://legalemperors.blogspot.com/2016/01/historical-evolution-of-land-law-in.html> (accessed 12 September 2021).

27 As above.

28 N Tobi Cases and Materials on Nigerian Land Law (Mabrochi Books 1992) 5.

estates, inheritance, perpetuities and a number of other rights. The impact of the Doctrines of Equity had an effect 'on the construction of wills, the institution and settlement of land disputes, legal and equitable estates and interests in land along with the doctrines of notice'.[29]

In quick succession, ordinances were passed to ensure acquisition of land for use by government and private developments. The most notable of these are: The Native Lands Acquisition Proclamation No. 8 of 1900 which was adopted that vested powers of administration of land in the hands of the High Commissioner in the [British] Protectorate of Northern Nigeria. The Land Proclamation provided that title to land in the Protectorate could not be acquired by non-natives without the written consent of the High Commissioner. Also as it relates to the Northern Region, numerous laws were enacted by the British Crown, the first being the Crown Lands Proclamation of 1902. To be sure, this was the result of an agreement between Sir Frederick Lugard and representatives of the Royal Niger Company under which all land, rights and easements were vested in the High Commissioner, in trust for His Majesty. The High Commissioner was empowered to manage or alienate these lands in a manner which was most conducive to the welfare of the Protectorate. In the same year, the Public Lands Promulgation No. 13 was enacted which gave the High Commissioner the power to manage, dispose and control of such lands as if they were Crown lands.[30] Then came the Native Lands Acquisition Proclamation 1903 and the Crown Lands Management Proclamation 1906 (as amended).

The Land and Native Rights Proclamation 9 of 1910 was promulgated to address the above problems,[31] but failed to do so. It was then 're-enacted with amendments necessitated by the Land and Native Rights Ordinance 1916 and substantially amended thereafter as the Land and Native Rights Ordinance No. 1 of 1948,[32] having as its main objective to vest the power, control and management of land in the Northern Protectorate to the Governor for the common benefit of the natives. It is therefore worth

[29] As above.
[30] Abugu (n 24 above) 18.
[31] As above.
[32] Cap. 105, 1948. 39.

noting that all the above Ordinances and Acts provided for the requirement of the High Commissioner's or Governor's consent before alienation could occur.[33] Notwithstanding this aim, the Native Rights Ordinance did not solve the problems faced by the government, and due to severe criticism, the Northern Legislature of Nigeria in 1962 took great pleasure in adopting the Land Tenure Law of Northern Nigeria, 1962 to solve the intractable problems of land tenure law that it was facing.[34] To this end, the Land Registration Act Cap 99 and the Registered Land Act 1965 were enacted for the purpose of registration of title to land. This new legislation adopted the principles, values, concepts, philosophies and ideologies that were embedded in the Land and Native Rights Ordinance of 1948.[35] The purpose of the law was to replace the Land and Native Rights Ordinance by a new law but nevertheless to preserve the existing basic principles of that law while introducing some much-needed modifications and improvements.

In the Eastern Region, the Land Tenancy Law 1935 was enacted. Other legislation includes the Acquisition of Land by Aliens Law 1957; the Land Instrument Registration Law 1963; the Land Instrument Preparation Law 1963 and the Recovery of Premises Law 1963.[36] Also enacted were the Niger Lands Transfer Ordinance 1916, the Native Acquisition Ordinance 1917, and the Crown Ordinance 1918. The Registration of Title Act was passed in 1935 and provided for the registration of land instruments recognised under the Act. In 1958 the State Lands Act Cap 45 was enacted. This vested the ownership of all public land in the state. The effect of this on the whole of Nigerian territory proceeded as follows: in the Western Region, the Region enacted the Property and Conveyancing Law, Cap 100 Laws of Western Nigeria 1959. Other laws passed in pursuit of land administration were the Land Instruments Preparation Law, Cap 55; the Land Instruments Registration Law, Cap 56; the Administration of Estates Law, Cap 2; the Public Lands Acquisition Law, Cap 105; the Registration of Titles Law, Cap 57; the Native Lands Acquisition Law, Cap 80; and the Recovery of Premises Law, Cap 110.

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33 Sections 28 and 32 of the Land Tenure Law 1962.
34 Abugu (n 24 above) 18.
35 As above.
36 OPA Olasehinde, 'A Decade of Statutory Monster: The Land Use Act in New Mentions in Nigerian Law' (Nigeria Institute of Advanced Legal Studies 1989) 126.

Additionally, different Decrees and Edicts regarding land in Nigeria were promulgated during the military era.[37] Mention will be made of only some of these laws. As a direct response to the public outcry concerning the soaring rental costs, the Federal Military Government promulgated the Rent Control Decree No 15 of 1966. It was abrogated and replaced by the Rent Control (Repeal) Decree No 50 of 1971. This however had a negligible impact on the ever-increasing rents in Nigeria.

During the state of emergency, the army and the police were afforded wide-ranging powers in terms of the Requisition and Other Powers Decree No 39 of 1967 to requisition land and other property as they saw fit.[38] The State Lands (Compensation) Decree No 38 of 1968 followed and dealt with compensation relating to land acquired by the state. The Decree was amended in 1975 for the purpose of establishing a state compensation committee mandated to deal with the question of compensation but was repealed in 1976 by the Public Lands Acquisition (Miscellaneous Provisions) Decree No 33.

Despite all these legislative advancements, Nigeria encountered numerous obstacles across its entire territory pertaining to land law and administration. These problems included land speculations, exorbitant demand for compensation, alienation, etc. Consequently, after forming various panels, tribunals and decrees to solve the aforementioned problems, the federal government under the first Obasanjo regime established the Land Use Panel Committee constituted by 11 members on 16 April 1977 and chaired by Justice Chike Idigbe. The report was 'the immediate foundation of the Land Use Act adopted in 1978, which vested all land in the governor of each state in Nigeria'.[39]

2.3 THE MEANING OF LAND

There have been difficulties in defining the complex and loaded term of 'land' by generations of lawyers.[40] None were able to establish a generally acceptable definition.

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37 Duru (n 26 above)
38 As above.
39 Olong (n 25 above) 142.
40 S Sauer 'Land and territory: meanings of land between modernity and tradition' *Agrarian South: Journal of Political Economy* (2012) 1(1), 85-107.

Land is distinguished by its physical and its economic conceptions. Physical conception of land relates to land in its natural state. The economic conception of land involves aspects such as why the physical land exists as an object, as well as the use to which the land may be put when labour and capital are applied to enhance the economic value of the land.

Land is the surface of the earth; it includes the air space above the land; the subsoil beneath the land and anything that has been permanently affixed to it.[41] The legal concept of land extends to 'all structures and objects, like buildings and trees standing on it'.[42] This includes buildings and any chattels which have by sufficient attachment to the soil or to buildings, become fixtures, including natural crops, but not industrial growing crops.[43] Nigeria's Interpretation Act states that 'immovable property or land includes land and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real'.[44] Going by the various definitions of land considered above, the common law maxim *quicquidplantator solo solocedit*, which means that whatever is attached to the soil belongs to the soil, relates to the definition of land in Nigeria.[45] By this definition, the natural content which includes the surface of the earth, the subsoil, things that grow on it as well as the artificial content in the form of structures and other long-lasting fixtures will generally belong to the owner of the land.[46] However, the discovery of oil and other minerals in Nigeria changed the narrative as it was declared that all minerals found in the territory of Nigeria shall be exclusively within the control and management of the Federal government.[47]

Notwithstanding this comprehensive definition of land, ambiguity remains. Consequently, lawsuit has been instituted for clarifying the meaning of land and obtaining access thereto. An important judicial pronouncement on the issue of equal

41 AA Utuama *Nigerian Law of Real Property* (Malthouse Press Limited (2 ed) 2012), 25.
42 Duru (n 26 above).
43 M Harwood *Modern English Land Law* (Sweet and Maxwell 1982) 22-23.
44 Section 3 of the Interpretation Act, 2004.
45 BO Alloh 'A Review of the Application of the 'quicquidplantatur solo solocedit' role in Nigeria' (2017) *Port Harcourt Law Journal* 125.
46 A Taiwo *The Nigerian Land Law* (Abba Press Ltd 2011) 7.
47 Sections 28(2)(b) and (3)(b) of the Land Use Act, 1978, CAP L8, Law of the Federation of Nigeria 2004.

access to land was delivered in the case of *CSS Bookshops Ltd v Register Trustees of Muslims Community in Rivers State*[48] that held:

> where land in an urban area was vested in any individual preceding the enactment of the Land Use Act 1978, the individual will continue to hold the land same as a holder of a statutory right of occupancy issued by the Government under the Act.

Evident is that the legal conception of land rights is not free from controversy.[49] Fundamentally, it is an accumulation of the physical conception as well as the economic conception of land. From this broad perspective, "land includes not only the earth or soil but also things savouring of land such as houses, huts, farms and any improvement effected to the land; thus, ownership of land includes ownership of all improvements thereon.[50] From the legal positivist viewpoint, land is quintessentially an 'empirical rule of social regulation of a specific legal situation, the concept of the accession of a building or other structure to the land built upon is reasonable, convenient and universal'.[51]

2.4 SOURCES OF NIGERIAN LAND LAW

The land administration and management law in Nigeria is derived from three major sources viz: Customary Law, Received English Law, and Local Enactments on Land, which includes the Constitution of 1999 and the Land Use Act of 1978 that operate uniformly in the federation as well as within individual states.[52] However, some authors argue that there is a fourth source, namely case law.[53] With Nigeria's British colonial history, case law understandably plays a very prominent role, thus the argument that case law is a fourth source is compelling.

2.4.1 Customary law

Customary law refers to the indigenous law of the people of Africa such as in Nigeria (tagged as native laws and custom) that operated prior to the emergence of colonisation. The 'customary land tenure system varied from place to place and was

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48 (2006) I Nigeria Weekly Law Reports (Pt 992) 530 at 574.
49 GBA Coker *Family Property Among the Yoruba* (Sweet and Maxwell 1966) 40.
50 MI Jegede *Land law and Development* (University of Lagos Press, 1980).
51 *Osho v Olayioye* (1966) Nigeria Monthly Law Report 329.
52 Olong (n 25 above) 15.
53 Taiwo (n 46 above) 12.

accepted as a mirror of accepted usage'.[54] Customary law is thus the indigenous laws of Africans that derive from their traditional way of life.[55] For instance, in Northern Nigeria, the Islamic law, which is classified as customary law is mostly applied, while in Western Nigeria the predominant customary law is the Yoruba Native law and custom. The application of customary law is subject to the test of validity; it must not be objectionable to the principles of natural justice, equity and good conscience; it must not be discordant with statutory law in force; and it must also pass the public policy test.[56]

2.4.2 Received English law

These laws apply in Nigeria to the extent that local conditions permit and only to the degree that they do not contradict with Nigerian statutes. This law falls into two categories: Common Law and the Doctrine of Equity; and the Statute of General Application, which was in force in England on 1 January 1900.[57]

2.4.3 Nigerian legislation

The legislative powers to make law for Nigeria resides in the National Assembly as enumerated in Part I of the second schedule of the 1999 Constitution of the Federal Republic of Nigeria, while the State Houses of Assembly make laws for the respective State. Indeed, section 4(7) of the 1999 Constitution provides:

> The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say
> a) any matter not included in the exclusive legislative list set out in part 1 of the second schedule to this constitution
> b) any matter included in the concurrent legislative list set out in the first column of part II of the second prescribed in the second column opposite thereto; and
> c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

Examples of such laws are the Constitution of the Federal Republic of Nigeria (the 1999 Constitution of the Federal Republic of Nigeria as amended), and the Land Use Act

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54 Aluko, Omisore, and Amidu (n 21 above) 145-173.
55 Tobi (n 28 above) 35.
56 Taiwo (n 46 above) 15.
57 Olong (n 25 above) 17.

(Chapter L5 Laws of Federation of Nigeria 2004), the Town Planning and Development Authority Law, Chapter T2 Laws of the Kwara State 2006 and the Stamp Duties Act (Chapter S8 Laws of Federation of Nigeria 2004).[58]

Essentially, 'the constitution is the supreme law of every democratic nation'.[59] It spells out the rules which regulate the relationship between the ruler and the ruled.[60] Furthermore, in its quest to realise the provisions of Chapter Four of the Constitution of Nigeria; the fulfilment of international obligations pursuant to the ratification of international instruments;[61] and the preservation of human dignity, the Nigerian Federal Government established the National Human Rights Commission[62] to protect the fundamental human rights of citizens from abuse. As such, the preamble to the National Human Rights Commission Act provides:

> Whereas considering that the United Nations Charter and the provisions of the constitution of the Federal Republic of Nigeria 1999 are based on the principle of the dignity and equality of all human rights and fundamental freedom for all without distinction as to race, sex, language or religion.

Rights, and its direct corollary, human rights, are those fundamental guarantees which every civilised society acknowledges and recognise as being inherent in every human being.[63] They are natural rights that cannot be separated from any human being irrespective of gender, race, religion or any other attribute. Protecting human rights is the hallmark of a society premised on the rule of law and democratic governance, such that every human being is protected against arbitrariness and are free to express themselves and aspire to achieve any goals to which they may aspire, thus realising their full human potential.[64] This is related to the precise provisions of the Universal Declaration of Human Rights (UDHR). The Preamble to the UDHR provides that

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58 As above.

59 Section 1 of the 1999 Constitution of Federal Republic of Nigeria (as amended).

60 J Alder and K Syrett, *Constitutional and Administrative law* (Red Globe Press (11 ed) 2017) 34.

61 Among the instruments are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Racial Discrimination, and the African Charter on Human and Peoples' Rights.

62 National Human Rights Commission Act Cap N46 Laws of the Federation of Nigeria 2004 (as amended).

63 Possibly the most appropriate international treaty confirming the value and significance of human rights is the Universal Declaration of Human Rights (UN General Assembly resolution 217A of 10 December 1948) that unequivocally pronounces that human rights are inalienable and non-derogable.

64 N Aduba and S Oguche, *Key issues in Nigeria Constitutional Law* (Lambert Academic Publishing 2014) 16-162.

'inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; it is the highest aspiration of all people to be free from fear and to be able to exercise their beliefs without hindrance'.[65] The UDHR elaborates in depth about the end result of disrespect and contempt for human rights, being 'barbaric acts that have outraged the conscience of mankind'. Possibly of the most importance is the conveyance of the message that 'if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'.[66] This is an excellent platform for the analysis of the Land Use Act because without respect for this law, people will take the law into their own hands, to the detriment of society as a whole as was the warning in the case of *Ogunlambi v Abowab.*

Equality is possibly one of the most crucial of human rights. Article 1 of the UDHR emphasises equality, by providing that every human being is 'born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.[67] Article 1 should be read in conjunction with article 7 that proclaims that 'all are equal before the law and are entitled without any discrimination to equal protection of the law'.[68] The violation of the right to equality amounts to a presumption of unfair discrimination and must be avoided at all costs. It is Article 2 of the UDHR that elucidates the multitude of grounds upon which no one may be discriminated against, and states that everyone is entitled to the protection of their rights:

> … without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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65 L Haocai 'Remarks at the opening ceremony of the Beijing forum on human rights' (nd) at <http://www.chinahumanrights.org/CSHRS/2/P020130514539581875675.pdf> (accessed 13 December 2021).

66 United Nations Universal Declaration of Human Rights at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 7 July 2020).

67 Human Rights Resource Center 'Lifting the Spirit Human Rights and Freedom of Religion or Belief' (2021) <http://hrlibrary.umn.edu/edumat/hreduseries/TB5/PDFs/lifting_the_spirit.pdf> (accessed 2 November 2021).

68 ND Gowda 'Violation of Human Rights in the Administration of Criminal Justice' (2015) 5(2) *Indian Journal of Applied Research* 302-304.

The African Charter on Human and Peoples' Right,[69] followed by the establishment of the African Commission on Human and Peoples' Rights on 2 November 1987 were the pre-eminent treaty and treaty-monitoring body on the African continent until 2004 when the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. This legislative and institutional arrangement is unambiguously geared towards the advancement and protection of human and peoples' rights in Africa. A particular consequence is that this international framework has been domesticated by Nigeria through Nigeria's ratification of the African Charter on Human and Peoples' Rights in 1983 and the promulgation of domesticating legislation.[70] It is maintained that international treaties regulating the protection of human rights is therefore binding on Nigeria. Indeed, the Nigerian courts have made several pronouncements on the status of the African Charter on Human and Peoples' Right. The Supreme Court of Nigeria in the case of *Ogugu v The State*[71] held thus:

> Since the charter has become part of our domestic laws, the enforcement of its provisions like all our other laws fall within the judicial powers of the courts as provided by the constitution and all other laws relating thereunto.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for two broad classifications of human rights: fundamental human rights and socio-economic rights, albeit that they are not directly justiciable.

2.4.3.1 Fundamental human rights

A fundamental human right, according to Kayode Eso (JSC) in *Ransome Kuti v Attorney-General of the Federation*[72] is defined thus:

> It is a primary condition to a civilised existence and what has been done by our constitution, since independence, starting with the independence constitution … the Nigerian Constitution order in council 1960 up to the present constitution, that is the constitution of the Federal Republic of Nigeria 1979 is to have these rights enshrined in the constitution so that the right could be "immutable" to the extent of the non-immutability of the constitution itself.

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69 OAU Doc CAB/LEG/67/3/Rev. 5 (which entered into force on 21 October 1980).

70 African Charter (Ratification and Enforcement) Act Chapter A9 Laws of the Federation of Nigeria 2004.

71 (1994) 9 Nigeria Weekly Law Reports (Pt 366) 1.

72 (1985) 8 Nigeria Weekly Law Reports (Pt 6) 211, 230.

Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the list of human rights that are regarded as fundamental. Every Nigerian, irrespective of age, sex, ethnic group, or any other possible ground is entitled to these rights. These rights must be protected by the government. Thus, the right relating to the topic of the research has provisions and explained in section 43(j) of the Constitution of Nigeria which reads: 'Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria'. Proceeding from a literal understanding of this provision of the Constitution, it is settled that everyone in Nigeria has the right to own property (particularly land) anywhere in the country, regardless of sex, age, tribe, religion and so on. This is confirmed by the fact that the Constitution enumerates the other fundamental rights as follows:

a) Right to dignity of the human person
b) Right to personal liberty
c) Right to fair hearing
d) Right to private family life
e) Right to freedom of thought, conscience and religion
f) Right to freedom expression and press
g) Right to peaceful assembly and association
h) Right to freedom of movement
i) Right to freedom from discrimination.[73]

There is an exception to the above-mentioned rule. Fundamental human rights may be regulated by the government on the grounds of defence, public health and overall public interest of the citizens. Section 45(1) of the Constitution of the Federal Republic of Nigeria provides that 'nothing in section 37, 38, 39, 40, and 41 of this constitution shall invalidate any law that is reasonably justiciable in a democratic society' if the following circumstances are met: if it is

a) in the interest of defence, public safety, public order public morality or public health; or
b) for the purpose of protecting the rights and freedom of other persons.

2.4.3.2 Socio-economic rights

Socio-economic rights are provided for in Chapter Two of the Constitution. As noted in 2.1 above, section 6(6) expressly stipulates that the rights in Chapter Two are not justiciable

[73] 1999 Constitution (as amended).

in the following terms:

> The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

While these rights are not justiciable, they do form part of the fundamental objectives and directive principles of state policy. Section 16(1) of the Constitution therefore provides that:

> The state shall within the context of the ideals and objectives for which provisions are made in this constitution:
>
> a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy every citizen on the basis of social justice and equality of status and opportunity;
> b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
> c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy;
> d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.[74]

Supplementing section 16 is section 17(1) which provides that the state social order is established on ideals of freedom, equality and justice, while section 17(2) provides thus:

a) every citizen shall have equality of rights, obligation and opportunities before the law;
b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
c) governmental actions shall be humane;
d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and
e) the independence, impartiality thereto shall be secured and maintained.[75]

Nigeria has demonstrated its dedication to human rights by establishing a National Human Rights Commission. The relevance of the National Human Rights Commission Act to respect for the rule of law is pronounced by the wording in the Preamble that the Act's purpose is to 'facilitate Nigeria's implementation of its various treaty obligations'[76] by virtue of Nigeria's endorsement of many seminal international human rights treaties.

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74 1999 Constitution (as amended).
75 1999 Constitution (as amended).
76 National Human Rights Commission Act 2010.

Indeed, Nigeria's commitment to upholding the rule of law is elucidated by the Human Rights Commission Act where the Preamble states further that:

> the federal government of Nigeria is desirous of creating an enabling environment for extra-judicial recognition, promotion and enforcement of all rights recognised and enshrined in the constitution of the federal Republic of Nigeria 1999, the international and regional instruments and under any other existing legislation.

The Human Rights Commission is empowered to perform the functions relating to matters of human right violations. In particular, section 5 of the Human Rights Commission Act details that in furtherance of the objective of protecting human rights, a forum for public enlightenment and dialogue should be created so as to uphold the sanctified and inviolate nature of human and other fundamental rights. In this regard, the Commission is obliged to consider and investigate all cases of human rights abuse in Nigeria and assist victims of human right breaches, regardless of the nature of the right.

In the spirit of an acknowledgement of the importance of customary law in Nigeria, alongside the prominence of the Constitution and its commitment to ensure social justice, equality and freedom from want, the discussion that takes place below relates to the existing forms of access to land in Nigeria and provides a commentary on their effectiveness.

2.5 ACCESS TO LAND IN NIGERIA

Ownership of land in Nigeria, which includes the Kwara State, before the introduction of the common law and more recently the enactment of the Land Use Act in 1978, was predominantly regulated by customary law.[77] The several enactments since the introduction of legislation have acknowledged the fact that land ownership through customary law is sacrosanct. Ownership of land today, by law, is vested in the state and local government and customary landowners.

[77] *Titiloye v Olupo* (1991) 2 Nigeria Weekly Law Reports (pt 191) 344; *Idehen v Paye* (1991) 5 Nigeria Weekly Law Report (pt 191) at 344.

The customary land could be owned by the community and it could also be owned by the traditional institution/family, either as a result of the privileged circumstance of their birth or due to the family first settling in the area or on the land. Consequently, individuals could become owners of communal or family land in the following circumstances: partitioning of family land; clearing of virgin land (*terra nullius*) in the forest and becoming an owner by being the first settler; a grant either from the family or community; or by way of survivorship.[78] At this juncture it is imperative to confirm that 'ownership is the exclusive right to possess, use, and transfer property, subject only to the right of any person having a superior interest or any other stipulated restriction on the owner's rights imposed by an agreement with or by an act of third parties or by operation of law'.[79] It confers a title to a subject matter which is good and valid throughout the whole world. Notwithstanding this definition, it is submitted that the meaning of ownership is 'an elephant before the blind men'. Concerning land, English law has never applied the concept of ownership in Nigeria.[80] Moreover, under customary law, the concept of ownership is contentious.[81] Indisputably, land is a natural gift, therefore no one can claim absolute ownership over land. Ownership may also be referred to as acquisition.[82] Ownership involves the enjoyment of several rights over the property i.e. the right of alienation and disposal. The reason for this close analysis of access to land and the ownership thereof in Nigeria is because speculative, illicit dealings in land and self-aggrandisement as a consequence, are now rife. Government officials and their close associates have once again begun allocating land among themselves, thereby resurrecting the evils of the state land system in Nigeria. Unfortunately, 'the result is an increase in the "price" of land, and its corollary, insufficient access'.[83]

78 BO Nwabueze *Nigerian Land Law* (Nwamife Publisher Limited 1972) 3.
79 DD Popov 'The ownership in The Draft of Civil Code in Serbia' (2019) 53 *Zbornik Radova* 1.
80 CC Chigbo 'The nature of land ownership and the protection of the purchaser.' (2013) 1(1) *Journal of Sustainable Development Law and Policy* 1-20.
81 Taiwo (n 46 above) 154.
82 *Lasisis & Anor v Nwanna* (2012) LPELR-19936 (Court of Appeal).
83 PE Oshio 'The Land Use Act and the institution of family property in Nigeria' (1990) 34(2) *Journal of African Law* 79-92.

2.5.1 Kinds of Ownership

Ownership may encompass ownership of corporeal property, that is, 'of a material thing, which may itself be movable or immovable; or it may be ownership over incorporeal property (that is, something intangible) such as a copyright or patent'.[84] Land thus falls within the category of ownership of a corporeal object. The owner's interest in land can be legal or equitable or both. Legal ownership of land confers the immediate right of possession. Equitable ownership of land confers right to enjoy the use and benefit of the property.

As stated above, individual ownership of land is unknown under the received English law. The Crown owned the land before ceding it to the state.[85] Nonetheless, there are forms of non-sovereign interest in land, which can be likened to ownership that operate in Nigeria. These are fee simple, fee tail, and life estate, elucidated hereunder. Fee simple ownership effectively confers absolute ownership. In this context, absolute indicates that the owner's rights are not conditional. As originally conceived, a fee simple was an estate which endures for as long as the tenant or any of his heirs (related by blood and their heirs and so on) survived. Fee simple lasts until the owner dies without an heir.[86] Contrasted against fee simple, is fee tail, whereby the ownership of the property is inheritable, but only by the descendants of the Crown's tenant/holder. Both the ascendants and the collaterals of the holder cannot inherit it after his death. Fee tail lasts until his holder dies without issue. Finally, a life estate is a grant of land for life only.[87] These kinds of ownership can be created through conveyance *inter vivos* and gift by will.

There are also different kinds of co-ownership under English law, namely joint tenancy and tenancy in common. Joint tenancy refers to ownership of land by two or more individuals until such time as they elect to sever such ties and terminate the joint

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84 MG Yakubu *Notes on the Land Use Act* (ABU Press Ltd 1986) 14.
85 IO Smith, Practical Approach to Law of Real Property in Nigeria (Ecowatch Publication 1999) 306.
86 As above.
87 As above.

ownership. Tenancy in common is a situation where each of the owners has 'a distinct title in the property that he can dispose of independently'.[88]

2.6 OWNERSHIP OF LAND UNDER CUSTOMARY TENURE

Under African customary law in general and the position prevailing in Nigeria to date, the management of land is administered in line with the regulations of native law and custom that is hinged on both the community, being either the village or the family head. It expressly excludes individual ownership which is why Lord Haldane opined in *Amodu Tijani v Secretary of Southern Nigeria*[89] that:

> The next fact which is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. This is pure native custom along the whole length of this coast…

In essence, 'the head of the family and other members of the family are responsible for the management of the family land'.[90] The family head cannot unilaterally or single-handedly decide without the consent of other principal members – the representative of each unit of the family. Traditionally, polygamy is the most common method of the establishment of the family structure. The position of the family head is that of trustee and fiduciary, which requires him to be accountable for his stewardship.[91] In *Taiwo v Dosunmu & ors*,[92] the Supreme Court of Nigeria lent credence to the position that a family head entrusted with family property owes family members a duty to remain accountable for the manner in which he manages the common property, and thus, family wealth. Unfortunately, however, very often the family head will sell family land without considering the interest of other members of the family and future generations of the family. Given the patriarchal system in play, other members of the family are sometimes too afraid to ask questions. Endless litigation often arises when such a family head dies because other family members will then challenge the previous alienation of the land by

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88 Taiwo (n 46 above) 88.
89 (1921) 2 Appeal Court 399.
90 JO Fabunmi *Equity and trusts in Nigeria* (University of Ife Press Ltd 1986) 96.
91 As above at 98.
92 (1966) Nigeria Monthly Law Reports 94.

the family head on the ground that it did not meet the requirement of the law.[93] It is for this reason that the Town Planning Laws unequivocally provide that the sale of family land must comply strictly with the provisions of said Town Planning Laws by requiring that before any sale of land occurs, a proper survey must be carried out and any plan made in respect of the sale of land must be formally approved by the appropriate department of government. In addition, a functional institutional framework must be put in place to enhance easy access to land.

It cannot be gainsaid that the term of individual ownership of land under customary law arrangements is controversial. When customary law was originally conceived, no provision was made for individual ownership of land. This was confirmed in the case of in *Amodu Tijani v Secretary of the Southern provinces of Nigeria*[94] where the Court held that land constitutes communal property and cannot be owned by an individual personally. Over time, this position has come under scrutiny and differing viewpoints have risen to prominence. For example, in the recent case of *Kaigama v Namnai*[95] Edozie Justice of the Court of Appeal said that land is not *res nullius*. Instead, individuals, the family or families, the entire village and community own every piece of land collectively. Therefore, ownership is customarily categorised as communal landholding, family landholding, and individual landholding. The distinction between these concepts is briefly that in the case of communal landholding, the members of a community collectively, severally and jointly own land as a corporate entity. Arguably, this is the root of the modern ownership of land in terms of customary law. Communal ownership has evolved from ancient settlement on the land.[96] When it comes to family landholding, this is a kind of ownership of land where all members of a family can inherit their fathers' land and claim joint ownership of such property. It is possible for a communal landholding to be transformed into a family landholding through the partition of such land among the respective families in such a community. At the furthest extreme, individual landholding arises where a single person is a landowner. Interestingly, it has been noted that the land was initially owned by an individual, but

93 *Achilihu v AnYatonwu* (2013) 12 Nigeria Weekly Law Reports (Pt 1368) 256 SC.
94 (1921) 2 Appeal Court 399.
95 (1997) 3 Nigeria Weekly Law Report (Pt. 495) 549 at 569.
96 Tobi (n 28 above) 25.

thereafter community and family landholding developed as the population grew and families expanded. Despite the decision being made in 1943, it is contended that individual landholding may arise if the division of family-owned land is clearly evident[97] as was held in the case of *Kadiri Balogun v Tijani Balogun*.[98]

For purposes of reiterating the legal position, ownership of land traditionally occurred due to settlement on the uninhabited land or the deforestation of the virgin land, conquest during a tribal war, by way of receipt as a gift, grant, sale and inheritance, on condition that this could be proved by traditional evidence.[99] Such evidence would entail "the production of documents of title which are duly authenticated; proof of acts of selling or leasing or renting out all or part of the land or farming on it or portion of it; evidence of long possession and enjoyment of the land; and proof of possession of connected or adjacent land in situations rendering it highly probable that the owner of such connected or adjacent land"[100] would also own the land in dispute.[101]

2.6.1 Possession

Possession is a concept that is closely connected to ownership but is wide and sometimes has vague and ambiguous descriptions. To be sure, it is the real control over property combined with the right to use it with largely unfettered discretion, as one's own. Elements of possession according to Paul are, firstly the 'corpus' or the element of substantive control; and secondly, the 'animus' or the intent in which such is exercised.[102] A decisive factor is that possession is the basic element of a claim of trespass; not ownership. Therefore, a tenant in possession of property can institute an action for transgressing his right of possession, in the form of trespass even against the landlord himself.[103]

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97 As above.
98 (1943) 9 West African Court of Appeal 78 at 81.
99 Section 66 of the Evidence Act 2011.
100 Section 35 of the Evidence Act 2011.
101 The Executive Governor, Ekiti State & Ors v Chief FA Abe & Ors (2016) LPELR-40152 (Court of Appeal).
102 Tobi (n 28 above) 25.
103 As above 27.

2.6.1.1 Kinds of possession

The underlying possession of land is distinguished by being either *de facto* or *de jure*. *de jure* possession is the amount of control over land which is sufficient to exclude another person from interfering with it. This includes the reversionary right of the owner who is not in actual possession. This can also be termed constructive possession. On the other hand, *de facto* possession means effective, physical or manual control or occupation of land. This is the physical possession of property. Possession includes receipt of rent and profits or the right to it. *de facto* possession is further subdivided into legal possession and adverse possession.

Possession can be acquired through, but not limited to, lease, mere grant, mortgage, occupation, trespass and other means of acquisition of ownership mentioned above etc. Establishment of possession depends on the intricacies or merits of each case. Even the slightest amount of possession can suffice.[104] This was confirmed in the case of *Eze v Owusoh*[105] where it was held that a member of a tribe that the land is validly alienated to, including his successor, can claim possession, which right must be protected.

2.6.1.2 Adverse possession

Adverse possession is the use of land to which another person has title. The intention is to use and possess that land as one's own. Evidence of adverse possession is when the adverse possessor occupies the land as if he were entitled to it, to the exclusion of all others, and indicates his intention to occupy it as his own.[106] In *Kei and Others v Okpose and Others*[107] it was ruled that adverse possession of land for some years by the defendant could evolve into some form of equitable interest in and over the land or at least a presumption of ownership if it can be ascertained that the plaintiff acquiesced to the possession. Interestingly, adverse possession is recognised as valid possession

[104] *Ajadi v Olanrewaju* (1969) 6 NSCC 334 at 339. See in particular, 638-639.
[105] (1962) 2 NSCC 394 at 396.
[106] Tobi (n 28 above) 27.
[107] (2011) LPELR-3921 (Court of Appeal).

against the whole world, except for the true owner. In the case of *Chief Adefioye Adedeji v JO Oloso and Another*[108] Oguntade, JSC affirmed that:

> adverse possession by a defendant is one which derogates from and is inconsistent with the ownership title of a person who claims to be the owner of the land. A tenant's possession cannot be adverse to the ownership of his landlord.

This case succeeded (and overturned) the case of *Gladys Majekodunmi and Others v Mutiu Abina*[109] where it was posited that an adverse possessor of land who establishes his title under section 21 of the Limitation Law, 1959 is a person entitled, at law or in equity, to an estate in fee simple to that land, should he have made the requisite application for its registration in the name of that person, as owner in fee simple.

2.6.1.3 Long possession/prescription

Under customary law, an extended duration of the unimpeded use of land or property does not automatically confer ownership through *hauzi* or prescription. Under Islamic law, though, if a person has possessed land for 10 years or more without any challenges thereto, he becomes the owner of the property, except if the claimant has provided cogent and compelling reasons for not complaining in good time. A non-exhaustive list of such reasons can include the existence of a blood relationship; fear of executive injustice or retribution; the actual owner being a minor; the person in possession was placed in that position by the claimant themselves as a free or paying tenant; the person in possession is put on the land as a trustee; the claimant is a partner or co-proprietor to the person in possession. By contrast, under English law, where the principle of acquiescence applies, prescription may indeed confer the title of the land on the occupier. Therefore, in Nigerian customary law, a party in possession can resist the claim of the rightful owner by pleading prescription, but possession – no matter how long they have possessed such property – cannot confer ownership against the title of a person admitted or established.

[108] (2007) 1 SCNJ 397.
[109] (2002) 1 Supreme Court 92.

2.6.1.4 Relationship between possession and ownership

Pertinent at this stage is the need to affirm that the terms ownership and possession are interwoven as was held in the case of *Oge v Ede*[110] at 566-567, that:

> Although the possession is nine-tenths of the law and a bird was seen in possession of a nest is presumed to be the owner and can maintain an action of trespass against any other bird but when the true owner comes, the bird in possession is bound to vacate the nest for the owner. This is also true in the land matter.

This implies that possession contains an irrebuttable presumption of ownership. Where there is conflict as to who owns specific land, the law presumes the possessor to be the owner. Furthermore, ownership can be reduced to *de jure* possession. For instance, in the case of *Anyabunsi v Ugwunze*[111] it was shown that the landlord who put a tenant in possession has rendered the tenant in *de jure* possession. In the circumstances, there is equitable interest for a purchaser of land in the possession of *de jure* possessor to become the owner of such registrable instrument, except against a *bona fide* purchaser for value without notice.[112]

Accordingly, possession is an important condition in the acquisition of ownership in various ways. For instance, the sale of land does not confer ownership on the vendor until he takes possession of such land and customarily, the sale is conclusive when the possession is given in the presence of witness as was decided in *Cole v Folami*.[113]

2.6.1.5 Access to land

Access to land is how persons (individuals or a group) obtain the rights to use land and benefit therefrom.[114] Access to land in Nigeria is derivable through purchase – which could be from a family or an individual having a personal right over the land or through allocation by the government or by way of alienation of family land. Access to land could also be derivable through lease and sharecropping – a system whereby the owner of

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110 (1995) 3 Nigeria Weekly Law Reports (Pt 385) 564.
111 (1995) 6 Nigeria Weekly Law Reports (Pt 401) 255 at 268.
112 Taiwo (n 46 above) 15-16.
113 (1956) SCNLR 180. See Taiwo (as above).
114 K Agwu, O Amasiatu and O Onuoha 'Land rights, characteristics and access to land, implication on food security in Nigeria' (2010) *Journal of Environmental Issues and Agriculture in Developing Countries* 149.

land allows a farmer to use the land for farming and the proceeds from the farm are shared at an agreed proportion.

Large-scale migration from rural to urban areas has placed massive pressure on governments.[115] Nigerian cities are equally caught up in this situation. Moreover, the population explosion in most cities in Nigeria has given rise to the illegal occupation of land and properties through squatting (a wholly illegal occupation of land but is a method through which people gain access to land).[116] The transfer of ownership, permanently, in the form of sale or, temporarily, in the form of a lease has to be done with the approval of the state governor if the land falls within an urban area, whereas the local government has to give permission if the land falls within a rural area.[117] The federal government plays no role in land administration unless concerning federal land which comprises of landholding vested in the federal government before the beginning of the Land Use Act.[118] Despite this *prima facie* clarified and regulated position, security of ownership of land in Nigeria remains precarious, as discussed in the sections that follow.

2.6.1.6 Control and management of land in Nigeria

Certain sections of the Land Use Act show the right of a community to hold a right of occupancy.[119] Certainly, such right was conceded by the Supreme Court of Nigeria in the recent case of *Chief SU Ojeme and Others v Alhaji Momdu II and Others.*[120] A critical issue, however, is whether the head of the community in exercising his power of control and management of land under customary law can deal with the land to which the community holds a right of occupancy without reference to (or the concurrence of) the governor or the local government. The latter are the authorities to whom the power of control and management of land is exclusively vested in terms of the Land Use Act.

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115 Maathai (n 10 above) emphasises this factor as having a particularly adverse impact on the environment, although its principal impact is on the ability to access land in the urban areas.

116 As above at 151.

117 Sections 2 and 6 of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004.

118 Section 5 of Land Use Act.

119 Section 29(3) of the Land Use Act provides that if the holder or the occupier entitled to compensation under this section is a community the Military Governor may direct that any compensation payable to it shall be paid (a) to the community...

120 (1983) 3 Supreme Court 173.

Two situations can be distinguished for more critical consideration under this broad theme, namely allocation to members of the community; and partition and sale of land, to which I now turn my attention.

2.6.1.7 Allocation of land to members of a community

Prima facie, with customary law as the primary foundation of land law in Nigeria, one would be inclined to assume that when the head of a community allocates land to a single member of the community that would be legally ordained. It is recalled that under customary law, any allocation of communal land to a member of that community does not divest the community of the title that it holds and neither does it vest title to such land in the particular member. Accordingly, this type of allocation does not constitute alienation of a right of occupancy. However, the Act brings in a new dimension, raising the question of whether such allocation is tantamount to alienation of the right of occupancy and for which the consent of the governor or the local government would be required under the Act.[121] While not clearly defined, when read in conjunction with each other, sections 21 and 22 of the Act indicate that alienation is wide in ambit. It includes assignment, mortgage, sublease, and even transfer of possession. Despite the wording of the Act, the most reasonable interpretation is that even when it comes to transfer of possession, the community does not transfer possession when it allots land to one of its members. Instead, as prescribed by customary law, the community continues to possess the land through its members. In the event that a member requires a certificate of occupancy as proof of a right over land occupied by him, the most rational option is for the community to sublease the right of occupancy, but to include a provision that unambiguously prevents that member from alienating the right of occupancy to a stranger without permission from the community and thereby retain its superior (and more strongly protected) interest in the land.[122] Based on a strict reading of the Act, a sublease amounts to alienation, requiring the permission of the governor or the local government.

[121] Sections 21 to 23 of the Land Use Act.
[122] A provision is made under section 34(4) of the Land Use Act for this kind of situation.

2.6.1.8 Partitioning of land and its alienation through sale

Members of the community have a relatively unfettered discretion to partition communal land among themselves and possibly even alienate that land by way of sale, as long as the community does this with the full concurrence of the head of the community. The requirement for consent from the head of the community is due to the fact that partition effectively divests the community of its title to the land, transferring such title to the individual concerned.[123] Having regard to the binding case law on the matter, the Act should thus be construed to require that any partition of formerly jointly-owned land requires the approval of the governor or the local government in view of the consequences: alienation of a right of occupancy under the Act. Sale of land by the community based on its ownership rights, nonetheless, cannot occur, as ownership now vests in the state by virtue of section 1 of the Act.

2.7 CONCLUSION

Law's effectiveness is often contingent upon those who interpret and apply the law. The mere wording of a statute alone is not decisive. What is also required is a judicial officer who is committed to accomplishing the desired goals stated in the legislation. The Land Use Act is a classic example of an apparent divergence between the intention of the legislature and the implementation of this law. A legal positivist approach in the present research is thus undoubtedly warranted in order to properly assess the empirical situation through the findings in court decisions where the provisions of the law are adjudicated. This methodological approach is necessitated especially by the irony that within just a decade of its promulgation, the Land Use Act's implementation has been defeated by many of the same anomalies and anachronisms that applied to the pre-existing customary law and the precarity of tenure during the colonial era analysed above.

[123] *Balogun v Balogun* (1943) 9 West African Court of Apeal 78.

CHAPTER THREE: ARTICULATION OF THE STATUS, MEANING AND CONTENT OF THE LAND USE ACT OF 1978

3.1 INTRODUCTION

The main purpose of this thesis is to critically analyse the legislation that is currently in use in Nigeria, being the Land Use Act of 1978. Although the adoption of the Land Use Act at first appeared to be a positive development, it is submitted that the failings of the Act are directly connected to the weaknesses inherent in the Land Tenure Law of 1962; its antecedent formulation to govern access to land in Nigeria.

Moreover, some activities of indigenous land owners has resulted in litigation. The matter of *Ogunlambi v Abowab*[124] decided by the West African Court of Appeals attests to this issue, where the Court remarked that this case was not an isolated incident; many similar cases had been determined beforehand. In this particular matter, the Oloto family had sought to sell or purport to sell the same piece of land at various times to different persons. Wryly, the Court asked, rhetorically, why any person would purchase land from this family without the most careful prior investigation and due diligence being undertaken because ultimately, all they purchase is 'a law suit and very often that is all they get'.[125]

Government allocated land is also illegally alienated, in exactly the same manner that indigenous landowners repeatedly alienate land without the requisite authority. Litigation abounds relating to wrongful revocation of land title and multiple allocations of land.[126]

It is against this contextual backdrop that the issue in Kwara State is analysed. It is trite that the operation of the Land Use Act of 1978 applies equally in Kwara State as the law deals with the right of the public to own land in either rural or urban areas of the State, subject only to the power of the State Government to revoke land for the

[124] 13 West African Court of Appeal 49.
[125] 13 West African Court of Appeal 50.
[126] As above.

overriding public interest.[127] The Land Use Act has been supplemented by the Kwara State Laws of 2006[128] that deals with land registration in Kwara State and also guides the duties of town planners and development authorities in relation to access to land by individual(s) in the State. Clearly, there is not deviation from the provisions of the Act. Instead, the Kwara State laws seek to inculcate the provisions of some norms and customs that have been in existence in that locality or community within the state since time immemorial. Therefore, if access to land must truly be guaranteed as intended by the enactment of the Act in Nigeria and most especially within the area of study, it is important that careful and considered thought be given to how the administration of land should be carried out in the State in order to enhance adequate and effective access to land by the public. This systematic analysis will commence with an explanation of the meaning of the relevant provisions of the Act.

In the context of the acquisition and enjoyment of land, which is granted by the Constitution, it becomes relevant to detail how this right can be secured by way of a Right of Occupancy, discussed next.

3.2 THE RIGHT OF OCCUPANCY IN TERMS OF THE LAND USE ACT

The Land Use Act initiated a new system called a Right of Occupancy. This refers to a uniform right that is intended to apply throughout the entire country and it gives its holder the entitlement to possess land. Incongruously, though, a Right of Occupancy is not defined under the Act, but some scholars[129] as well as binding judicial decisions have equated it to the substance of a lease. The Right of Occupancy is best described as a hybrid form of right; somewhere along the continuum between a personal and a proprietary right. Therefore, "there is nothing wrong in the right creating a new form of right as the categories of rights over land need not be closed".[130] In an attempt to clarify the meaning of a Right of Occupancy, Umezulike has persuasively defined it as the right to use and occupy land in accordance with the terms and tenure set forth by the

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127 *Governor, Kwara State v NICON PLC* (2017) ALL FWLR (Pt. 890) at 674.

128 Land Registration Law Chapter L3 Laws of Kwara State 2006 and Town Planning and Development Authority Law Chapter T2 Laws of Kwara State 2006.

129 ET Olawale *Nigerian Land Law and Custom* (Routledge & Paul (3 ed) 1962) 284.

130 JA Omotola *Essays on Land Use Act, 1978* (Lagos University Press 1984) 24.

state within the provisions of the Act.[131] What is incontrovertible is that a Right of Occupancy is a right to possess or use land subject to the stipulations of the Land Use Act. Moreover, the Act has conferred upon government all powers of control over land acquisition in Nigeria. Thus, section 1 of the Act provides that:

> Subject to the provisions of this Act, all land comprised in the territory of each state in the federation are hereby vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.[132]

Clearly, what has been introduced by the Act is a Right of Occupancy subject to the oversight, regulation and management of the government, whether it be local or state government.[133] An analysis of the nature and scope of right under the Nigerian Land Use Act 1978, primarily the Right of Occupancy will henceforth be undertaken. In conjunction with this analysis, the problems that the courts often face when two grants are issued to two different grantees on the same land will be investigated. After having set out the legal position, recommendations that the writer thinks will serve as solutions to the problems will be advanced.

3.2.1 Types of Right of Occupancy

In the light of the discussion above, what remains to be more fully described is the particular types of Right of Occupancy introduced by the Act, as there are subtle differences between the various forms of Right of Occupancy and the consequences ensuing therefrom. The types of Right of Occupancy fall within the following two broad categories: Statutory Right of Occupancy; and Customary Right of Occupancy. However, these two types are further sub-classified into four distinct categories, namely: (i) Statutory Right of Occupancy expressly granted by the Governor;[134] (ii) Statutory Right of Occupancy deemed granted by the Governor;[135] (iii) Customary Right of

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131 IA Umezulike *The Land use Act, More Than Two Decades After, And Problems of Adaptive Strategies of Implementation* (Snapp Press Ltd 2004) 45.
132 Section 1 of the Land Use Act, Cap L5 Laws of the Federation of Nigeria 2004.
133 Sections 1(2), 5 and 6 of the Land Use Act, Cap L5 Laws of the Federation of Nigeria 2004.
134 Section 5(1)(a) of the Land Use Act.
135 Section 34 of the Land Use Act.

Occupancy expressly granted by Local Government;[136] and (iv) Customary Right of Occupancy deemed granted by the Local Government.[137]

3.2.1.1 Statutory right of occupancy expressly granted by the Governor

Section 5(1) of the Land Use Act defines a Statutory Right of Occupancy as a Right of Occupancy granted by the Governor under the Act. The wording of the Act in section 5(1)(a) provides that:

> It shall be lawful for the state Governor in respect of land, whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes.[138]

While stated in rather broad terms, this right is not absolute. It is subject to a number of prescribed stipulations and conditions.[139] Thus, section 8 of the Act provides that:

> Statutory Right of Occupancy granted under the provisions of Section 5(1)(a) of this Act shall be for a definite term and may be granted subject to terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of the Act.[140]

The undeniable implication is that Right of Occupancy is limited: it has a life-span (such as 99 years), but once a holder does anything that is inconsistent with the provisions of the Act, his right may summarily be withdrawn. However, by the provisions of Section 5, it can be deduced that the power of the Governor to grant Statutory Rights of Occupancy is not limited to land in an urban area; he may also grant land in non-urban areas.[141] It is submitted that the determining factor in this case is not the location of the land (urban or rural), but the status of the person who grants the right of occupancy, that is, either the Governor or the Local Government, as the case may be.[142]

3.2.1.2 Statutory Right of Occupancy deemed granted by the Governor

By virtue of the provisions of section 34(1) and (2) of the Act, 'where land in an urban area was developed before the commencement of the Act, it remains vested in that

136 Section 6 of the Land Use Act.
137 Section 36 of the Land Use Act.
138 Section 5 of the Land Use Act
139 Section 8 of the Land Use Act.
140 Olong (n 25 above) 215.
141 Taiwo (n 46 above) 209.
142 *Olagunju v Adesoye* (2009) 9 Nigeria Weekly Law Reports (Pt 1146) 225(a)-265 (Supreme Court).

developer as though the Governor had granted a Statutory Right of Occupancy'.[143] This implies that any holder of developed land that has held that land prior to the commencement of the Land Use Act should continue to hold such land in his capacity as a deemed grantee, as if the land was granted to him by the Governor. Finally, as to whether it is an express or a deemed grant, the Governor can issue a certificate as evidence of the right of a holder.[144] Once issued, the holder of a certificate has a right to possession of the land so granted. Hence, the distinction between an actual and a deemed grant is that a grantee under an actual grant holds the land subsequent to commencement of the Act; whereas a deemed grantee has held the land prior to the commencement of the Act, but it remains vested in him as though it were granted by the Governor himself. However, in *Savannah Bank of Nigeria Ltd v Ajilo*[145] the Supreme Court held that irrespective of whether it is an actual or a deemed grant, the Governor's consent is required for alienation. Arguably, the *Savannah Bank* case has eliminated any ambiguity relating to the contention by Williams that the provisions of sections 21 and 22 of the Act are not applicable to deemed grant as deemed grant is different from actual grant. Indeed, the Supreme Court has categorically asserted that:

> The holder of a statutory right of occupancy granted by the governor, as contained in section 22 of the Act, includes the implied grant in section 34(2) and 36(2) of the Act. Any failure by a holder under section 34(2) or 36(2) of the Act to comply with the provisions of section 22 would attract the full rigour of section 26 of the Act render a transaction or an instrument arising there from null and void.

The effect of the above decision is that for the purpose of the application of sections 21 and 22 of the Act, there is no difference between a deemed and an actual or express grant. Consequently, it is the researcher's submission that the terms that are specifically mentioned in the certificate, but not mentioned in the Act may arguably serve as features of distinction between the respective types of grants.

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143 Olong (n 25 above) 215.
144 Section 9 of the Land Use Act.
145 (1987) 2 Nigeria Weekly Law Reports (Pt 57) 421.

3.2.2 The apparent interest created by a Right of Occupancy

There are opposing views on the exact nature of interest created by Right of Occupancy. Nevertheless, some scholars do not view it as fee simple.[146] They founded their argument on section 1 of the Land Use Act which vests government with complete power relating to all land in Nigeria. This directly contradicts the very idea of fee simple in terms of the common law, given that fee simple can be equated to radical title because it is the most far-reaching interest that any owner can have. Moreover, when read holistically, what the Act instead suggests is that the interest created by the Right of Occupancy is nothing more than a lease over property.[147] Precisely, section 51 of the Act describes 'sublease' as including a 'sub-under-lease', implying that Right of Occupancy is akin to a lease.[148] Fortunately, clarity has been provided by the judgment of Tobi (JSC) (as he was at the time) in the Supreme Court's decision in the *Ezeanah v Attah*[149] matter, thus:

> A holder of Certificate of Occupancy holds the title to the property and subject only to the conditions stipulated in the Land Use Act. A Certificate of Occupancy creates a term of years absolute or a lease for a number of years stated therein. The greatest legal estate that can now subsist under the Land Use Act is a term of years. The grant of term of years under a Certificate of Occupancy is in substance a lease.

A Certificate of Occupancy is nothing more than proof that a Right of Occupancy has been conferred on the holder thereof, either in terms of customary law or statute.[150] Thus in *Orlu v Gogo Abite*[151] the Supreme Court held that a Certificate of Occupancy is of a particular duration and does not imbue the holder of the right to occupy the property as having any legal title such as ownership. Accordingly, any Certificate of Statutory or Customary Right of Occupancy obtained in terms of the Act is of limited duration and does not constitute proof of any additional right, interest, or valid title to land.[152]

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146 UJ Osimiri *Application for Certificate of Occupancy: Practice and Procedure* (Jus 1991) 11.

147 Section 22 of the Land Use Act expressly prohibits the holder of a Statutory Right of Occupancy granted by the Government to alienate his Right of Occupancy (or any part thereof by assignment, mortgage, transfer of possession, sublease) without the consent of the Governor first having been obtained.

148 Section 8 of the Land Use Act.

149 (2004) 7 Nigerian Weekly Law Reports (Pt. 873) 468(a) 500-501 paras A-H.

150 Olong (n 25 above) 25.

151 (2010) 8 Nigeria Weekly Law Reports (Pt.1196) 307 SC.

152 *Boye Ind Ltd v Sowemino* (2010) ALL FWLR (Part 521) 1642.

3.2.3 The consequences of obtaining a Statutory Right of Occupancy

The point of departure for purposes of this analysis is section 5(2) of the Land Use Act, which simply states:

> upon the grant of a Statutory Right of Occupancy under the provisions of subsection (1) of this section, all existing rights to the use and occupation of the land which is the subject of the Statutory Right of Occupancy shall be extinguished.

Referring to the wording of this provision as simple, is an understatement. Prior to 2003, the courts arrived at conflicting judgments as to the exact meaning and consequences of the provision.[153] One judgment asserted that 'any subsequent grant of a Statutory Right of Occupancy immediately extinguished the previous one'.[154] More creative arguments were relied on in future decisions. A notable decision is that of *Dantsho v Muhammed*[155] where, the principle of 'first in time, first in law' prevailed. The Supreme Court, per Katsina-Alu JSC (as he then was) held that section 5(2) of the Act cannot be understood to entail that once a Statutory Right of Occupancy is granted it invalidates any other existing rights or interest.

This decision has come under scrutiny, with some contending that although the Supreme Court's decision is correct,[156] there are fatal flaws in interpretation and reasoning that were applied in reaching this decision because this approach gives the impression that a Right of Occupancy contains a number of rights; some of lesser and others of more importance, depending on the circumstances.[157] Olong puts it bluntly: this reasoning is 'nothing more than drawing a distinction without a difference'.[158] Nonetheless, the Supreme Court's decision is compelling and appealing because it serves to settle the contentious issue of whether or not a grant of Certificate of Occupancy takes precedence over a vested right. The court has subsequently approached the issue by having regard to where or not there exists any other valid title

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153 AM Madaki 'The Relevance or Otherwise of Section 5(2) of the Land Use Act Examined' 2011 *Journal of Private and Property Law* 185.
154 *Debup v Kolo* (1993) 12 SCNJ 1.
155 (2003) 6 Nigeria Weekly Law Reports (Pt. 817) 457.
156 Madaki (n 153 above).
157 As above.
158 Olong (n 25 above) 25.

or legal interest in the property. Decisively, in *Omiyale v Macaulay*[159] the Supreme Court held that where there exists a Certificate of Occupancy to one of two claimants, one of whom has proved a better title, it must be deemed that the other Certificate is defective or was granted or issued in error and against the spirit of the Land Use Act. On the issue of whether registration of a [disputed] Certificate of Occupancy cures any irregularity pertaining thereto, the courts have insisted that a Certificate of Occupancy is merely *prima facie* evidence of title. Therefore, exclusive possession of the land or property is rebuttable.[160] On account of this presumption, registration of a Certificate of Occupancy does not – in fact, cannot – cure or validate any irregularities arising from it being issued under spurious or fraudulent circumstances.

3.2.4 The acquisition of a Right of Occupancy by acts of parties

The holder of either a Statutory or Customary Right of Occupancy has the power to dispose of his interest in the land,[161] including improvements thereon, by assignment, mortgage, transfer of possession, sublease or any other form of disposal including by assignment, mortgage, or sale. At all times, however, this right is subject to the provisions of sections 21 and 22 of the Act, thus it is not completely unfettered.[162]

3.2.5 The consequence of death of the occupier

In the event of the death of an occupier, the foremost consideration is the form of the Right of occupancy: is it Statutory or Customary? In this regard, the personal or customary law applying in the locality where the land is situated is instructive. It is to section 24 of the Land Use Act that recourse must be had as it regulates the legal position as follows:

> (a) in case of a Customary Right of Occupancy (unless non-customary law or any other customary law applies) be regulated by the customary law existing in the locality in which the land is situate;

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159 (2009) 7 Nigeria Weekly Law Report (pt 1141) 605-607.

160 *Debup v Kolo* (1993) 12 SCNJ 1.

161 Taiwo (n 46 above) 29

162 Section 21 makes it mandatory for any transaction relating to land to be done with the Governor's consent, even though there are provisions under paragraph (a), (b) and (c) which provide exceptions to the general rule. As an example, paragraph (a) provides that consent is not required in the case of an equitable mortgage.

(b) in the case of a Statutory Right of Occupancy (unless any non-customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of the property of like nature to right of occupancy.

It is therefore worth noting that in the case of a Customary Right of Occupancy, the relevant law applicable is *lex situs* (the law regulating land in the place where the deceased died). For instance, *lex situs* will apply to an Ibo man who died in Zaria, unless English Law or any other customary law applies. However, in the case of a Statutory Right of Occupancy, the relevant law applicable is the personal law of the deceased (unless English law or customary law applies). By way of illustration, if a Hausa man died in Enugu State of Nigeria, personal law will generally apply.

A further consideration is that the law of succession essentially determines the applicable rule of devolution of land to the owner or occupier's heirs. The heirs may be determined according to the applicable law of succession of the deceased who died intestate or may be prescribed by him where he died testate.

3.2.6 The consequence of a Right of Occupancy obtained by way of court order

Rights of Occupancy can be acquired by way of a court order.[163] This arises where there is a judgment against the holder of a Right of Occupancy who was unable to settle the judgment debt. Consequently, the judgment creditor is permitted by law, under the Sheriffs and Civil Process Act, to attach the immovable property of the judgment debtor for disposition in satisfaction of the judgment debt.[164] Section 21(a) of the Land Use Act also recognises this procedure, although it is subject to the express consent of the Governor.[165]

[163] Taiwo (n 46 above) 29.
[164] As above.
[165] Order V Rules 3-10 of the Sheriffs and Civil Process Act and Judgment (Enforcement) Rules, Cap. S6 LFN, 2004 also provides that Governor's consent is required in cases where the property is sold by or under order of any court under the provisions of the applicable Sheriffs and Civil Process Law.

3.2.7 Obligations and duties imposed on the holder of a Certificate of Occupancy

Once a Right of Occupancy has been granted, the holder is issued with a Certificate of Occupancy. This Certificate unequivocally stipulates the duties and obligations imposed upon him, also revealing the consequences of a failure to abide by the duties and obligations (although some obligations are viewed merely in theoretical terms and are not practically enforced). The primary duty placed on the holder is the payment of rent as prescribed under the Act from time to time,[166] although as just mentioned, land holders invariably do not comply with this provision (most often with absolute impunity). In addition, 'a holder is expected to pay for any incidental expenses in the event that the Certificate of Occupancy is revoked due to non-payment of rent or refusal to accept a Certificate after it was issued'.[167] A further requirements is that any land holder is supposed to pay for improvements that have not been completed.[168]

Additional obligations which it is anticipated that the land holder must adhere to include the fact that the holder must allow the Governor or his agent to enter into his land for inspection where necessary, although such should only take place during the day.[169] This is a controversial obligation, because it is arguably equivalent to a violation of the constitutional right to privacy[170] but to date no challenge has been lodged arguing that the right to privacy should outweigh the right of the Governor or his agent to inspect the property. There is a nexus between the right of the Governor or his agent to inspect the property and the Certificate of Occupancy in that the holder has undertaken to ensure that all beacons or landmarks on the property will be maintained and that any necessary repairs which clearly define the boundary of the area covered by the Certificate of Occupancy are effected.[171] Thus inspection is necessary to guarantee that repairs are executed when necessary. The land holder is also liable for expenses incurred for erecting a beacon when instructed to do so by the Governor.[172] Notwithstanding the

166 Section 10(b) of the Land Use Act.
167 Section 9(3) of the Land Use Act.
168 Section 10(a) of the Land Use Act.
169 Section 11 of the Land Use Act.
170 Section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011).
171 Section 13(1) of the Land Use Act.
172 Section 13(2) of the Land Use Act.

wording of this provision, it is submitted that this section is redundant as it does not deter a holder to wilfully refuse or fail to maintain a beacon or landmark, since he would only be required to pay for the expenses incurred, with no further sanction. By extension of this argument, the Governor amounts to nothing more than a lender; and the holder a borrower of the land.

With reference to the provision concerning the Governor furnishing consent to an assignment, mortgage or sublease, the Governor may instruct the holder to submit instruments executed in evidence of the easement, mortgage or sublease to the Governor for examination.[173] The effect of this requirement is merely to unduly delay the process of procurement of consent. Similarly, whereas one of the requirements is that the holder is prohibited from alienating a Certificate of Occupancy without the consent of the Governor or local government as the case may be,[174] it is argued in this thesis that there is no rationale for this tautologous provision given that section 22 of the Act has exhaustively elaborated on the issue of consent.

3.3.8 Examining the holder of a Certificate of Occupancy's rights

The Land Use Act dictates that the holder of a Certificate of Occupancy has a number of rights flowing from having complied with the formal processes involved in obtaining the right to the land. Naturally, the most important right is that the land holder has exclusive rights to the land, being the subject matter of a Right of Occupancy. The right applies against all persons, except the Governor or the State where the land is situated.[175] Nonetheless, ambiguity and confusion abounds because an inevitable question that arises is how does one resolve the impasse when another person presents a better title to the same land? It is therefore not clear whether the concept of 'exclusive right' accruing to one party is able to extinguish the other party's existing rights. The purpose of the present research is to reveal answers to these contentious and vague aspects in subsequent chapters.

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173 Section 22(2) of the Land Use Act.
174 Sections 22 and 21 of the Land Use Act.
175 Section 14 of the Land Use Act.

Less controversial rights that the land holder has to his benefit include the duty on the Governor to notify the holder of the new rent so fixed from time to time so that the land holder is fully aware of any changes thereto.[176] Moreover, the land holder "has the right to transfer, assign and mortgage any improvement on the land in accordance with the Act;[177] and an occupier has the exclusive right to the total possession of all improvements on the land".[178] In addition, 'as a lessee, a holder is entitled to quiet and undisturbed possession of the land, subject only to good behaviour'.[179]

Purported protection of the land holder's rights is that he is entitled to compensation if his certificate of occupancy is revoked for public interest;[180] and the fact that 'a holder is entitled to costs in respect of buildings, installation or improvement thereon after the revocation'.[181] Accordingly, it is the considered view of the researcher that not only are some of these provisions superfluous, but they are inevitably unenforceable, thus the law does not serve the purpose of protecting access to land as contemplated by the Constitution of Nigeria and international instruments to which Nigeria is party.

3.3.9 Alienation of rights under statutory laws

Regardless of this contention, it must at least be appreciated that a consequence of the Act is that land is intended to be held in trust and administered for the use and common benefit of all Nigerians. Indeed, it unambiguously requires the consent of the governor before alienation can be attempted.[182]

3.3.10 Consequences of alienation without the required consent

Any holder of a Statutory Right of Occupancy approved by the governor cannot alienate this right (or part thereof) without the personally approved consent of the governor, according to section 22 of the Land Use Act. Thus, failure to secure consent where

[176] Section 19(3) of the Land Use Act.
[177] Section 15(b) of the Land Use Act.
[178] Section 15(a) of the Land Use Act.
[179] Abugu (n 24 above) 11-13.
[180] Section 29(1) of the Land Use Act.
[181] Section 29(4)(b) of the Land Use Act.
[182] Sections 21 and 22 of the Land Use Act.

same is required, may lead to the following serious consequences: first, the complete nullity of the transaction. This is stipulated in section 26 of the Land Use Act in the following terms:

> any transaction or instrument which purports to confer or vest in any person any interest or right over Land other than in accordance with the provisions of this Act shall be null and void.[183]

Moreover, where there is any doubt, this was affirmed by the decision in *Savannah Bank v Ajilo*[184] where the Court held that any alienation of any interest in land without the governor's consent is null and void *ab initio*. Second, prohibition of registration of the transfer of land is prescribed. The Land Registration Laws of various States of the Federation prohibits registration of any instrument transferring any right or interest in land without the requisite consent to that effect or in compliance with the applicable law. This is repeated in section 12 of the Kwara State Land Registration Law,[185] that provides:

> no instrument executed before the commencement of this law shall be registered if it does not comply with the requirements of this law or of any enactment in force at the date of execution thereof.

In other words, for any instrument to be registered in the Land registry, it must be fully in compliance with the applicable law regulating land transactions in the State.

A third consequence is that the Land Instrument Registration Laws of various states of the Federation also provide that any registrable instrument which is not registered cannot be pleaded or given in evidence in any court of law as affecting any instrument in Land.[186] Judicial precedent in this regard is the case of *Lawson v Afani Continental Company Limited*[187] the Court of Appeal held that:

> By virtue of 15, Land Registration Law, Cap 85, no instrument shall be pleaded or given in evidence in any court as affecting any land unless the same shall be registered in the appropriate office. In other words, a registrable instrument which is not registered cannot be pleaded and if pleaded, it is not receivable in evidence, but where though in advertence, it is admitted, it should be expunged.

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183 Section 26 of Land Use Act.
184 (1987) 2 Nigeria Weekly Law Reports (Pt.57) 421.
185 Cap. L3, Laws of Kwara State, 2006.
186 Section 15 of Land Registration Law, Cap. L3, Laws of Kwara State, 2006.
187 (2000) Federal Weekly Law Reports (Pt.109) 1766 at 1741.

Fourth, the Land Use Act stipulates that the governor of any of the respective states can revoke a Right of Occupancy of its holder, who alienates the land without the requisite consent or approval.[188] The fifth and final consequence is imprisonment or the payment of a fine. Section 28(7) of the Land Use Act provides that no land to which subsection (5)(a) or (6) of section 28 applies that is held by any person shall be transferred to any other person except with the prior written consent of the governor. Subsection (8) of same section goes further to provide:

> Any instrument purporting to transfer any underdeveloped land in contravention of subsection (7) of this section shall be void and of no effect whatsoever in law and any party to any such instrument shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of ₦5,000.

Ambiguity and contention remain, however. There is absolutely no mention made of the circumstance where the land that is the subject matter of the alienation is developed and the holder alienates without consent. It is not immediately apparent whether section 28 applies to this situation or not. It is accordingly submitted by the researcher that section 28 should apply and vehemently disputes the rationale behind restricting section 28 to undeveloped land only. This is because, any holder that wants to alienate his right of occupancy may connive with another person to develop the land and later alienate it.

It is however worth noting that there are some exceptions to this general rule in that in some cases, the court will not declare a transaction illegal as a result of lack of consent as occurred in the case of *Solanke v Abed*,[189] where the Supreme Court held that notwithstanding that the consent of the Governor had not been obtained as provided in section 11 of the Native Right Ordinance, the transaction was not illegal but could have been avoided. Likewise, in *Awojugbabe Light Industries Ltd v Chinukwe*,[190] Iguh JSC held that any transaction without the governor's consent is incomplete until consent is received, after which it can be said to be fully effective. Envisaged here is that it is lawful for parties to begin negotiations towards the alienation of land before seeking consent, but consent must be obtained to perfect the transaction.

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188 Section 28(3)(d) of Land Use Act.
189 (1962) NRNLR 92.
190 (1993) 1 Nigerian Weekly Law Reports (Pt 270) 485.

It is the researcher's view that even though the above cases state the position of the law, those decisions have been superseded by events on account of the fact that the present position of the law is that any alienation outside the approval of the governor is invalid.[191] In addition, under customary law, where the family head alienates land without the consent of the principal members, thereby misrepresenting that the family land is his alone, the alienation is void.[192] As a safeguard, however, the same consequences that emanate in terms of the Land Use Act will be applied under other laws where there has been alienation without consent.

3.3.11 Legislative restriction on alienation of land

The Land Use Act and other legislation provides for certain restrictions on alienation or transfer of land. It is pertinent to begin with section 22 of the Land Use Act which states that the failure to obtain consent renders the alienation null and void. Nonetheless, there are exceptions to the general rule that consent is required. Exceptions are provided under paragraphs (a)-(c) of section 22, but require critique because they are flawed:

(a) Governor's consent shall not be required to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor.
(b) It shall not be required to the re-conveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Governor.
(c) The Governor of a State cannot grant a statutory right of occupancy to a person under the age of twenty-one (21) years.[193]

This latter provision also has an additional exception, being that 'where a guardian or trustee of a person under twenty-one has been duly appointed for such purpose, the Governor may grant or consent to the alienation of a statutory right of occupancy to

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191 *Union Bank of Nigeria Plc & Anor v Ayodire & Sons Ltd* (2007) 12 Nigerian Weekly Law Reports (Pt 1052) 567 and *Phametic Industrial Project Ltd v Trade Bank Nig Plc & Ors* (2009) 13 Nigerian Weekly Law Reports (Pt 1159) 577. In these cases, requisite consent was sought and obtained but only obtained from persons not delegated by the Honourable Commissioner for Land and the Court held that the mortgage transactions were void and illegal and that notwithstanding the fault of the mortgagors who obtained the said consent from the incorrect persons, the mortgagors could benefit from their own wrongful conducts.

192 *Osaibafor v Osaibafor* (2005) 3 Nigeria Weekly Law Reports (Pt 913) 665.

193 Section 7 of the Land Use Act.

such guardian or trustee on behalf of such person under age'.[194] Moreover, the proviso goes further to stipulate that 'a person under the age of twenty-one years upon whom a statutory right of occupancy devolves on the death of the holder shall have the liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him'.[195] The submission is accordingly made that this restriction is unacceptable because it maintains an old Common Law position, in that our legal system has since provided legal capacity to be eighteen years. Thus, contractual capacity, capacity to vote etc is eighteen years.[196]

One further aspect of relevance is that a non-Nigerian cannot be granted right of occupancy, except on condition that approval has been granted by the National Council of States.[197]

3.3.12 Alienation of right to land under other laws

Some legislation also aids in regulating alienation of land in Nigeria.[198] The Nigerian Coal Mining Act[199] prescribes that it is imperative to seek the consent of the minister in charge of a department when dealing with an authority that is alienating its property. It is important to examine the legislation setting it up to see whether consent is a requirement and to apply for it and obtain consent. The Nigerian Coal Authority Act provides in section 12(4) that 'corporations shall not alienate, demise, mortgage or charge any land vested in the corporation without the prior approval of the minister.' Thus, in the case of *Rockonoh Property Co Ltd v NITEL Plc,*[200] the Court held that 'it must not be accepted, the absence of the necessary ministerial approval or consent is a serious defect which affects the title sought to be conferred by the relevant instrument.'

194 Section 7(a) of the Land Use Act.
195 Section 7(b) of the Land Use Act.
196 Section 1(b) of the Electoral (Amendment) Act (No. 2) 2011.
197 Section 46(1) of the Land Use Act.
198 For instance, Nigeria Coal Authority Act, Cap N95, Laws of the Federation of Nigeria, 2004.
199 Nigeria Coal Authority Act, Cap N95, Laws of the Federation of Nigeria, 2004.
200 (2011) Federal Weekly Law Reports (Pt 67) 885 at 910 (per Uwaifo JSC).

Since customary law plays such a dominant role in African society, the analysis engages with the acquisition of the Right of Occupancy in terms of customary law.

3.4 CUSTOMARY RIGHT OF OCCUPANCY

The customary right of occupancy to be discussed immediately below has been divided into two branches, as follows:

a) Customary right of occupancy expressly granted;
b) Customary right of occupancy deemed granted.

3.4.1 Customary Right of Occupancy expressly granted

A Customary Right of Occupancy is defined in section 51 of the Land Use Act as the right of a person or community lawfully occupying land in accordance with customary law and includes a Customary Right of Occupancy granted by a local government in terms of the Act. It is argued that this definition is both vague and ambiguous in that it makes it seem as though it is only customary law that governs the granting of a Right of Occupancy and excludes the Act from its operation. However, section 5(1)(a) of the Act clearly articulates that the governor can grant a Statutory Right of Occupancy over land in an urban area.[201] In *Olagunju v Adesoye*[202] the Supreme Court confirmed the power of the governor to grant a Statutory Right of Occupancy whether or not the land concerned is in an urban or non-urban area.

Furthermore, the Land Use Act empowers local government to grant a Customary Right of Occupancy in respect of land not in an urban area to any person or organization, for agricultural purposes or for purposes associated with agriculture, including grazing and residential or other purposes.[203] Similarly, where land was not in an urban area but such land was held and occupied for agricultural purposes, after 1978, such holder was entitled to continue holding the land as if the Customary Right of Occupancy had been granted to him by the local government.[204] Thus, in *Ogunleye v Oni*[205] the Plaintiff

[201] Taiwo (n 46 above) 209.
[202] (2009) 9 Nigeria Weekly Law Reports (Pt 1146) 225.
[203] Section 6 of the Land Use Act.
[204] Section 36 of the Land Use Act.

claimed land based on a document of grant made in early 1978 as well as a Certificate of Occupancy granted to him in 1983 by the Commissioner for Land. He asked for damages for trespass. The land in question is situated within a non-urban area, thus falling within the remit of local government. The Plaintiff (Ogunleye) had obtained a Certificate of Occupancy from the Governor in terms of section 5 of the Act which allows a Governor to grant a Statutory Right of Occupancy both in urban and non-urban areas. The Defendant, for his part, said that he inherited the land from his father in 1936 (who had acquired same for a valuable consideration). The Court applied section 34 of the Act and held that the Plaintiff was not the holder of the land in dispute before 1978. Instead, the Certificate of Occupancy could only make him a holder of a Statutory Right from 1983. The Court thus confirmed that since the Defendant held the land before the enactment of the Act, the Defendant was deemed to be the holder of Statutory Right of Occupancy granted by the Governor. Moreover, since the holder did not rebut or revoke the Defendant's Deemed Right before issuing a grant to the Plaintiff, the Plaintiff's right was not valid and against the letter and spirit of the Act. Consequently, the Defendant had a better title.

3.4.2 Customary Right of Occupancy that is deemed to be granted

A holder of a Customary Right of Occupancy is deemed to have been granted this right if he held such land prior to the commencement of the Land Use Act and continues to hold the land. He is said to be the holder rightly granted by the local government. Thus, section 36(2) provides:

> Any occupier of such land, whether under customary right or otherwise however, shall if that land was on the commencement of this Act being used for agricultural purposes continue to be entitled to possession of the land for use for agricultural purposes as if a customary right of occupancy had been granted to the occupier or holder thereof by the appropriate Local Government and the reference in this subsection to land being used for agricultural purposes includes land which is, in accordance with the custom of the locality concerned, allowed to lie fallow for purposes of recuperation of the soil.

In affirming the right of a holder under a deemed grant, the Supreme Court held in the case of *Adole v Gwar*,[206] that the Land Use Act was not promulgated with the objective

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[205] (1990) 2 Nigeria Weekly Law Reports (Pt. 135) 745.
[206] (2008) 11 Nigeria Weekly Law Reports (Pt. 1099) 562 at 588 and 606.

of abolishing all existing titles or rights to possession existing prior to its promulgation. Rather, it reinforces or strengthens the title of prior holders who are deemed grantees. This is, however, subject to the proviso that it limits their interest to Statutory or Customary Rights of Occupancy, as the case may be by removing radical title. Customary Right of a title holder has not been retracted or extinguished with the coming into force of the Land Use Act. This case is analogous to the case of *Ajilo* where the Supreme Court held that when applying sections 21 and 22 there is no distinction between deemed and actual grants.

Similarly, in *CSS Bookshops Ltd & Ors v Registered Trustees of Muslim Community of Rivers State & Ors*,[207] it was held that by virtue of section 34(1), (2) and (3) of the Act, where developed land in an urban area was vested in any person immediately before the commencement of the Act, the land continues to be held by that person in whom it was vested as though the holder of the land was the holder of a Statutory Right of Occupancy issued by the Governor under the Act. Furthermore, 'where the land is undeveloped, a portion of the land not exceeding half of one hectare in area shall continue to be held by the person in whom the land was vested as if the holder of the land was the holder of a Statutory Right of Occupancy granted by the Governor in respect of the land'.[208]

3.4.3 Alienation of rights in terms of customary law

The history of alienation of land can be traced back to the customary land tenure system because it was not the practice in the past to alienate land. For land was considered to be held by its present owners in trust for future generations.[209] It was also asserted that 'there is perhaps no other principle more fundamental to the indigenous land tenure system throughout Nigeria than the theory of inalienability'.[210] Consequently, native law and custom do not recognise the sale of land and the literature on this point is abundant.[211] This principle inherent to the indigenous land

[207] (2006) 11 Nigeria Weekly Law Reports (Pt. 992) 530 at 561-562, 567 and 574.
[208] *Ilona v Idakwo* (2003) 11 Nigeria Weekly Law Reports (Pt. 830) 53.
[209] IO Smith 'The Land Use Act, Twenty Years After' (2003) *Journal of Private and Property Law* 200.
[210] Olawale (n 129 above) 147.
[211] Coker (n 49 above) 40.

tenure system has been given judicial recognition in *Lewis v Bankole*[212] where the Chief Justice declared: 'The idea of alienation of land was undoubtedly foreign to native ideas in the olden days'.

From the foregoing observations, it is not clear whether what is meant, is that alienation was forbidden by a positive rule of customary law or whether it was merely not the practice in earlier times.[213] However, it is a well-known fact that under customary law, the gift of land to close relations and friends is common.[214] In addition to that, alienation of land may take the form of a loan or be borrowed, or pledged and more recently, sale. So even though the above observations cannot be a justification for the origin of alienation in Nigeria, the consent principle has underpinned the law and practice in alienation of family land.

3.4.3.1 Alienation by the head of a family/majority of principal members

Generally, for alienation of family land to be valid, all members of the family must approve of the alienation, otherwise it is void. Going by the decisions in *Usaibafor v Usaibafor,*[215] where the family head alienates without the consent of the principal members thereby misrepresenting that the family land is his, the alienation is void. Moreover, where he not only alienated without their consent but also misrepresented that the land is his, the sale will be void. However, in practice, alienation by the head of a family without the consent of principal family members is merely voidable. Thus, in *Lukan v Ogunsusi*[216] the Supreme Court held with reference to consent in respect of the alienation of family land as follows:

1. The head of the family cannot alienate family property without the consent of the family, if he does, the sale will be voidable.[217]
2. It must be taken to mean that every member has to give his consent. It is not enough if majority give their consent.[218]

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212 (1904) 1 NWLR p.102.
213 Smith (n 209 above) 200.
214 As above.
215 (2005) 3 Nigeria Weekly Law Reports (Pt. 913) 665.
216 (1972) 5 Supreme Court 40.
217 G Ezejiofor 'Alienation of Family Property in Nigeria' (1975) 7(12) *The Journal of Legal Pluralism and Unofficial Law* 4-20.
218 As above.

3. Whether the head of the family as against all principal members of the family,[219] refused the alienation of family proper, the head cannot unreasonably with hold his consent for such a sale as against members of the family.[220]
4. The effect of *Ekpendu v Erika*[221] *Esan v Faro*[222] is that alienation of family land by the head of the family is voidable whilst sale by the principal members of the family in which the head does not consent is void *ab initio.*[223]
5. The principal member of a family cannot give any title in the conveyance of the family property without the head of the family joining in the conveyance even though he may be in agreement.

Confirming this position is the fairly recent case of *Achilihu v Anyatonwu.*[224] Here, Lazarus Oguevule, as the head of the Umuagbaghigba family, pledged family land to the Respondent in 1968. The said transaction was witnessed by Jacob Amalaha, a principal member of the family. In 1970, however, the pledge was surreptitiously converted into a sale in favour of the Respondent. The sole witness to the purported sale transaction was Lazarus's wife. No principal member of the family witnessed the sale transaction. Nonetheless, the Respondent took possession of the parcel of land. Once he had occupied the land, he established a palm oil plantation (during the life time of Lazarus Oguevule, which ended in 1971) and harvested the palm oil without hindrance from any one. It was in 1983 that the Appellant entered the said land, at which point the Respondent sued the Appellants at Imo State High Court, where the Court gave judgment in favour of the Respondent on 14 October 1996. The Appellants were aggrieved by the judgment and appealed to the Court of Appeal, Port Harcourt Division. This appeal was dismissed. Unsatisfied with this outcome, the Appellants appealed to the Supreme Court. At this point, the Respondent cross-appealed. The Supreme Court held that 'the sale of a family property by the head of the family without the consent of other members of the family is voidable'. Aka'ahs JSC, was more elaborate in his reasoning. Besides stating the effect of alienation of family land without consent of the principal members, he reiterated the role of the family head in respect of

219 LK Agbosu 'The Land Use Act and the state of Nigerian land law' (1988) 32(1) *Journal of African Law* 1-43.
220 Ezejiofor (n 217 above).
221 (1959) 4 Federal Supreme Court 75.
222 (1947) 12 West Africa Court of Appeal 136.
223 Oshio (n 83 above).
224 (2013) 1 MJSC (Pt. II) 2.

the management of family property in the following terms:

> The management of family property is put in charge of the family head and he acts as a trustee of such … He should exercise his power not for his own private advantage but for the benefit of the family and he does not enjoy absolute power in the management of family land per se. He is required to consult the other members of the family, and in case of important decisions such as sale of a family land, he must obtain the consent of the principal members of the family. As the head of the family cannot transfer family land as his own exclusive personal property, any transfer of the family property transferred by him without carrying alone the principal members is void *ab initio.*

The implication of the above decision is that any transfer of family land by head of the family without the consent of the principal members is null and void.

3.5 CREATION OF A TRUST TO GUARANTEE ACCESS TO LAND

The creation of trust brings to the fore the issue of the centrality of the intention of a person giving over ownership or possession of his or her property.[225] To create a valid trust, the words used must be able to address the certainty of intention, the certainty of subject matter and the certainty of objects.[226] While emphasizing the requirements that creation of trust must meet, Lord Langdale said:

> As a general rule, it has been laid down, that when property is given absolutely to any person, and the same person is, by the giver who has the power to command, recommend or entreated or wished, to dispose of that property in favour of another, the recommendation, entreaty or wish shall be held to create a trust. First if the words were so used, that upon the whole, they ought to be construed as imperative.
>
> Secondly, if the subject of the recommendation or wish be certain, and thirdly, if the object or persons intended to have the benefit of the recommendation or wish also be certain.[227]

Anyone with the capacity to dispose of particular property also has the capacity to create a trust over such property. Any person who is not below the age of 18 years can create a trust. The creation of a trust by a minor is voidable because such could be repudiated during his minority. The settlement on trust by a minor is however possible in respect of an equitable interest since a minor cannot hold any property or estate in law.[228]

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225 F Emiri and AO Giwa *Equity and Trust in Nigeria* (Malthouse Press 2012) 25.
226 As above.
227 As above.
228 As above.

Married women also have the capacity to create a trust to cover their personal property. No restriction is placed on women to own and create a trust on their property.[229]

Companies that are incorporated under the Companies and Allied Matters Act[230] can create trusts. At incorporation the company becomes an artificial (legal) person capable of suing and being sued in its corporate name.[231] This position was aptly captured in the case of *Salomon v Salomon & Co*.[232] Mr Salomon had, for many years, carried on a prosperous business as a leather merchant. In 1892 he decided to convert it into a limited company and so formed Salomon & Co Ltd. Salomon assumed the position of managing director, with his wife and five children as members of the company. This new company purchased Salomon's leather business as a going concern for $39 000, the price being satisfied by $10 000 in debentures. Conferring a charge on all the company's assets, $20 000 was fully paid in $1 shares in the name of Salomon and the balance in cash. Seven of the shares were subscribed in cash by the members with the result that Salomon held 20 001 of the 20 007 shares issued, and each of the remaining six were held by a member of his family as nominees for him. Barely a year later, the company went into liquidation. The assets were sufficient to satisfy the debenture but the unreserved creditors with debts amounting to $7 000 received nothing. The liquidator instituted an action on behalf of the creditors against Salomon to indemnify the company by way of providing that the company had been validly formed, hence the business belonged to it and not to Salomon, and Salomon was merely the company's agent. The Court held that the company has legal personality entirely separate from the shareholders.

Relevant as far as companies is concerned is that

> as from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may from time to time become members of the company, shall be a body corporate in the name contained in the memorandum and shall be capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of the

229 As above.
230 Company and Allied Matters Act, Cap C20 LFN 2004.
231 Emiri and Giwa (n 225 above).
232 Salomon v Salomon & Co (1987) AC 22, 66.

> members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.[233]

Thus, the creation of trust is regulated by part C of the Companies and Allied Matters Act Cap C20 Laws of Federation of Nigeria 2004. Section 590(1) provides:

> Where one or more trustees are appointed by any community of persons bound together by custom, religion, kingship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the community, body or association (hereinafter in this Act referred to as "the Association") apply to the commission in the manner hereafter provided for registration under this Act as a corporate body.

The registration of a trust confers the right of perpetual succession. Section 596 of the Companies and Allied Matters Act provides:

> From the date of their registration, the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, and power to sue and be sued in its corporate name and as such trustee or trustees and subject to section 12 of this part of this Act to hold and acquire, and transfer, assign or otherwise dispose of any property or interest therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provision as the trustee might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

3.5.1 THE DUTIES OF TRUSTEE UNDER TRUST

Kekewich J in the case of *Hallows v Lloyd*[234] speaks of the duties of the trustee where it was held as follows:

> I think that when persons are asked to become new trustees, they are bound to inquire of what the property consists that is proposed to be handed over to them and what are the trusts. They ought also to look into the trusts documents and papers to ascertain what notices appear among them of encumbrances and other matters affecting the trusts.

It emerges from the above quotation that in accepting the trust, the trustee has a duty to administer the trust in accordance with the laws creating that trust. Therefore, the duties of trustee under the principle of trust are numerous but under the heading the duties of trustee in relation to land under their trust shall be examine.

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[233] SN Nzegwu and I Uhumuavbi 'Assessing the suitability of "Lifting the Corporate Veil" Legal Mechanism in the Enforcement of Law on Corporate Manslaughter and Corporate Social Responsibility in Nigeria' (2022) 4(1) *IJMCEducational Research (IJMCER)* 129-140.

[234] (1886) 39 Chancery Division 686 at 691.

3.5.2 TRUST UNDER THE 1978 LAND USE ACT

Under the traditional native law and custom, land was corporately owned by the family and community. Individual ownership of land was completely unknown and even incomprehensible.[235] It was the colonization of Nigeria and the introduction of English Law, which brought with it the notion of capitalism which gradually replaced the extant communal and welfarist system. Land was needed for industrialization and housing schemes. Consequently, families and communities began to sell land to prospective buyers. This led to a series of litigation as the same parcel of land was being sold to several purchasers at the same time. The inefficient system of land registration exacerbated and compounded the problem. This led to great confusion, necessitating drastic action to redress the trend. The chosen method of recalibrating the system was the Land Use Act promulgated in 1978, which introduced a number of mechanisms aimed at protecting the right to land and property.

One of the defining features of the Land Use Act is the creation of a statutory trust (in other words, a trust that derives its existence from legislation). For example, under the Kwara State Property Law, 1987, a statutory trust is envisaged in section 20, which provides that:

> For the purposes of this Act land held upon the 'statutory trusts' shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale after payment of rates, taxes, costs of insurance repairs and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the person (including an encumbrance of a former undivided share or whose encumbrance is not secured by a legal mortgage) interested in the land.

Section 34(2) of the Property Law Act, 1952 provides that where land is conveyed to persons in undivided shares it will vest in the first four named persons upon trust for all the beneficiaries as tenants, who all enjoy the property in common. From the foregoing it is revealed that the moment a land owner dies intestate and without having made specific provision for the subsequent ownership of his property, his property will automatically come under the protection of the law and hence be converted into a statutory trust. Under this arrangement, ‘the trustees of the statutory trust become the

[235] Olawale (n 129 above) 42.

legal owners of the property while the beneficiaries become the equitable owners'.[236] Ownership of land, statutorily speaking, is vested in the authority of the trustees, while members of the public are the beneficiaries. This is graphically captured by the Land Use Act. For example, the preamble to the 1978 Land Use Act provides:

> An act to vest 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 would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and organisations for residential agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on local governments.

It is significant that the idea of a trust which was the underlying philosophy of family and communal property under Nigerian native law and custom was also the underlying philosophy behind the Land Use Act. Section 1 of the Land Use Act provides thus:

> Subject to the provisions of this Decree all land comprised in the territory of each state in the federation are hereby vested in the military Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Decree.

In interpreting this section, the Court held in *Akinloye v Ogungbe*[237] that section 1 of the Act vested all land comprised in the territory of each state in the Governor. It must be pointed out that the Governor, as trustee under the Land Use Act, is not the same as a trustee under the Received English Law, which rendered the Governor a "governor as trustee". Hence, in terms of the Land Use Act, the governor, despite being a trustee, cannot sell the trust property and transfer title to the purchaser as though he is the owner thereof, but can only allocate the land on the recommendation of the Land Use Allocation Committee. Furthermore, the allocation is for a maximum term of 99 years in both urban and rural environments, albeit that in terms of the latter, it is the local government that allocates the land for occupation.

The principles of trust are very important in the interpretation and enforcement of the Land Use Act in order to achieve the goals of the 1978 Land Use Act reforms. The court in several pronouncements has affirmed that administration of Land in Nigeria is based on trust. Beneficiary when sui juris and absolutely entitled to the trust property under the

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[236] I Abdulkarim 'Trust Law and the Administration of Real Property in Nigeria' (2011) 2 *International Journal of Advanced Legal Studies and Governance* 210.

[237] (1979) 2 Nigerian Law Reports 282.

received English Law can terminate the trust and get the trust property vested in them; this is not possible under the Land Use Act. So, Governor as trustee under the Land Use Act is a special kind of trustee. This fiduciary position renders him accountable for his action and in-action.

3.6 CONCLUSION

The nature of a right – especially the right of occupancy under Nigerian Land Law – gives an occupier nothing more than a right of possession, and thus a right to use the land. Alienation of the land cannot occur without the written consent of the Governor. Thus, alienation of land in Nigeria creates many problems. An initial problem is obviously the actual obtaining of the Governor's consent or the consent of the local government as the case may be. Additional problems involve obtaining the consent of principal members of a family in the case of family or communal land; and obtaining consent of the Minister when the land is intended to be used for mining purposes. It is submitted that most of these problems will be eradicated or at least ameliorated if the consent provision on the instances is either deleted or amended. It is further submitted that where the primary failing arguably exists is in respect of section 5(2) of the Land Use Act which provides that upon the grant of a Statutory Right of Occupancy under section 5(1), all existing rights to the use and occupation of the land which is the subject of the Statutory Right of Occupancy shall be extinguished. The problem inherent in this provision is that it makes it appear as though a Certificate of Occupancy confers many rights and that it is consistent with other statutes whereas this is not the practical reality.

CHAPTER FOUR: THE CURRENT FORMS OF ACCESS TO LAND AS APPLIED TO THE SPECIFIC CONTEXT OF KWARA STATE

4.1 INTRODUCTION

The detailed extrapolation of the law governing the Right of Occupancy up until this point has been largely abstract and descriptive, affirming that a Certificate of Occupancy is a document issued under the hand of the Governor of a specific state, evidencing the existence of a right of occupancy. Importantly, the procedure for obtaining a Certificate of Occupancy varies from state to state, so given the topic under consideration in this thesis, the analysis now moves to the practical implementation of the Land Use Act in Kwara State.

Kwara State was created on 27 May 1967 by the military Head of State General Yakubu Gowon with Ilorin as its state capital. The State is made up of 16 local government areas. Its people are from different tribes, but the predominant language is the Yoruba language. The state is in Northern Nigeria.

The Kwara State has been involved in land administration since the promulgation of the land Tenure Law of 1962 which was applicable to Northern Nigeria. The promulgation of the Land Use Act was heralded, but it was also made clear that in 1978, it

> was not totally new to the Kwara State government because substantial part of the 1978 Land Use Act was culled from the 1962 Law. The Land Use Act No. 6 of 1978 was promulgated into law with effect from 29 March 1978 as the nation's land policy document. Since then, it has remained so in the country till date. To all intents and purposes, the Act regulates the ownership, alienation, acquisition, administration and management of land within the Federal Republic of Nigeria.[238]

The 1978 land reform started with the inauguration of the Land Use panel on 26 May 1977 by the federal military government. The panel set up by the military government were given the following terms of reference:

a) to undertake an in-depth study of the various land tenure, land use and conservation practices in the country and recommend steps to be taken to streamline them;
b) to study and analyse the implications of a uniform land policy for the country;

[238] NB Udoekanem, OA David and OO Victor 'Land ownership in Nigeria: Historical development, current issues and future expectations (2014) 4(21) *Journal of Environment and Earth Science.*

c) to examine the feasibility of a uniform land policy for entire country, make recommendations and propose guideline for their implementation; and
d) to examine steps necessary for controlling future land use and also opening and developing new lands for the needs of the government and Nigeria growing population in both urban and rural areas and make appropriate recommendations.[239]

The promulgation of the Land Use Act in 1978 introduced radical changes in the administration of land in Nigeria. The Land Use Act introduced a National Uniform Law that now regulates land in Nigerian by transferring the legal title on all land in urban area to the state governor and the rural area to local government, thus, eliminating absolute ownership and introduced a uniform title to land that will be applicable all over the country.[240] The transfer of legal title to the government however left the customary land title holders with possessory right over their respective land. This situation created a dual right over land in Nigeria.[241] The Land Use Act still recognises customary land tenure. This was acknowledged in the case of *NNPC v Sele & Ors*[242] thus:

> It is settled law that the right of use of the land by the community is intact before and after the promulgation of the Land Use Act. The Land Use Act, I agree, does not alter vested customary rights of the holder of the land.

4.2 OBTAINING A RIGHT AND CERTIFICATE OF OCCUPANCY IN KWARA STATE

The law regulating control and management of land in Kwara State provides for the acquisition of a Statutory Right of Occupancy for plots of land in Urban areas of Kwara State. Paragraph two is the logical starting point as it refers to a Provisional Allocation of Statutory Right of Occupancy, thus alluding to the fact that the process is arduous, and one runs the risk of forfeiting the fees payable in the event of any non-compliance with the strictures of the law.

The Kwara State Bureau of Land is imbued with the responsibility of regulating Land Use and the allocation thereof. The Bureau has made it a policy for all applicants applying for a Statutory Right of Occupancy on land to pay the prescribed Certificate of Occupancy fee as part of other fees required from the out-set of the allocation of land to

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239 As above, 51-52

240 The Right of Occupancy is the highest title to land in Nigerian and it was first introduced by the Land Tenure Law of 1962 in Northern Nigeria.

241 OI Derik-Ferdinand and O Okolo Philips 'The Concept of Dualism to Title to Land in Nigeria' (2015) *American International Journal of Contemporary Research*.

242 (2004) 5 Nigeria Weekly Law Reports (pt 866) 379 Court of Appeal.

them. As such, this Certificate of Occupancy is issued *ex lege* and is the final stage of titling. To reach this final stage, an immensely onerous process must be completed that includes applying for the Certificate of Occupancy. To this end, an application form must be completed. The form is obtainable from the State Ministry of Lands and Survey and must indicate whether the application is for residential, commercial, industrial, educational, agricultural or religious purposes. The completed form must be returned along with (a) a passport photograph; (b) a tax clearance certificate; and (c) a non-refundable fee. The matter of these non-refundable fees requires emphasis.

Paragraph one of the Provisional Statutory Right of Occupancy provides for the payment of land charges in accordance with the provision of the Land Charge Law No 7 of 2009 of Kwara State. Immediately apparent is that the amount payable is high, and thus likely prohibitive for most persons in Kwara State. The fees include:

a) Premium fee
b) Administrative charges
c) Development levy
d) Certificate of Occupancy collection fee
e) Administration fee
f) Infrastructure fee
g) Layout fee
h) Administrative charges payable to the Ministry of Housing and Urban Development
i) Survey fee payable to the office of the Surveyor-General
j) Administrative charges payable to office of the Surveyor-General
k) Survey reporting and charting fees
l) Administrative charges payable to the office of the Surveyor-General.

It is also the process which is extremely onerous, as well as the consequence of the failure to fulfil each and every one of the abovementioned requirements. This is clear from paragraph four of the Provisional Letter of Allocation which states: ‘take note that failure to make full payment on or before the 30th day of receipt of this letter will amount

to forfeiture of this offer'. A systematic discussion of this onerous process and how the fees are calculated will now be undertaken.

The first step is the survey of the land. Upon receipt of the application, the applicant will be required to pay a survey fee to enable the office of the Surveyor-General to carry out the survey of the land, so as to determine its exact size and establish beacons indicating the boundaries. The office of the Surveyor-General also draws a survey plan of the land. For either developed or undeveloped land, land officials will further carry out a valuation of the property to determine its capital value upon which the applicant will be required to pay an actual percentage of the value of the property to the government. Upon approval of the survey plan by the Surveyor-General, the application is processed by the land officials and sent to the Land Use Act and Allocation Committee for their consideration.

Should the Land Use Act and Allocation Committee be satisfied with the survey plan, a Letter of Grant is issued by the Governor. At this stage, the applicant is entitled to either accept or reject the allocation. The Letter of Grant also spells out the conditions of the grant. Obviously, the applicant will potentially forfeit what could be a significant amount of money should they reject the allocation and its onerous conditions. If the applicant accepts the allocation, however, an Endorsement of Certificate of Occupancy is issued by the Governor. Once again, payment of prescribed fees is required, where after a Certificate of Occupancy is printed and sent to the Governor for endorsement. The subsequent step is the preparation of printed copies of the Title Deed, which contains a comprehensive description of the property in terms of location, size and dimension. It is based upon these factors that relevant charges are assessed for payment by the person to whom land is allocated. After payment of these charges has been processed, the Governor is then empowered to formally endorse the Certificate of Occupancy. This Certificate is then sent to the Land Registry for registration. It is only after registration that the original Certificate of Occupancy is released to the land holder while a carbon copy is kept at the Land Registry and the Land Administration office.

Should an applicant successfully obtain a Statutory Right of Occupancy in Kwara State, this right has a life span of 99 years from the date of the grant, strictly on condition that the holder abides by the conditions attached to such grant. It is paragraph two of the Statutory Right of Occupancy regulations that contain the conditions precedent for the Right of Occupancy to constitute the requisite evidence that the Right of Occupancy applies and is binding on the person. These conditions encompass four components. Firstly, within a period of two years from the date of commencement of the Right of Occupancy, the holder is obligated to both erect and complete on the said land the buildings or any other similar structured as specified in detail on the approved plans by the Kwara State Town Planning and Development Authority (which must be valued at not less than the specified amount on the Right of Occupancy). Secondly, the holder may not erect or build or permit to be erected or built on the said land, any buildings other than what has been previously approved by the Kwara State Town Planning and Development Authority. This includes the duty not to make or permit to be made, any addition or alteration to the said building to be erected on the land except in accordance with plans and specifications also approved by the Kwara State Town Planning and Development Authority. Thirdly, the holder of the Right of Occupancy is not permitted to develop or build anything on the plot of land in contravention of the current local; or state; or federal building line regulations as applicable on road adjacent to the land in this area. Finally, the holder is prohibited from alienating the Right of Occupancy (or any part thereof) granted or re-granted to him by way of sale, mortgage, transfer of title, sublease or bequest or otherwise, without the prior written consent of the Kwara State Governor.

4.3 THE RIGHTS CREATED IN TERMS OF A TRUST UNDER THE 1978 LAND USE ACT

Every Nigerian, irrespective of gender has the right to apply for land from the government for agricultural, residential, commercial and any other purpose. However, any Nigerian below twenty-one (21) years who wishes to apply for land shall do so, through a guardian or a trustee.

Section 7 of the Land Use Act provides:

> It shall not be lawful for the governor to grant a statutory right of occupancy or consent to the assignment or subletting of a statutory right of occupancy to a person under the age of twenty one years provided that:
>
> a) Where a guardian or trustee for a person under the age of twenty one has been duly appointed for such purpose the governor may grant or consent to the assignment or subletting of a statutory right of occupancy to such guardian or trustee on behalf of such person's age;
> b) A person under the age of twenty one years upon whom a statutory right of occupancy devolves on the death of the holder shall have the liabilities and obligations under and in respect of his right of occupancy as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.

The provisions of section 7 of the Land Use Act amount to denial of right of Nigerians to access land. The twenty-one years requirement is hostile and anti-development and world hinder the dreams of so many Nigerians wishing to access land because the governor is not under any obligation to grant such application because of the wordings of the law that the governor "may" grant the application as against the use of "shall" in other similar provisions of the law.[243] Any Nigerian who shows reasonable purpose for applying for land should be granted land irrespective of age in urban area by the governor and in rural areas by the local government. Thus, Section 6 of the Land Use Act provides:

> It shall be lawful for a local government in respect of land not in an urban area –
>
> a) To grant customary rights of occupancy to any person or organization for the use of land in local government area for agricultural, residential and other purposes.
> b) To grant customary rights of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned."

The highest right that anybody can get on land in Nigeria, be it residential, commercial or agricultural, is a certificate of occupancy if such land is allocated by state government and customary right of occupancy when local government allocates land. Absolute right remains with the government.

[243] Section 5 of Land Use Act, Cap L5, LFN, 2004.

4.4 LAND ACQUISITION BY GOVERNMENT

By virtue of section 1 of the Land Use Act, the legal right over land in urban areas is vested in the hands of the governor. The governor however, does not have possessory right owner the land it has legal right on. The possessory right lies in the land of the indigenes customary title holders. The governor can only come into possession by exercising its power of compulsory acquisition of land. This power is however exercisable if only the acquisition is for public purpose.[244] All land that is today designated as urban centres in Nigeria were once held by customary means. The respective government acquired the land from the natives.[245]

The governor has the statutory right to acquire land without the consent of the customary title holders as required under international declarations. The United Nations Declaration on the right of indigenous people[246] protects the customary rights of indigenous people to their land. Article 8 protects indigenous people from assimilation and place duty on the state to ensure effective compensation for any action that will dispossess them of their land. Article 10 provides that the indigenous peoples shall not be forcibly removed from their lands. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. Article 35 provides for the right of the indigenous people to be consulted on the development or project their land will be used for and their prior consent should be obtained. In the vain the International Labour Congress (ILO) convention 169 of 1989[247] also protects the rights of indigenous people to their lands and their territories and their right to participate in the use, the management and the conservation of their resources. It urges states to seek the consent of indigenous people before any use of their resources.

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244 Section 51 of the Land Use Act.

245 Derik-Ferdinand and Okolo (n 238 above) 186.

246 The declaration was adopted on 13 September 2007 by a majority of 144 states in the United Nations.

247 It was adopted on the 27 June 1989 at the 75th International Labour Conference and entered into force on 5 September 1991.

The indigenous/customary land title holders can challenge the government on the ground that their land was acquired not for public purpose and if such land is diverted for private use or the purpose of the acquisition is no longer achievable, the land should revert to the indigenous people. In *Olatunji v Military Governor of Oyo State,*[248] Justice Salami made the following pronouncement:

> The appellant can legitimately protest the acquisition if the purpose for which the land was been acquired was not within the confines of definition of public purpose as defined in section 50 of the Act. The acquiring authority failed to state the public purpose for which the property was acquired.

Presently before the High court of the Kwara State is matter between the family of *Alhaji Mustapha Garba v Gratias Resort Nigeria Ltd*. The claimants are asking the court of cancel the certificate of occupancy no KW 3273 granted to the defendant in connection with the land of the claimant situate at APATA OTU, Ilorin on the ground that the purported acquisition which was classified for public use was diverted for the benefit of Gratias Resort Nigeria Ltd which is a private company.

It is not enough to tell the customary land holders that it is for public purpose. The government must state specifically what the public purpose is. In the case of *Chief Commissioner, Eastern Province v Ononye*[249] Waddington J stated thus: 'The notice merely states for public purposes and I find it difficult to understand why the particular public purpose is not stated'.

The Land Use Act is silent on how long an acquired land should be left not used for the purpose of acquisition. This situation abounds in the Kwara State. This has led to so many litigations. An example is the Ilorin International Airport, Ilorin. The land where the airport is situated was acquired more than thirty (30) years ago for the purpose of building the Ilorin International Airport. The Ilorin International Airport has since been established and remaining vast land has been left without use. The land is not forced and there are no visible beacons showing the demarcation of where the land ends. The original customary title holders have resulted to selling some portion of the airport land

[248] (1994) LPELR 14116.
[249] 17 NLR 142 at 143.

to unsuspecting citizens. The airport recently has marked for demolition more than eight hundred (800) houses. This situation raises some questions.

a) Why did the airport not take full possession of the land and why did the airport authority wait for buildings to be erected before now marking for demolition?
b) The Town Planning Authority of Kwara State is responsible for the granting of building approval before any building would be constructed. The Town Planning Authority is to ensure no illegal structure is erected without its approval. Why were the citizens allowed to build over eight hundred houses (800) without its approval?

This situation has exposed the poor land administration by the government and there is the need for a synergy amongst the agencies of government that is saddled with the responsibilities of regulating land use and development to rethink better ways to efficiently enforce the provisions of the laws so that such ugly trends where people take laws into their hands in terms of land use is curbed and the citizens should not be made to suffer huge loss as a result of the incompetence of those whose duties are to protect the innocent citizens from the hands of dubious land speculators and land grabbers.

The customary land holders are entitled to compensation for the unexhausted improvement to the land. The government does not pay compensation for land acquired from family that does not have government title. The basis of the compensation is NIL value for the land and the prescribed method of computations is the improvement to the land and to insure a cost of equivalent reinstatement.[250]

Section 51 of the Land Use Act defines unexhausted improvement to mean:

> Anything of any quality permanently attached to the land, directly 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, road, and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce.

Section 44(1) of the 1999 Constitution provides for prompt payment of compensation. It provides:

> No moveable property or any interest in an immovable property, shall be taken possession of compulsory and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –
> a) Requires the prompt payment of compensation therefore; and

[250] Abugu (n 24 above) 161.

b) Gives to any person claiming such compensation a right of access for the termination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

4.5 ALLOCATION OF LAND BY GOVERNMENT

Section 2(2) of the Act mandates the establishment of the Land Use and Allocation Committee (LUAC) to assist the governor in the control and administration of urban lands under his care. The duties of the LUAC are threefold. These are articulated in the Land Use Act as;

(i) Advising the State governor on any matter connected with the management of land in an urban area;
(ii) Advising the State governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and
(iii) Determining disputes as to the amount of compensation payable for improvements on land.[251]

The appointment, composition and the modus operandi of the committee is at the exclusive discretion of the governor.[252] The Land Use and Allocation Committee shall be presided over by one of its members as may be designated by the governor and, subject to such directions as may be given in that regard by the governor, shall have power to regulate its proceedings. The committee shall consist of such number of persons as the governor may determine but shall include in its membership at least not less than two persons possessing qualifications approved as Estate Surveyors or Land Officers and who have had such qualification for not less than five years; and a Legal Practitioner.[253] The governor is thus the unquestionable personage in the overall administration of land in the state. In practice, 'the composition, quality and tenure of the committee has tended to vary over time depending on the government in power and the disposition of the governor'.[254] On the relevance of the committee, it was observed that:[255]

> It is doubtful whether from the composition and mode of appointment of members of the committees whether any person can ever obtain a satisfactory compensation even for

[251] O Adigun *The Land Use Act: Administration and Policy Implication* (University of Lagos Press 1991) 49.
[252] As above.
[253] Section 2(3) of the Land Use Act.
[254] Adigun (n 251 above) 49.
[255] JA Omotola 'Compensation Provisions of the Land Use Act' (1980) *Nigerian Bar Journal* 36.

> improvements on land compulsorily acquired by government. Since the committee cannot be an independent and impartial tribunal, the provision is not only retrograde but also conflicts with the fundamental principles of natural justice, which requires that a person shall not be a judge in his own cause.

This provision has its origin in the military background of the Act,[256] that reflects the harshness in the military. The Act is undemocratic in its provision and implementation. It appears to be parochial as it does not consider the representation of members of the public in the committee with no clear criteria for appointment into committee membership. Furthermore, 'there is no certainty of tenure for members of the committee; they hold their position in the committee at the pleasure of the governor. Unfortunately, the State legislature cannot curb the excesses of the governor in this regard since it lacks the power to amend and or review the Land Use Act, being federal legislation'.[257] While the Act may have recorded some achievements during the military regime; however, it appears despotic and intolerable in a democratic dispensation.[258]

Allocation of land could be for residential, agricultural or commercial purposes. Allocation is commenced with the buying of application form and if the secretary[259] is satisfied that the applicant is qualified to be allotted land then the secretary forwards the application to the director general[260] of the Bureau of lands for approval. Allocation of land requires that the allottee pay for fees as spelt out in the allocation letter within thirty days of the issuance of the letter. Failure of the allottee to pay the fee within the stipulated period, the letter of allocation shall be withdrawn without notice. Paragraph four of the provisional allocation of statutory right of occupancy for plot within urban area in Kwara State read thus: 'Take note that failure to make full payments on or before 30th day of receipt of this letter will amount to forfeiture of this offer.'

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256 The Military regime of General Olusegun Obasanjo in 1978 promulgated with fiat the Land Use Decree.

257 A Otubu 'The Land Use Act and land administration in 21st century Nigeria: Need for reforms' (2018) 9(1) *The Journal of Sustainable Development Law and Policy* 80-108.

258 As above.

259 The secretary heads of the land use and allocation committee signs the allocation letter on behalf of the Bureau of Land.

260 The Director General is the administrative head of the Bureau of Land. He oversees the activities of the Bureau and reports directly to the governor.

The Right of Occupancy is granted to the applicant after payment of all necessary fee. The right of occupancy is signed by the Director General on behalf of the governor. The certificate of occupancy is issued afterward under the hand of the governor and it takes between six (6) months to one year for the certificate of occupancy to be ready.

The right of occupancy is submitted by the holder at the point of collection of the certificate of occupancy. Thus this means the certificate of occupancy nullifies the Right of Occupancy. It is submitted that the certificate of occupancy is a complimentary document that should not replace the Right of occupancy, while the Right of Occupancy confers right over the land, the certificate of occupancy is an evidence that a right of occupancy has been issued. Both documents should be in possession of the grantee. It is further submitted that the Right of Occupancy and the Certificate of Occupancy should be one single document. The current practice where by it takes six month to one year before the certificate of occupancy is ready is absurd and has negative impact on the economy. The Kwara State must cut down the procedures and bureaucratic bottlenecks. The system must embrace information technology and open up to promote transparency.

4.5.1 Power to grant title by government

The Land Use Act allows the governor to give statutory right of occupancy and no more.[261] The governor can only issue a certificate of occupancy regarding land rights before the promulgation of the Land Use Act.[262] "All other powers of the governor flowing from this power of grant are restricted to statutory right of occupancy so granted. The provision of section 5 of the Act is clear and unambiguous in this respect"[263]. It reads:

> It shall be lawful for the Governor in respect of land, whether or in an urban area-(a) to grant statutory rights of occupancy to any person for all purposes; (b) to grant easements appurtenant to statutory rights of occupancy; (c) to demand rental for any such land granted to any person.

[261] Section 5(1) of the Land Use Act.
[262] Section 34 of the Land Use Act.
[263] Otubu (n 257 above).

Thus, the power to grant easements[264] and review rent by the governor is restricted to the grant of statutory right of occupancy. The governor may, however, enforce a penal rent for a breach of any agreement in a certificate of occupancy requiring the holder to develop or effect improvements on the land the subject of the certificate of occupancy and to review such penal rent as provided in the Act.[265] This latter power is enforceable regardless of whether the land is protected by statutory right of occupancy or otherwise; the essential prerequisite here is that the land is protected by a certificate of occupancy.

By virtue of section 5(1)(f) of the Act, the governor can only impose penal rent for breach of any condition expressed or implied, where the land is protected by statutory right of occupancy approved by the governor. The inference from the provision is that rights of occupancy not statutorily granted under section 5(1) are left out from the application of the provisions. Essentially, the governor is largely interested in the control and administration of lands statutorily granted by him. This postulation further supports Omotola's theory[266] that the Land Use Act intended a dual administrative and management structure; one for actual grant and the other for deemed grant of right of occupancy.

Also, it is important to note that in granting the right of occupancy, the governor, by section 14 of the Act, holds ownership simultaneously with the occupier. Furthermore, section 11 of the Act provides the governor or any public officer duly authorised by him the power to enter and inspect the land comprised in any statutory right of occupancy or any improvements effected thereupon at any reasonable hour in the daytime. It is evident from the express provision of section 14 of the Act that action in trespass is not justifiable against the governor or his duly authorised officer for such entry because the occupier's possession is not exclusive of the governor's.[267] It is thus obvious that the

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264 AI Umezululike 'Easements and the Problems of Some Startling Presumptions' (2004) *Journal of Private and Property Law* 1.

265 Section 5(1)(e) of the Land Use Act.

266 Omotola (n 255 above) 34.

267 *Akapan Sam Adua v Akpan Akpan Udo Udo Essien* (2010) 8 ALL FWLR (Pt 535) 361 where the Court of Appeal held that for a plaintiff to commence an action in trespass, he must show that he is in exclusive possession; exclusive possession in the sense that he does not share his right of possession with any other person. He need not show ownership of the land; proof of actual possession can sustain an action in trespass.

power of the governor over the management and control of land varies depending on whether the land is covered by statutory right of occupancy or not, and whether the land is subject of certificate of occupancy or not. This contradiction, which breeds vagaries in land administration in Nigeria, has great implications for landholders, land administration and property market development.

4.6 REVOCATION OF TITLE BY GOVERNMENT

In the administration of the Act, 'the governor is empowered to revoke the grant of right of occupancy in deserving cases as stipulated by the Act'.[268] The power of revocation is exercisable irrespective of whether the land is in the urban area, directly under the governor, or non-urban lands, under the control of the local governments. It is also of no moment that the right of occupancy is actual or deemed granted. The governor's power in this respect is enforceable where the land is required for prevailing public interest/public purposes or where the revocation results from the exercise of the penal powers of the governor under the Act. The need for the distinction between the two revocation powers of the governor is premised on the fact that whilst compensation is payable for revocation for over ridding public interest/public purposes, there is no compensation for penal revocations. Also, 'whilst revocation for overriding public interest/public purposes impacts on all land holders/occupiers, penal revocation affects only rights of occupancy granted by the governor or evidenced by a certificate of occupancy. The exercise and instances of the two powers are further discussed below'.[269]

4.6.1 Revocation for overriding public interest/public purposes

The governor is mandated under section 28(4) of the Act to revoke a right of occupancy in the event of the issue of a notice by or on behalf of the president, declaring such land to be required by government for public purposes. However, 'the Act is silent on the consequences of the refusal of the governor to accede to federal government request'.

[268] Section 28 of the Land Use Act.
[269] Otubu (n 257 above).

As Otubu rightly questions:

> Can the federal government enforce the provisions of this section even where the governor has yet revoke the existing rights of occupancy over the land? What happens where the federal government public purpose use of the land is at variance with planning laws and zoning policies of the state? These are moot questions and challenges thrown up by the Act in its provisions and administration.[270]

There were cases of disputes between the Federal Government and states over the exercise of this power during the Second Republic in Nigeria.[271] Recently, the Supreme Court affirmed the supremacy of powers of the state government over the federal government in respect of lands situated in the states, even where the land is federal land.[272] "The provision makes the cooperation of the state government indispensable to the federal government's acquisition of land for its use. The exigencies of the federal government are thus made subject to the politics and bureaucracy of relevant state government in this respect".[273] There is the need for cooperative federalism and inter-government relationships for the smooth application of this provision.

4.6.2 Penal revocation

The Act, under certain conditions, grants powers to the governor to revoke or forcibly acquire land and land rights without compensation. All these are referred to as penal revocation and covers situations where the occupier/holder alienates the right of occupancy without the requisite consent;[274] if there is a breach of any of the provisions deemed to be contained in the certificate of occupancy;[275] if there is a breach of any terms in the certificate of occupancy or special contract made by the governor;[276] and where a person to whom a certificate of occupancy is issued refuses or neglects to accept and pay for such certificate.[277]

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[270] As above.
[271] NN Chinwuba 'Easements and the Problems of Some Startling Presumptions: A response' (2009) *Journal of Private and Property Law* 35.
[272] *A-G Lagos States v A-G Federation & 35 Others* (2003) 6 Supreme Court (Pt 1) 24.
[273] Otubu (n 257 above).
[274] Section 28(2)(a) and (3)(d) of the Land Use Act.
[275] Section 28(5)(a) of the Land Use Act.
[276] Section 28(5)(b) of the Land Use Act.
[277] Section 28(5)(c) of the Land Use Act.

The Act forbids[278] and makes it unlawful for any person given a right of occupancy by the governor to alienate his right of occupancy or any part thereof without the approval of the governor. Any supposed transfer of ownership without the necessary approval is invalid.[279] Further, based on such transaction, the holder of the right could lose it by outright revocation without any reward. In *Savannah Bank v Ajilo*,[280] the court extended the application of the foregoing provisions to include a deemed grant of a right of occupancy.

The application of this provision enforces double jeopardy on the parties to the transaction. The parties would not only have incurred losses on the account of the transaction being declared void for lack of necessary permission of the governor, but will also forfeit the land and the improvement thereon to the state without any corresponding obligation to pay compensation. It is enough for the law to invalidate the transaction without the parties suffering the loss of their property without compensation.

By virtue of section 28(5)(a) of the Act, the governor may revoke a statutory right of occupancy if there is a breach of the provisions which by virtue of section 10 of the Act,[281] the certificate is deemed to contain, including provision on rent. The governor has the exclusive powers to fix and review rents[63] and may revoke the right of occupancy for failure to pay the imposed rents.[282] This makes the governor the lawgiver and enforcer at all times. This is equivalent to executive judgement, which is contrary to the tenets of separation of powers and the rule of law. It is one of the incidences of insecurity of title and tenure under the Act as it leaves the holder of the right of occupancy at the mercy of the governor.[283]

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278 Section 22 of the Land Use Act.
279 Section 22(2) of the Land Use Act.
280 (1989) 1 Nigeria Weekly Law Reports (Pt 97) 305.
281 Section 10 of the Land Use Act provides that every certificate of occupancy shall be deemed to contain provisions to the following effect:
(a) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of his entering into occupation;
(b) that the holder binds himself to pay to the Governor the rent fixed by the Governor and any rent which may be agreed or fixed on revision in accordance with the provisions of section 16 of this Act.
282 The combined effect of sections 10(b) and 28(5)(a) of the Land Use Act suggests this conclusion.
283 AK Otubu 'Democratic Land Governance and the Land Use Act: Need for Reforms' (2015) *IFJR* 679.

The governor is empowered under Part III of the Act to determine and collect rents on rights of occupancy granted under the Act. It is to be noted that this power is exercisable both on statutory right of occupancy granted by the governor and any other right of occupancy once covered by a certificate of occupancy.[284] However, under section 17 of the Act, the governor may grant a *statutory right of occupancy* free of rent or at a reduced rent in any case in which he is satisfied that it would be in the public interest to do so. The implication of this provision is furthering the dual administration and dichotomy in property rights under the Act as only parties with a grant of *statutory right of occupancy* can benefit from the exercise of the governor's discretion to the exclusion of others, particularly holders of customary rights and deemed grantees.

To support the argument of dual administration under the Act, 'there is no provision for the payment and/or review of rents in respect of lands covered by customary rights of occupancy or other lands not covered by a certificate of occupancy; there is no concrete administrative and enforcement structure in respect of such lands in the least'.[285] In essence, the greater parts of the lands in the states are not covered by this rent requirement.[286] In fact, the Act seems to be more interested in lands in the urban areas, specifically land covered by certificate of occupancy in so far as the rent provisions do not capture other lands in the state. Unfortunately, this is a drain on the revenue profile of the state and unfair taxation on the part of parties caught by the provisions. Such uncovered lands continue to remain dead assets both to the individual occupant and to the state.

The Kwara State Bureau of Land gives 90 days' notice of revocation to grantee of the right of occupancy. In addition, newspaper publication is made. The essence of serving notice of revocation is to give opportunity to the holder of the right of occupancy to develop the land if the reason given for the intended revocation is failure to develop the allocated land with the time frame given in the Right of Occupancy. Paragraph 2(1) of Right of Occupancy usually read thus:

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284 Section 10(2) of the Land Use Act.
285 Otubu (n 283 above)
286 As above at 679.

within two years from the date of commencement of this Right of Occupancy to erect and complete on the said land the buildings (gate house) or any other similar works specified in details with approved plans by the Kwara State Town Planning and Development Authority.

If the reason given for the intention to revoke is as a result of non-payment of land charge then the 90 days-notice will also give the holder the opportunity to pay up the land charges that has accrued. Paragraph 1(1) of Right of Occupancy reads: 'To pay Annual Land charge in accordance with the provision of the land charge law No 7 of 2009'. However, if the revocation notice gives overriding public interest as the reason, then the 90 days' notice is to prepare the holder to face the inconveniences and psychological future that come with such revocation.

The Bureau of Land while carrying out the process of revocation on behalf of the governor is faced with some challenges. According to an official of the Bureau of lands, communicating notice of revocation is sometime difficult because some allottee give addresses that are difficult to locate. Sometimes if located the allottee might have relocated from the address supplied without notifying the Bureau of such changes, such allottee often challenge the revocation on the ground that he did not receive the revocation notice.

Another area of challenge is finding a file. This could be as a result of the activities of unscrupulous staff who hide files of their friends, relative and client in order to evade revocation, unfortunately, the Bureau of Land is still operating the manual filling system. Files sometimes are difficult to find if there is a miss up in the movement of the file.

4.7 TRANSFER OF TITLE

A title holder may transfer his title. This privilege however must be consented to by the governor. It therefore means that the holder of a right of occupancy who wishes to transfer or assign his interest must obtain the governors consent before he assigns his interest.[287]

[287] Sections 21, 22, and 23 of the Land Use Act.

The transfer of title could be in form of mortgage, lease, assignment or sublease. However, failure of first obtaining consent renders the transfer null and void and maybe a ground for the governor to revoke the title.[288] Approval of consent by the governor usually read thus:

> I am directed to refer to your application dated …….. and to inform you that the consent to assign the certificate of occupancy no …… over property situated at …….. and described as plot No …….., Block ……, Ilorin West Local Government Area of Kwara State, measuring 1293 Ha to Mr …….. of No 2 street, Ilorin, has been approved by the executive governor of Kwara State with a value of N…….. with effect from Date/Month/Year subject to submission of stamp duty and executed Deed of Assignment with one month of this approval and payment of registration fee, failing which a panel charge of N100.00 per day will be imposed on you from the lapse of one month grace till the condition are satisfied and the panel charges paid in full.

4.8 CONCLUSION

Based on the foregoing, it can safely be assumed that the process of issuance of title to land and the revocation thereof is flawed, particularly for the fact that it is not a transparent process. Furthermore, it is submitted that the Land Use Allocation Committee should employ modern technology in ensuring easy communication of information to holders of title and enhance the process of acquisition of title to land. It is precisely this type of reform that is required to bring land administration in Kwara State (and Nigeria as a whole) in line with international standards and thus, to protect property rights and the benefits that accompany property rights.

[288] Sections 26, 28 of the Land Use Act.

CHAPTER FIVE: ADMINISTRATION OF LAND BY LOCAL GOVERNMENT SPECIFICALLY FOCUSING ON ILORIN WEST

5.1 INTRODUCTION

The local government is the third tier of government in Nigeria; the closest to the grass-roots. Most of the people live in the rural areas. The Kwara State has up of sixteen Local Government Areas. The local government is headed by a chairman who is elected into office every three years. The Ilorin West Local Government is one of the 16 Local Government Areas in Kwara State. The Ilorin West Local Government does not have a distrint department that oversees the land use, control and management in rural area. The land affairs is supervised by the Works department which is headed by the Head of Department who reports directly to the Chairman of the Council in the Local Government.

5.2 ADMINISTRATION OF LAND BY LOCAL GOVERNMENT

The local government is the third tier of government in Nigerian after the Federal and State.[289] While the Governor is authorised to oversee urban lands, as designated under section 2 of the Act, the local governments are in-charge of all non-urban lands in the state.

To assist the Local Government in the administration of the land under its care, the Act provides for the establishment in each local government a body to be known as the Land Allocation Advisory Committee consisting of such persons as may be determined by the governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land on which the local government has jurisdiction.[290] In line with section 6(2), the Act empowers the local government to grant customary rights of occupancy to any person or organization for the use of land in the local government area.

[289] Section 2(1) of the Land Use Act, Cap L5, LFN, 2004.
[290] Section 2(5) of the Land Use Act, Cap L5, LFN, 2004.

The implication of the provision is to vest the local government with powers of land administration over lands in its domain, not declared as urban land by the governor. It is, however, to be noted that this provision lacks much substance in view of other provisions of the Act that vests the governor with unfettered powers of management of land irrespective of whether the land is urban or non-urban.[291] For example, where the governor, exercising the powers under section 3, declares all the lands in the state as urban land, there will be no land for the local government to manage and or superintend. Even, where the governor divides the land in the state into urban and non-urban lands, the administrative power vested in the local government by this section is so minute as to be inconsequential. Under the Act,[292] once the land is subject of statutory rights of occupancy and or certificate of occupancy, its management is beyond the powers of local government irrespective of the location of the land in the State.

Also, the terms and conditions contained in a certificate of occupancy issued by the governor constitute a contract between the governor and the holder of the certificate, and the local government has no role to play even where the land is under its control. Furthermore, the local government cannot grant land for agriculture or grazing without the consent of the governor once the grant is in excess of 500/5000 hectares, respectively.[293] Additionally, the approval of the governor is requisite in certain situations with respect to the alienation of customary right of occupancy.[294] Though the local government is authorised to grant customary right of occupancy under section 6 of the Act, it lacks the power to charge fees and/or rents for its exercise, except for the provisions of section 42(2), which makes inferential remarks on it.[295] This is an inherent contradiction in the Act since the lack of such powers denies the local government a veritable source of revenue to carry out its functions under the Act.

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[291] Section 5 of the Land Use Act, Cap L5, LFN, 2004.
[292] Section 5 of the Land Use Act, Cap L5, LFN, 2004.
[293] Section 6(2) of the Land Use Act, Cap L5, LFN, 2004.
[294] Section 21 of the Land Use Act, Cap L5, LFN, 2004.
[295] The section provides that 'Proceedings for the recovery of rent payable in respect of any customary right of occupancy may be taken by and in the name of the Local Government concerned in the area court or customary court or any court of equivalent jurisdiction'.

Even where the local government is empowered to compulsorily acquire land,[296] the power has been so much decimated as to be ranked as inconsequential. The local government cannot in the least, revoke any right of occupancy, statutory or customary, except through the agency of the governor.[297] The local government does not even enjoy exclusive right of occupancy over any such land as the governor retains the suzerainty of all lands.[298]

Given the foregoing facts, the power of the local government regarding land administration under the Act is an illusion or at best puzzling. To a discerning mind, there remain several questions as to what the local government can do over land under its control against the rights of the customary owners. In the absence of legal authority, the local government cannot request for rents, penal or otherwise over land held in non-urban areas.[299] All management powers vested in the local government is circumscribed in one form or the other; in fact, all powers belong to the governor. As earlier pointed out, by vesting some management powers in the local government, the Act creates unnecessary dichotomy and incongruous dilemma in land administration with respect to rights of occupancy and certificate of occupancy. The local government is authorised to grant a customary right of occupancy,[300] but there is no provision for the issuance of any certificate in respect thereof. This has led to the issuance of a document referred to as "Grant of Right of Occupancy" in some states in the northern part of Nigeria.[301] In some instances, there have been legal disputes on the status of customary right of occupancy and a statutory right of occupancy,[302] all to the discomfiture of the populace. The division of administrative powers and rights between the governor and the local

296 Section 6(3)d, 28(2)b and (3)a of the Land Use Act, Cap L5, LFN, 2004.
297 Section 28(1) of the Land Use Act, Cap L5, LFN, 2004.
298 Section 6(4) of the Land Use Act, Cap L5, LFN, 2004.
299 Tobi (n 28 above) 64.
300 Even where the customary right of occupancy is to be granted under the Act, there is no provision for certainty of duration of the right granted. The provisions of section 8 of the Act on fixation of tenure of right of occupancy relates only to statutory rights of occupancy granted by the governor under section 5(1) of the Act, it does not extend to cover the issuance of customary right of occupancy. In fact, the right of the local government *vis-a-vis* customary right of occupancy is primarily to record such holdings in its records.
301 Taiwo (n 46 above) 86.
302 *Joshua Ogunleye v Babatayo Oni* (1990) 4 NILR 272.

government has only succeeded at introducing rancour and confusion in land administration in the country.

To further deepen the discord, the Act mandates the establishment of the Land Allocation Advisory Committee at the local government level but gives the governor the power to constitute the committee in consultation with the local government concerned. It will be practically impossible for the local government to control a body not independently set up by it, particularly where the head of the local government belongs to a different political group from that of the governor. It is also to be noted that where the governor refuses to constitute the committee for any reason whatsoever, the local government is bereft of any remedy against the governor. The constitution of such a committee is foreclosed where the governor declares all land in the state to be urban land.

In practical terms, the existence and value of the Land Allocation Advisory Committee established at the local government level has been questioned. In the report of a workshop on the Land Use Act,[303] a commentator[304] lampooned the rationale for the establishment and powers of the local government and the committee. According to him:

> Apart from those already identified, there are other important limitations on the powers of the local government under the Act. These limitations derive mainly from the rather too wide powers of the governor vis-à-vis those of the local government. A governor can, if he wishes, decide to marginalise the role of the local government under the Act or even render it completely impotent and irrelevant.

He rightly concluded that there is no doubt that the local government is not in an enviable position under the Act: “The options are either to remove it entirely from the scheme or to strengthen its present position”.[305] Unfortunately, the author opted for the latter position in spite of the clear provisions of section 1 of the Act vesting all lands in the State in the governor.

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303 Adigun (n 251 above) 54.
304 As above.
305 As above at 55.

5.3 LAND ACQUISITION BY LOCAL GOVERNMENT

Compulsory acquisition is the process by which local government acquire land for development purposes when they consider this to be in the best interest of the community. The process must meet the requirement of the Land Use Act of prevailing public interest. The interest could be for the purpose of building schools, hospital, market and agricultural purpose as provided in section 6 of the Act. The process of valuation for compensation in acquisition of land takes place within distinct legal; cultural; socio-economic; political and historical environments which influence the delivery of the process by key actors in it. The basic principles are observed to be similar though the practice may vary in diverse nations or regions, the assessment of compensation is usually influenced by local and national statutes, enactments or laws that provide the basis upon which existing professional standards and methods may be applied.[306] The main statute governing land acquisition and the assessment of compensation in Nigeria is the Land Use Decree No 6 of 1978. Section 28 provided that:

1) It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
2) Overriding public interest in the case of a statutory right of occupancy means
   a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made there under;
   b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
   c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.
3) Overriding public interest in the case of a customary right of occupancy means
   a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;
   b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
   c) the requirement of the land for the extraction of building materials;
   d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

[306] Ladan Environmental Law and Land Use in Nigeria 12.

4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.
5) The Military Government may revoke a statutory right of occupancy on the ground of:
   a) a breach of any of the provisions which a certificate of occupancy is by section 10 deemed to contain;
   b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8;
   c) 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 Military Governor under subsection (3) of section 10.
6) The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder.
7) The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.

Public Land Acquisition and Payment of Compensation in Nigeria have led to controversies, and disputes. Such as listed; inadequate revocation notices, inadequate compensations, illiteracy of the claimants most claimant are often not aware of their inherent rights when their lands are to be acquired .For instance, it is the right of the claimant to be informed by the government the specific reason or purpose of revocation and the claimant have the right to prevent the Government from taking over possession of acquired land except compensation is first paid. Claimant often time suffer a lot of hardship when their land are acquired by government are made to wait for months and in some cases years without been compensated as a result of inadequate funding of compensation exercise, non-payment of interest or delayed payments There is also the problem of conflicting claims, this often arise where two or more family lay claims to the same parcel of land. The continual re occurrence of this problem is as a result of the failure of the Government to register the interest of every family on land and the establishment of clear cut boundaries. The use of low rate for the valuation of economic trees and crops has also caused great hardship to claimant in the process of compulsory acquisition of land. This is as a result of the Government use of the surveyor in their service, most times the claimants are not buoyant enough to employ the service of private surveyor. Non-enumeration of some crops/economic trees, non-payment for undeveloped land and corruption of government officials also constitute a

huge problem to the claimant.[307] Indeed, 'the laws dealing with land acquisition are not clear and there is ambiguity with regards to who is entitled to compensation, what items to be included in the compensation, and what is meant by adequate compensation. The absence of clear explanations is a hindrance to uniform and consistent interpretation and so tend to flout the provisions contained therein.[308]

5.4 SUPERVISORY ROLE OF LOCAL GOVERNMENT OVER CUSTOMARY LAND

The Local Government Council has a supervisory role to ensure sustainable use and development of the land in rural areas because the local government has legal interest over all land in rural areas. It is therefore very important for the local government to closely supervise land use and development.

An assessment of some selected rural areas shows that the local government has not been performing its supervisory role beyond land allocated by the local government. Most rural areas up until now still fight over boundaries. The Bayi community and Ajegunle community does not have a well-defined boundary. They pointed at a place where there used to be a tree and a stream as their boundary. The Gereu community and Abojumeji community showed the researcher a locust beans tree as their boundary that separate the two (2) communities. The Ibagun family, Alege family, Gobir family and Aliagan family also showed the researcher a foot part and a stream as their boundaries. It is expected that the local government should by now assist the various families and communities to have a well-defined boundaries and put a final solution to the lingering boundary disputes that characterises land in rural areas. The problem of who is entitled to compensation often arise when local government embarks on compulsory acquisition of land because sometimes more than one family or community lay claim to the same land.

The long abandonment of the rural areas to develop on their own without supervision has led to slums been found in urban area. The urbanization is continually expanding. If

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307 Abugu (n 24 above) 12.

308 AI Sule 'Communal land acquisition and valuation for compensation in Nigeria (2014) 4(11) *International Journal of Scientific and Research Publications.*

we must stop the trend where by slums are found as the urban area expands, local government must ensure that they enforce the approval requirement before family could transfer interest in land.

Most communities visited don't have well planned roads that could be tarred in the future, no provisions for solid waste management, the houses are built without town planning approvals. It is however suggested that the local government should established rural area planning authority to oversee the planning of rural areas.

5.5 CONCLUSION

The Ilorin West Local Government should create the department of lands and employ qualified professionals that would oversee land use and management. The present arrangement where the department of works without the requisite knowledge merely oversee land matters is absurd. Massive education of the indigenous customary land holders on the extent of their right over land is very urgent and important. This is so because the indigenous land owners still see themselves as absolute owners because they are not aware of the existence of the Act. The land advisory committee should be educated and exposed to regular training to enable them perform their functions diligently and optimally. The indiscriminate and illegal development of land must be regulated.

CHAPTER SIX: WEAKNESSES OF THE LAND USE ACT AND THE NEED FOR LAND LAW REFORM IN NIGERIA

6.1 INTRODUCTION

Every nation of the world has gone through one reform or another; as such, land administration reform is not an exception. Law reform is the process of updating, amending or changing a piece of legislation to address the challenging of the realities of the present and immediate future. Law reform 'within the legal system or the administration of justice system is to improve the laws by making changes or corrections so that the laws will be in harmony with the constant demands of the time being and desired democratic norm'.[309] Law reform entails implementing changes on existing laws towards enhancing efficiency in justice delivery.[310]

6.2 CRITICAL EVALUATION OF ACCESS TO LAND AND A CRITIQUE OF THE LAND USE ACT

The unenforceability of citizens' rights to compel government as a result of the fact that the right falls under economic and social right as seen in chapter two of the 1999 constitution of Nigeria[311] has led to so mush abuse and impunity in the administration. When the state Government compulsorily acquire land for the purpose of redistribution for housing, application are often received beyond available land mainly for generating money from citizens, When a citizen is fortunate to get an allocation such citizen is made to pay exorbitantly within a spate of 30 days and those not fortunate to get allotment, no refund of application fee to applicants. The government agents saddled with the responsibility of allocating land do not disclose their activities to ensure transparency in land allocation.

Perhaps our starting point should be the legal basis of the Act. In this regard, whilst much literature including judicial opinions exists to show that by virtue of section 274(5)

309 J Olakanmi *Land Law in Nigeria* (Law Lords Publications 2009) 22.
310 ON Akun 'The process of Law Reform' (2012) *International Journal of Legislative Drafting* 25.
311 *A-G Federation v Abubakar* (2007) 8 Nigeria Weekly Law Reports (pt 1035) 107.

of the 1999 Constitution of the Federal Republic of Nigeria as variously amended, the Act remains an existing law,[312] there is divergence of opinion on the supremacy of the statutes over each other in the event of conflict. There is the view that where there is a controversy, the provisions of the Act shall prevail over that of the constitution since it has been recognised as an extra-ordinary statute of special nature.[313]

A contrary view has however been expressed that if there is conflict, the provisions of the constitution shall prevail over that of the Act.[314] Although the Supreme Court had the opportunity in *Nkwocha v Governor of Anambra State*[315] to pronounce on the issue, the court preferred not to because it is purely academic. That the approach of the Supreme Court is simply evasive have been rightly proved that the conflict is resolvable against the symbiotic nature of the relationship.[316] The point must be stressed that the issue is far from being settled. The best we have had so far is Esho JSC (as he then was) obiter in Nkwocha's case to the effect that although the Land Use Act is not a fundamental component of the Constitution, it is a standard rule that becomes phenomenal because of its entrenchment in the Constitution. Hence, it is argued that since the legal validity of the rules in the event of conflict with the constitution is still in doubt, it is not worth the foundation of any serious statute.

Another area deserving attention is the jurisdiction of the Act. While it applies throughout the federation, it does not affect all lands in the country. This is so on the grounds that while it vests all lands in the domain of each state in the Governor[317], it absolves the Federal Government or any of its organizations the powers to possess land.[318] Two interesting provisions here are sections 28(4) of the Act and 50(2) of the Act. Whereas the former is to the effect that if the Federal Government requires any land in the territory of the State, a notice should be issued out by the Head of the

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312 FO Adeoye 'The Land Use Act 1978 and the 1979 Constitution: The Question of Supremacy' (1988/1989) *Journal of Private and Property Law* 33.
313 JR William *Nigerian Land Use Act: Policies and Principles* (University of Ife Press 1987) 14.
314 *Kanada v Kaduna State Governor & Anor* (1986) 4 Nigeria Weekly Law Reports (pt 50) 25.
315 (1984) 6 Supreme Court 362.
316 TAI Osipitan 'The Land Use Act and the 1979 Constitution' (1990/91) *Journal of Private and Property Law* 67.
317 JA Omotola 'Does the Land Use Act Expropriate?' (1986) *Journal of Private and Property Law* 1.
318 Section 49 of the Land Use Act.

Federal Government; or any person so authorised on its behalf, the provision woefully fails to state to whom the notice should be served, the State Governor or the direct holder. However, the latter provision invests the Head of the Federal Government with the same powers as exercisable by the Governor of a State regarding lands under section 49 of the Act. The implication is that the Federal Government cannot directly access State land except through the State. Hence, it is absurd to base a national statute like the Act which requires unfettered accessibility to land for its success on a law that requires the co-operation of the Governor of a State for the operation. Again, it is uncertain if the Governor also needs to be satisfied of the public purpose for which the Federal Government requires the land, before proceeding to revoke the interest of the holder. Thus, it is unthinkable that a statute of such a magnitude or ambivalence will form the substratum of an ambitious statute like the Act.

Furthermore, whilst the Governor is the exclusive allocating authority for express grants of lands in urban area[319] though usually acting through his constituted Land Use Allocation Committee, with regard to express grants in non-urban area, the power of allocation is shared between the Governor and the concerned Local Government. Moreover, the grant by the local government in the circumstance is customary right of occupancy,[320] the Governor's grant is statutory right of occupancy.[321] This necessarily implies that the exercise of the Governor's power in this regard must have been preceded by the designation of such area as urban area under Section 3 of the Land Use Act. If this is so, and in fact, is the only logical reasoning possible,[322] it is then arguable that where such a condition precedent have not been fulfilled, any purported 'grant of statutory right of occupancy by the Governor over lands in non-urban area shall be null and void.'[323]

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319 Section 5 of the Land Use Act.
320 Section 6 of the Land Use Act.
321 Section 5 of the Land Use Act.
322 G Ezejiofor 'Interpreting Section 5 of the Land Use Act' (1994) *Journal of Private and Property Law* 27.
323 Oshio (n 83 above) 79-92.

It is notable that massive designation of the entire area of a state as urban have however been denounced in so many researches and by so many authors.[324] Thus, such an approach is inimical to planning as observed by the erudite scholar referred to above and indeed unlawful.

Another worrisome area of the act is its effect on existing interests. Though it is indisputable that with the passage of the Act, the era of absolute possession has gone. However, it is erroneous to canvass that there is expropriation of these existing interests; or put differently, that there is nationalization of all lands in the federation. However, in the subsequent statements of their Lordships, it will appear that they concede to the preservation of these existing interests by the Act. In fact, Obaseki JSC (as he then was) observed as follows:

> Of immense interest to every Nigerian in the Land Use Act 1978 are the transitional provisions in Part VI of the Act (i.e sections 34, 35, 36, 37 and 39). These sections have helped in no small way to cushion off the heavy impacts the Act would have had on the life of every man and woman in Nigeria. It is doubtful whether the imposition of the harsh conditions, implied and expressed, a certificate of occupancy may contain would not have excited people who cannot reconcile themselves with the idea of becoming a rent paying tenant on their own land to a cause of action which may amount to general disaffection and civil disobedience. Section 34 and 36 gave to those in whom land is vested before the coming into operation special treatment to both their nerves and showed consideration for their being the persons in whom the land was vested.[325]

Notwithstanding this concession however, the conclusion is inextricable that the impact of the Act on existing interest is yet to be resolved as it shall be unfolded under the discussion of consent provisions of the Act. The implication of this being the unsettled nature of land rights under the Act. As a nexus to the above, the extent of right possessed by the individual holders under the Nigerian Land Use Act of 1978 is still controversial. From the provision of section 8 of the Act, it will appear that, apart from the Statutory Right of Occupancy specifically granted by the Governor that has limited duration, all other rights of occupancy including the deemed ones can safely be said to have indefinite duration. This lies in the fact that deemed grants are meant to be

[324] As above.
[325] As above.

transitional. What then is the probability that they will ever have? The same thing applies to liability to pay rent under the Act.[326]

As indicated earlier, the consent provisions of the Act[327] more than any other provision, generated the most serious problems of interpretation. Generally, it will appear settled that where the holder of a right of occupancy, either statutory or customary is transferring his interest, the consent of the Governor is required to validate the transaction. However, it is contested that where the transfer relates to a right of occupancy which is deemed granted and exist over developed land within an urban area of the State,[328] the Governor's consent is unnecessary.[329] But assuming without conceding that the Governor's consent on the strength of the resolution of the Supreme Court on *Savannah Bank Ltd v Ajilo*[330] is essential for the transfer of all forms of right of occupancy, the adjunct question is at what point in time must the consent be obtained? And whose duty is it to procure the consent?

Going by the content of section 26 of the Act as well as the *Ajilo* case, it will seem that the consent is required immediately an interest or right over land is being transferred, and that the burden of seeking such is on that person who stands to gain the transfer. But by the provision of section 22(2) of the Act, the transfer either in form of assignment or sub-lease must have been completed, as that will constitute the instrument upon which the endorsement will be made. Hence, it is submitted that if this is the position, the procurement of consent can be at any stage prior to enforcement. The importance of this issue is underscored by the need to establish valid and subsisting land rights before embarking on any planning. Since this is yet to be resolved, no credible statute supposed to be aligned with the Act.

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326 Section 5(1) of the Land Use Act.
327 Sections 22, 23 and 34 of the Land Use Act.
328 JA Omotola *Law and land rights: whither Nigeria?* (University of Lagos Press, 1988).
329 Omotola (n 255 above) 16.
330 (1987) 2 Nigeria Weekly Law Report (pt 57) 421.

Finally, by the provision of the Act, the power of revocation is vested in the head of the Federal Government,[331] the State Governor and the Local Government.[332] However while the revocation power of the Federal Government is limited to land vested in it and its agencies, the State Governor's power extends over all that land in the territory of the State excluding the foregoing. The Local Government's power is however curtailed by the exceptions under section 6(3) a-d of the Act. It is interesting to note that while it can be said that the application of the power of revocation is not without guide in case of Federal or State revocation, the local government's power is left blank. All that seems required is for the local government to jump on any land in its area of jurisdiction in the name of public purpose. It is needless to demonstrate the inherent dangers of this approach, especially in a civilian regime. In fact, it is a veritable tool of intimidation, victimization and oppression. Inevitably therefore, it will have negative impact on planning law since land rights will then become unascertainable and unreliable.

In this regard, if these controversial areas are removed from the Act, nothing significant can be said to remain. Hence, the Act from the above theoretical evaluation and practical operation can be described as a failure.

This research finds out that nobody has been prosecuted for the violation of the land registration law of the Kwara State and the reason is that there is no way the land registry can enforce the law because there are no data on land transaction in the Kwara State. It is however submitted that a synergy of the land registry, the court and the Nigerian Bar Association would help to enforce the rules of the land registration law of the Kwara State. Agreement of land sales purporting to transfer interest in land in the Kwara State always have affidavit of sale that requires oath. The court should ensure no such agreement is accepted for oath unless it is first registered at the land registry and the submission of any land transaction documents for oath without first registering with the land registry constitute a violation of the extant law and should be met with appropriate punishment and sanctions.

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[331] GL Mpigi 'The Social Network of Urban Agriculture' (2019) <https://advance.sagepub.com/articles/preprint/THE_SOCIAL_NETWORK_OF_URBAN_AGRICULTURE/8949308/1> (accessed 23 December 2021).

[332] Otubu (n 257 above) 80-108.

6.2.1 Lack of political will to reform

The Bureau of Land has been carrying out its functions without achieving much as a result of not reforming its system and approach. Most of its activities are still been done manually. The sale of application forms by applications for land cannot be done online. Such applicant still have to come down in person or by proxy to buy. The conduct of search on title by prospective persons that want to verify the status of a title to confirm if such title is not encumbered can only be done by visiting the bureau of land and going through files that may take days to locate. Whereas, the advancement in technology should make that possible from anywhere in the world.

6.2.2 Lack of in-depth knowledge of the provision of the Land Use Act as a result of inadequate training and workshops

The Bureau of Land has the authority to give a right of occupancy on property or land anywhere. The power to award Right of Occupancy is not restricted to the urban area where it controls land use and management.[333] However, in the use of its power to grant a Right of occupancy on land already covered by a customary right of occupancy, such customary Right must first be revoked by the local government that granted it.[334] Findings revealed that the bureau of land grants right of occupancy without first asking the local government to revoke its customary rights.[335]

The Bureau of Land accepts agreement of sale on a private property for processing a right of occupancy without requesting for the local government approval that was granted to the family. This practice has promoted illegality been perpetuated by the customary title holders.

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333 Section 5(1) of the Land Use Act.

334 M Kassim-Momodu 'Impact of the Land Use Act on Petroleum Operations in Nigeria' (1990) 8(1-4) *Journal of Energy & Natural Resources Law* 291-300.

335 MI Atilola 'Reconciling the provisions of the Land Use Act and the Kwara State Land Charge Law' (2013) *West Africa Built Environment Research* 12-14.

6.2.3 Political interference by political appointees

The Director General is a political appointee of the governor. The pressure from politician sometimes compel the Director General to allocate land to politicians as a political gain. Most of these politicians sell their allocation thus contributing to the high prices of land. The Kwara Television layout, in Ilorin was mostly allocated to members of the House of Assembly of the Kwara State in 2013. Findings revealed that none of them who were originally allocated land in the estate built or developed their respective land, most of the original allot tee has sold their land. The allocation of the estate to politicians has showed down the development of the estate as most of the plots are still not developed seven years after allocation even though the allocation letter only gives two years ultimatum to develop any allocated land. This practice of allocating land to those who do not need it for development is a breach of the right of so many Nigerians to access land at reasonable cost.

6.2.4 Unprofessional conduct of professionals

The Land Use and Allocation Committee consists of professionals with specialised knowledge. The Committee has legal practitioners, estate surveyors, and land officers among its staff compliment. This Committee is required to advise the governor on all matters relating to land use and management.[336] A property in the GRA area of Ilorin was demolished by the state governor during 2020. The reason given by the state governor was that the state government owns the property. Thus, the structure erected on the land was a trespass on the land. The alleged trespassers tendered a letter of allocation from the Land Use and Allocation Committee that allocated the land to Asa Investment dated 9 June 2005 with reference number LAN/ARO/COM/22866/Vol. 1. In the light of this, the questions that agitate one's mind are:

a) Was the Land Use Allocation Committee not aware that the land is government land?
b) Did the Land Use Allocation Committee advise the governor?
c) Should the Land Use Allocation Committee allocate such land?
d) Does the Land Use Allocation Committee actually meet as a body before allocations are made?

[336] Section 2 of the Land Use Act, Cap L5, LFN, 2004.

It is argued that the conduct of the Land Use Allocation Committee amounts to gross misconduct and the professionals involve in such illegality should be reported to their respective professional bodies for sanctions. This way, the Land Use Allocation Committee would desist from such misconduct and see their positions as that of trust.

Before the arrival of the colonialists, Land Tenure Law – that was the predominant law of the natives – governed land transactions in Nigeria then. Even though the customary system did not recognise separable ownership of land, the 1900 Land Proclamation Ordinance was intended to give undue access to land to the colonialists, just as the Native Rights Act of 1916 vested all – rights in native land on the governor.[337]

The 1962 Land Tenure Law was the first post-independence land reform law in Nigeria.[338] The provisions were similar to the land and native rights ordinance of 1916, which took over land ownership from the natives and put it in the hands of the government and also introduced consent as a requirement to use land. The strongest right that they could exercise in relation to land was a right of occupancy.[339] The 1962 Land Tenure Law sought to bring about efficient land administration that would support economic growth, which is only possible if access to land is guaranteed by creating efficient mechanisms to transfer land.[340] The 1962 Land Tenure Law regarded all land in the region of Northern Nigerian to be native land and to be administered by the minster to benefit of the Natives.[341] This implied that Non-Natives were unable access land, except with the consent of the minister.[342] The Land Tenure Law of 1962 replaced the Land and Native Rights Act of 1916 and applied to Northern Nigeria up until 1978 when the Land Use Act was promulgated as the first National Legislation on land

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337 B Fajemirokun 'Land and resource rights issues of public participation and access to land in Nigeria' paper presented at the First Workshop of the Pan-African Programme on Land and Resource Rights, Cairo, Egypt, (2002) 9 <http://www.nigerianlawguru.com/articles/land%20law/LAND%20AND%20RESOURCE%20RIGHTS%20IN%20NIGERIA.pdf> (accessed on 11 June 2019).

338 O Daramola *Revisiting the Legal Framework of Urban Planning in the Global South: An Explanatory Example of Nigeria* (Handbook of Research on Sustainable Development and Governance Strategies for Economic Growth in Africa. IGI Global, 2018) 258-271.

339 Nigerian Land Tenure Law, 1962.

340 M Odeny 'Improving access to land and strengthening women's land right in Africa' (2013) <https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/odeny_improving_access_to_land_in_africa.pdf> (accessed 21 July 2019).

341 P Francis '"For the use and common benefit of all Nigerians": Consequences of the 1978 land nationalization' (10984) 54(3) *Africa* 5-28.

342 As above.

reform.[343] The 1978 Land Use Act sought to bring about a uniform system of land administration as against the regional land laws and to correct the discriminatory provisions. The opening paragraph of the 1978 Land Use Act provides:

> An act to vest 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 would henceforth be responsible for allocation of land in all Urban areas to individuals resident in the state and to organization for residential, agriculture, commercial and other purpose while similar powers will with respect to non-urban areas are conferred on local government.

This law (1978) gave a sweeping power to the state and local governments to do everything necessary, to bring or make access to land easy. The 1978 Act gave power to both the state and local government to expropriate land without compensation in some instances (such as where it is bare land), except where there has been improvement on the land such buildings and so on, then, the government is mandated to compensate such owner of the land.[344] Also, the local government can issue a customary right of occupancy on land to individuals or an organization that is in the rural area so far the land does not fall in the area delineated as an urban area.[345]

The customary landowner is continually displaced due to the compulsory acquisition of land by the government and the payment of compensation is often delayed. The 1978 Land Use Act did not state how long acquired land should be kept without being used, or whether such land shall be returned to the initial customary owner if the purpose of the acquisition is defeated. Most often, land that is acquired from customary owners is allocated to political associates who mostly re-sell such land at much gain. The 1978 reform re-enacted the discriminatory provision of the land tenure law of 1962.The provides as follows:

> Subject to the provisions of this Act, all land comprised in the territory of each state, in the federation are hereby vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.[346]

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[343] E Emmanuel 'The land holding system and the development of mortgage industry in Tanzania: an evaluation of the law and practice' (2021) <https://thelawbrigade.com/wp-content/uploads/2021/01/Edward-Emmanuel-JLSR.pdf> (accessed 12 December 2021).

[344] Section 35 of the Land Use Act.

[345] Section 6 of the Land Use Act.

[346] Section 1 of the Land Use Act.

The procedural requirement that a foreigner must fulfil to acquire land with a government title is cumbersome. In *Huebner v Aeronautical Industrial Engineering & Project Management & Co Ltd*,[347] the Supreme Court held as follows:

> '… The appellant being an alien had no legal capacity to hold interest inland… the appellant cannot benefit from a property which he was incapable of owning.'

A further concern is that the Land Use Act discriminates against persons of a particular age, specifically persons under the age of 21 because the Act prohibits 'anyone under the age of 21 from being lawfully granted any right of occupancy'[348] either in terms of statute or even by way of consent by the Governor, except in the instance where 'a guardian or trustee of the person under the age of 21 years has been duly appointed for such purpose'.[349] In the same vein, due to exorbitant fee attached to allocation of land by the government, individuals prefer to purchase land from an indigenous landowner whether through the community; the family head and/or an individual, although this remains subject to ultimate approval by the appropriate authority[350] as provided for under section 21 of the Land Use Act. Section 21 declares:

> It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever –
> (a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or
> (b) in other cases without the approval of the appropriate local government.

6.3 CHALLENGES CONFRONTING LAND TITLE REGISTRATION BY THE STATE

The following are some of the difficulties associated with land registration in Nigeria:

(i) Noticeable discrepancies on the drafted law especially arose, based on non-consultation with stakeholders.[351] Ownership of land rather than ownership of interest

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347 (2017) 14 Nigeria Weekly Law Report (pt 1586) 396.
348 KH Babalola 'Measuring tenure security of the rural poor using pro-poor land tools: A case study of Itaji-Ekiti, Ekiti State Nigeria' (MSs thesis, University of Cape Town 2018).
349 Section 7 of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004.
350 Derik-Ferdinand and Philips (n 241 above) 182-183.
351 IS Udoka 'Effect of land titles registration on property investment in Nigeria' (2017) 5(2) *International Journal of Advanced Studies in Economics and Public Sector Management* 2354-4228.

in landed property is often given priority.[352] This priority on ownership clashes with the Land Use Act (1978) which sees leasehold interest only in land.

(ii) The goal of title registration should not be universal, but rather compulsory and specific deemed grand title and village excision should be accommodated in the land registry.[353]

(iii) Title registration is not recognised, with a strong emphasis on deed registration.[354]

(iv) The registrar of title role is restricted to legal practitioners solely, as opposed to professionals (estate surveyors and valuers) with experience in land administration.[355]

Registerable instruments that is not registered is not admissible in evidence. The Court in *Co-operative Bank Ltd v Mr Musibawu Lawal*[356] held:

> Once a document qualifies as an instrument, it must be registered. An instrument affecting any land which is registerable but yet to be registered cannot be pleaded and given in evidence[357] and if pleaded would be inadmissible and liable to the expunged or ignored.

The decision in *Co-operative Bank Ltd Vs Mr Musibau Lawal* was the position of the law until 2017 when the supreme court of Nigeria reversed its earlier decisions and held in *Benjamin v Kalio*[358] that unregistered land documents are admissible in evidence in court.[359] Based on the judgement of the supreme court in *Benjamin v Kalio*, section 15 of the Land Registration Law of Kwara State that makes unregistered instrument in admissible in evidence in contrary to judgement of the Supreme Court of Nigeria in the above cited case as the section provides:

> No instrument shall be pleaded or given in evidence in any court of law as affecting any land unless the same shall have been registered in the proper office as specified in section 3.

A registered instrument takes priority over an unregistered instrument if the instrument is affecting the same land.[360] Section 16 of the land registration law of Kwara State holds that instruments registered under it takes effect against other instruments affecting same land.

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352 A Awolaja 'Land registration in Nigeria: issues and challenges' (2017) <http://docplayer.net/34849897-Land-registration-in-nigeria-issues-and-challenges.html> (accessed 12 November 2020).

353 As above.

354 As above.

355 Udoka (n 351 above).

356 (2007) 1 Nigeria Weekly Law Reports (pt 1015) 287.

357 E Chianu 'Priorities under the Land Registration Act in Nigeria (1992) 36(2) *Journal of African Law* 66-80.

358 (2018) 15 Nigeria Weekly Law Reports (pt 1641).

359 AO Ewere 'Benjamin v Kalio: reversing the law on admissibility of unregistered land instruments in Nigeria' (2019) 45(1) *Commonwealth Law Bulletin* 164-185.

360 *First Bank of Nigeria Plc v Okelewu* (2013) 13 Nigeria Weekly Law Reports 435.

The 1978 Land Use Act restriction on the ability of aliens to acquire land in Nigeria was also a re-enactment of the Lagos State Acquisition of lands by alien law of 1971.[361] Before the 1978 federal reform, freehold and absolute ownership of land were possible in Western and Mid-Western States because the common law principles were applicable.[362]

6.4 CONCLUSION

The 1978 Land reform initiated by the Land Use Act meant to give unhindered equal access to land to all Nigerians has become a stumbling block to accessing land. The Act has only become an instrument for Government to take over the land of the indigenous people with impunity under compulsory acquisition without adequate and timely payment of compensation. The Government has also used the Act as instrument of clamp down on political opponents and land which was meant to be allocated to citizens as of right is now been sold at exorbitant price without incentives to the middle class and lower class to have access. There is therefore a need to rethink the reform and build strong independent institution that will be devoid of political interference that has rendered the 1978 Act a failed reform.

[361] Chapter A2 Laws of Lagos State 1971.

[362] Bendel State was the Old Mid-Western State. It now comprises of Edo and Delta State. The restriction of aliens in freely acquiring land was first enacted by Lagos State.

CHAPTER SEVEN: PROPOSALS FOR APPROPRIATE LAW REFORM

7.1 INTRODUCTION

Any nation of the world that really wants to develop and be on par with her counterparts must begin by having an enabling up to date laws that create the legal frame work for development. This can only be achieved by continually reforming her laws and institutions. The body that is statutorily mandated to perform this very important function of identifying areas of laws that require amendment must be empowered by the required manpower and resources to carry out their mandate. The law reform commission should be truly independent. But as it stands today, the reform commission need to be restructured to enable it perform its functions diligently like the judiciary that draws its fund from the consolidated revenue, the law reform commission should be made to get its funding from the consolidated revenue. The commission should report directly to the National Assembly with any proposed bill for reform without going through the Attorney General who is a political appointee. Because, politicians play politics with every policy.

Forty years post-enactment of the Land Use Act, it has not been repealed nor amended. Besides the inadequacies of fund, lack of true independence, lack of enough human resources, the constitutional requirement for amending the Act is partly hindering the possibility of its amendment. Section 315(5) of the 1999 Constitution provides:

> Nothing in this constitution shall invalidate the following enactments that is to say:
> a) the National Youth Service Corps Decree 1995;
> b) the Public Complaints Commission Act;
> c) the National Security Agencies Act;
> d) the Land Use Act;
> and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this constitution and shall not be altered or repeated except in accordance with the provisions of section 9(2) of this constitution.

Section 9(2) of the 1999 Constitution provides:

> An Act of the National Assembly for the alteration of this constitution, not being an act to which section 8 of this constitution, applies, shall not be passed in either house of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that house and approved by resolution of the Houses of Assembly of not less than two-thirds of all the states.

A less cumbersome mode of restructuring the Land Use Act is important to guarantee easy access to land that will culminate into economic prosperity of Nigerians.

7.2 PROCESS AND PURPOSE OF LAW REFORM

The major goal of land reform globally is to give all participants easy access to land but unfortunately, Nigeria's only major reform seems to make access to land difficult to its participants.[363] An attempt was made by the Nigerian federal government under the late Umar Yar-Adua administration in 2009 to reform the Land Use Act of 1978 but unfortunately, the death of the president saw to the neglect of the reform. The Act has left customary land tenure systems in the country to develop on their own and as such several problems have been confronting it, ranging from; insecurity of Tenure, Succession Problems and Compensation Problems.[364] The customary title cannot be used as collateral for a loan, thus, limiting financial opportunity for expansion of owners' farms and businesses.[365]

The Nigerian Law Reform Commission[366] was set up on 3 July 1979 with the aim of ensuring the reforms of laws to meet up with the demand of time. The preamble to the Act establishing the Nigerian Law Reform Commission provides:

> An Act to set up a law reform commission for Nigerian to undertake the progressive development and reform of substantive and procedural law applicable in Nigeria by way of codification, elimination of anomalous or obsolete laws and general simplification of the law in accordance with general directions issued by the government, from time to time and for matters connected therewith.

Section 5 of the Law Reform Commission Act states:

> 1) Following the provisions of this section, it shall be the duty of the commission generally to take and keep under review all federal laws with a view to their systematic and progressive development and reform in consonance with the prevailing norms of Nigerian society including, in particular, the codification of such laws, the elimination of anomalies, the repeal of obsolete, spent and unnecessary enactments, the reduction in number of separate enactments, the reform of procedural laws in consonance with

[363] The 1978 Reform had the effect of only making access to land easy for government and cronies of those in government.

[364] S Famoriyo 'Land Tenure, Land Use and Land Acquisition in Nigeria' (1992) *Institute of Agriculture Research* 5.

[365] As above at 7.

[366] Cap N118 LFN 2004.

changes in the machinery of the administration and generally the simplification and modernization of the law.

2) For the purposes of subsection (1) of this section, the commission –
   a) Shall receive and consider any proposals for the reform of the law which may be made or referred to it by the Attorney – general of the federation.
   b) May prepare on its own initiative and submit to the Attorney General, from time to time, programs for the examination of different branches of the law with a view to reform.
   c) Shall undertake, pursuant to any recommendations approved by the Attorney-General, the examination of particular branches of the law and the formulation, by means of draft legislation or otherwise of proposals for reform therein.
   d) Shall prepare, from time to time, at the request of the Attorney-General, comprehensive programmes of consolidation and statue law revision, and undertake the preparation of draft legislation pursuant to any such programme approved by the Attorney-General.
   e) May provide advice and information to Federal Government departments and other entities or bodies concerned, at the instance of the Federal Government, with proposals for the reform or amendment of any branch of the law.
3) The Attorney-General may –
   a) Modify the terms of a reference and
   b) Give directions to the commission as to the order in which it is to deal with references.
4) For the purpose of the efficient performance of its function under this Act, the commission may from time to time, obtain such information as to the legal systems of other countries as appears to it likely to facilitate the performance of any such function.
5) The commission may conduct such seminars and, where appropriate, hold such public sittings concerning any programme for law reform as it may consider necessary from time to time.
6) The Attorney-General shall lay before the president any programmes prepared by the commission and any proposals for reform formulated by the commission pursuant to such programmes.
7) Notwithstanding the forgoing provisions, the commission shall be autonomous in its day to day operations.
8) For the purposes of subsection (1) of this section “Federal Laws” means all laws within the legislative competence of the government of the federation and includes all received law and rules of law in force in the federal legislative and all procedural laws and all subsidiary instruments made under or pursuant to any such law.

The Law Reform Commission in cooperation with the office of the Attorney-General of the federation is to continually ensure that the laws are up to date with the realities in the country and suggest reforms to the president of the nation through the Attorney General. Therefore the commission is to draft all executive bills that the president would send to the National Assembly. Codification of all Acts of the national Assembly whether sponsored as executive bill by the president or private bill by senators or members of representative is also the responsibility of the law reform commission. Constitutionally, the National Assembly has the power to enact laws for the country on all matters on the

exclusive list of legislation and matters on the concurrent list of legislation.[367] The purpose of law reform is as follows –

> …to live in society, man has had to fashion laws to govern the conduct of the members of that society. This is to prevent chaos, conflicts and confusion that would have resulted from the absence of such rules and regulations guiding men's behaviour. It is this need for harmonies co-existence among men that makes law an imperative for human existence. The society is not static; it is organic and so is law. And as society grows, so does law. Therefore a growing society will need a growing and dynamic systems of laws to regulate its social intercourse and interactions.[368]

Law reform is a veritable tool for social engineering and the problems of societal growths and dynamism are resolved through the instrumentality of the law.[369] The failure of existing laws to address the challenges of the moment, the duty impose on member state by international laws, the changing social values of our societies and the reality of new technologies are among the purposes of law reform. Inspiration for potential land reform is derived from the Tanzanian experience and complemented by well-established mechanisms to provide meaningful outcome to the law that apply in South Africa. It is intended that these valuable lessons can be replicated in Kwara State, Nigeria.

7.3 LEARNING FROM THE TANZANIAN EXPERIENCE

The fundamental principle of the National Land Policy of Tanzania is basically to recognize that all lands in Tanzania is vested in the President of the country to be held in trust for the benefit of Tanzanians and to ensure that the existing rights before the enactment is recognised and secured by law. It is also to ensure equitable distribution of land and regulate the amount of land any person or corporate body may occupy.[370]

The Tanzanian Land Act provides for three categories of land, that is: the General land, Village land and Reserved land and clearly provides that land has value.[371] Land administration is centralised in Tanzania. It is the President alone that can grant a right

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[367] See the Part I and Part II of the second schedule of the 1999 constitution of the Federal Republic of Nigeria. See also Chapter 5 of the 1999 Constitution of the Federal Republic of Nigeria.
[368] Olakanmi (n 306 above) 22.
[369] As above.
[370] See Section 1(1) of the Tanzanian Land Act 1999.
[371] See Section 4 of the Tanzanian Land Act 1999.

of occupancy; the power is delegated to the minister who establishes land allocation committee at the central, urban and district authorities'. The local government does not have power to allocate land except it is authorised to do so in some specific circumstances.[372] A person who is not a Tanzanian citizen can only be allocated land for the purpose of investment[373] and the duration or term of the right of occupancy is 99 years and it attracts the payment of premium.[374]

The Tanzanian system even as it is similar to the Nigerian system of Land administration has addressed some of the main problems that the Nigerian system is still bedeviled with. For instance, as noted in Chapter 5, the non-attachment of value to land to attract compensation when government decides to acquire land for overriding public interest. This practice does not only negate international instruments but has left indigenous land owners in abject poverty. Article 10 of the United Nation Declaration on the Rights of the Indigenous Peoples provides:

> no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and where possible, with the option of return

Much like Nigeria, Tanzania identified the need for land reform to ensure compliance with

> economic and social demands, that is, the demand to have laws which will facilitate smooth dealings in land while at the same time protecting the interests of the users and occupiers of the land.[375]

Tanzania represents a good case study, because its colonial history in terms of land administration is almost identical to Nigeria's.[376] Moreover, the Land Act that was passed in 1999 in Tanzania established the system of a right of occupancy,[377] also accompanied by a proof of registration of customary title to the land ('a right over a piece of land').[378] At the same time, as time went on, citizens gained an increasing

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372 See sections 12 &14 of The Tanzanian Land Act 1999
373 See section 20 of the Tanzanian Investment Act 1997
374 See sections 32(1) of the Tanzanian Land Act 1999
375 G Mwaisondola 'Dilemma in Land Law Reform: Tanzania Experience' (2011) 1(1) *St. Augustine University Law Journal* 61.
376 As above at 74-75.
377 As above at 62.
378 As above at 66.

awareness of 'the value of land and property (buildings) and the conflicts caused by this development'.[379] The aim of balancing the interests of customary land holders and modern society was apparent in the 1999 Land Act, but this rendered the Act a failure because it was unable to 'facilitate the smooth operation in land market'.[380] The argument made by scholars is that this constitutes evidence of

> reluctance or unwillingness to effect real reforms, a tendency towards protectionism, a desire to continue to limit accessibility to land, a year to keep control of land holders and unwillingness to let free operation of land market.[381]

Politics is invariably a dominant factor in establishing a land system. In Tanzania, resort was had to more informal tribunals to resolve sensitive land disputes.[382] However, this was partly the reason why the land reform system failed. What was required was a judiciary 'bound by professional ethics' and competent in executive judicial functions.[383] As far as this aspect is concerned, Nigeria's system appears fit for purpose. This also reinforces the argument that a positivist legal system's success can be measured by way of analysing court decisions; the very methodology employed in the present thesis.

Emerging from the research into the Tanzanian process of land reform is that there was a clear lack of political will to reform,[384] which is precisely what Nigeria is experiencing. The Kwara state Government in 2014 initiated mass titling for those that bought unsecured title from customary owner, but the policy failed from the outset because the Government was more interested in using the policy to further exploit the applicants of their hard-earned money. The Government was not willing to subsidise the process and give the applicants incentives. The policy was not meant to reform the customary system of land holding by granting secured title. The reluctance of the Government in granting security of title to customary or indigenous land holders is to offer the Government the perpetual right to compulsorily acquire the land of the indigenous or customary land holders without compensation. The only reform in Nigeria was over four decades ago which eradicated outright possession of land and came up with the Right

379 As above at 65.
380 As above at 66.
381 As above at 70.
382 As above at 71.
383 As above at 72.
384 As above at 74.

of Occupancy. The 2009 attempt at reform was futile because of the death of the President and unwillingness to proceed with the reform. The Nigerian Government must as a matter of urgency embark on comprehensive reform that will redefine the right citizens can hold over land and rethink the concept of compensation to include the value of land beyond mere development over the land but to include the spiritual connection of the people to the land. It is also convincingly argued that what the Tanzanian land reform process should have set out to achieve is full and complete independent ownership as this provides security and stability – to citizens and foreigners alike.[385] Nigeria should take heed of this reality due to its direct nexus with economic prosperity by way of direct foreign investment as well as local investment.

7.4 PROPOSED SOUTH AFRICAN INTERVENTION MECHANISMS

The judiciary must activate its oversight function of checks and balance to guarantee that Socio-Economic Rights are realised. The court should criticise government actions and hold government accountable. Despite the Freedom of Information Act's passage in 2011 and the pronouncement of the Court of Appeal on its applicability to all states of the federation in the case of *Martins v Speaker Ondo State House of Assembly*, CA/AK/4/2018 where the Court ruled that the Freedom of Information Act is applicable to all states in Nigeria and that it does not require further legislation by the States' Houses of Assembly. The states have been reluctant in implementing the provisions of the Act. Citizens should start asking questions and applying to court to seek structural interdict relief compelling the agencies of government to fulfil their duties and address administrative failures that have resulted in denying Nigerians access to land.[386]

Structural interdict emanated in the United State of America in 1954 in the case of *Brown v Board of Education of Topeka*[387] where the court assumed jurisdiction over the case of racism until effective solution was implemented by the county. Structural interdict has been adopted by South Africa and some other countries where socio-economic rights are not justiciable like Nigeria to safeguard and enforce the socio-

[385] As above
[386] S Viljoen and SP Makama, 'Structural Relief – A context-sensitive Approach' (2018) 34(2) *South African Journal on Human Rights* 209-223.
[387] 347 US 483.

economic privileges of their citizens. The failure of government agencies has mostly been as a result of corruption, and incompetence and the lack of accountability rather than dearth of laws.[388] These failures of Government and her agencies is really having negative effect on the right of citizens to access land. Accessing land in Kwara state is bedevilled by corruption, incompetence, impunity and lack of accountability. The citizens must rise up to the occasion and explore the opportunity provided by the law to use structural interdict to enforce their socio-economic rights as obtainable in South Africa.

Waiting for the right to land to be upgraded to the status of Fundamental right might be a long wait and such wait will inflict more hardship on citizens. Structural interdict has not gained prominence in Nigeria because most citizens are not aware of the measure and legal practitioners seem not also aware or ready to explore the window because it is mostly needed by those who rely on Government for the provision of their socio-economic rights and such class of citizens can't afford the legal practitioners fee. The judiciary is to ensure that structural interdict is used as an intervention. The judiciary been the only organ of government that is not partisan, must activate its judicial activism in ensuring that the two other arms of governments are checked and compelled to open their books and give periodic reports of their activities. The judiciary must however take its function beyond the conservative interpretation of laws and extend its functions to ensuring that its decisions particularly against Government are obeyed and enforcement of government policies and budgetary provisions are strictly implemented.

The Judiciary in Nigeria has not been forthcoming in enforcing socio economic rights through structural interdict and judicial activism because of the effect of the provision of section 6(6) of the 1999 constitution (as amended) that removed the power of the Nigerian courts from hearing matters relating 'to socio economic rights and the absence of true independence of the judiciary'.[389] The advocacy for judicial autonomy has been in the front burner in Nigeria in recent years but unfortunately the judiciary still suffers from influences from outside. The judiciary can only achieve its constitutional mandate

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[388] C Thakur 'Structural Interdicts: An Effective means of Ensuring Political Accountability?' (2018) <http://www.politicsweb.co.za>.

[389] LI Uzoukwu 'Constitutionalism, human rights and the judiciary in Nigeria' (2010) <https://uir.unisa.ac.za/bitstream/handle/10500/3561/thesis_ozoukwu_1.pdf?sequence=1> (accessed 26 February 2022).

to the fullest if it has financial independence by drawing its finance directly from the consolidated revenue as provided in the 1999 constitution of Nigeria (as amended) without the Executive's interference and if appointment of judicial officers are not made by the Executive.

The goal of structural interdict is inter-alia to eliminate systemic breach in an organization; and the back to court model that will require government agency to provide court with their plan and a periodic report of how the plan has been implemented.[390] Capturing the characteristics of structural interdict as a judicial remedy, Thakur citing Mbazira stated thus:

a) its purpose is neither deterrence nor compensation. Rather it is intended to eliminate systemic violations existing especially in institutional or organizational settings.
b) its focus is to adjust future behaviour rather than compensate for past wrong.
c) it is deliberately fashioned rather than logically deduced from the nature of the legal harm suffered; and
d) its prominent feature is the creation of a complex ongoing regime of performance which is made possible by the courts retention of jurisdiction and sometimes by its active participation in the implementation of the order.[391]

South Africa, like some other African countries relies mostly on land as a means of survival. The South Africa Government (unlike Nigeria that last reformed its land law in 1978) has made tremendous efforts at continually embarking on reforms to address land rights and enhance the economic prosperity of the indigenous land owners and addressing the injustices and discriminatory policy of the Apartheid regime.[392] The enactment of the Restitution of Land Rights Act of 1994 was to restore the rights over land of persons and communities dispossed of their rights. The right to restitution was however for those whose rights were denied from June 1913.[393]

The South Africa Government established the Department of Land Affairs to ensure the enforcement of the land reform by restoring land back to those whose rights were deprived. The Claim Courts, The Commission of Restitution of Land Rights and the

[390] As above.
[391] As above.
[392] S Rugege 'Land reform in South Africa: an overview' (2004) 32(2) *International Journal of Legal Information* 283-312.
[393] The Restitution of Land Rights Act 1994.

Provisional Land Claims Commissioners established to adjudicate claims on Land Restitution.[394] The enactment of the Restitution of Land Rights Amendment Act of 2003 empowers the minister to expropriate land for restitution without a court order as was the case under the Restitution of Land Right Act of 1994. Section 25 of the South Africa Constitution 1996 mandates the government of South Africa to ensure access to land within the available means taking into account the social, economic and historical context.[395]

The Land Reform (Labour Tenant) Act of 1996 protects labour tenant who have lived on a farm and had the right to cultivate and graze and had provided grandparent same. A person who was a labour tenant on 2 June 1995 is entitled to have a right with his family to use and occupy part of the land.[396] The South African Communal Land Bill 2017 is a further step at fulfilling the mandate of the South Africa constitution to broadening the right of access to land by transferring communal land to communities that occupy such land under section 25(5). This is also in tandem with the provisions of The United Nations Declaration on the Rights of Indigenous Peoples.[397] The convention was adopted by the General Assembly in September 2007 and should be read in conjunction with the 1989 International Labour Organisation (ILO) Convention 169 on the right of indigenous and tribal people to their lands and their territories, and their right to participate in the use, management and the conservation of their resources (adopted on 27 June 1989 at the 76th International Labour Conference and entered into force 5 September 1991). The Nigerian Government must begin as a matter of urgency, to rethink its land laws and follow the South African reforms system by putting in place new legislation and amend existing laws towards ensuring equitable access to land and security of title of indigenous land owners.

[394] R Hall Ruth and G Williams. Land reform in South Africa: problems and prospects' (2003) *From Cape to Congo: Southern Africa's evolving security architecture* 97-129

[395] HJ Kloppers and JP Gerrit 'The historical context of land reform in South Africa and early policies' (2014) 17(2) *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 676-706.

[396] The South African Land Reform (Labour Tenant) Act of 1996

[397] UN General Assembly. 'United Nations declaration on the rights of indigenous peoples' (2007) *UN Wash* 12 1-18

7.5 CONCLUSION

The Bureau of Land should take land administration beyond the issuances of letters and certificate. There is the need to take advantage of information technology to enhance their efficiency and effective supervision of land use and management. Officials involve in professional and administrative misconduct should be sanctioned to serve as deference to others. Continual education of customary land holder is very important on the extent of their right over the land they occupy. Staff of the bureau should be exposed to regular workshop and retraining. The Bureau of land should promote synergy between the relevant agencies involved in achieving efficient land administration. The consent requirement should not only be used to streamline land transaction. It should also be employed to provide security of tenure to the customary land holders. This will help the customary land holder to explore mortgage opportunity thus fighting poverty amongst the citizens. The overall goal of the Land Use Act to give equal access to land to Nigerians should be the guiding principle of the Bureau of Lands.

CHAPTER EIGHT: CONCLUSION AND RECOMMENDATIONS

This research has looked into the land administration of the Kwara State by tracing the history of land law and land administration in Nigeria before the colonization of Nigeria by the British. This is broadly divided into the Southern Nigeria that was predominantly administered under the native customs and the Northern Nigeria that was administered under the Islamic system because of the dominance of Muslims and the establishment of the Islamic caliphate where the Emirs are the community heads and spiritual leaders.

Land as a trust was also researched into under the customary land holding and the current system of land administration. Land holding under the customary land tenure was purely base on trust. The community or the family jointly own land and the head of the family who often is the oldest was handed the responsibility of overseeing the land use by the family. The family or community only held land for the benefit of the family and was not for economic gains in form of selling the land, sale of land then was an abomination. The cession of Lagos to the British and the promulgation of the various ordinances introduced the concept of individual land ownership and sale of land and it was the first time that transfer of land and documentation was introduced.

The post-independence reform of 1962 and the 1978 adopted the customary system of holding land in trust. The Governor and the local government are the trustees of land in Nigeria and are now playing the role of the family head in the pre-colonial era. Thus, land administration reforms have consistently been based on the principles of trust. The role of the state and local government in land administration is discussed and the right of occupancy and customary right of occupancy as the only title that could be held over land in Nigeria. The Nationalisation of the land law and the abolishment of absolute ownership is discussed. The Historical evolution of registration of title to land and the effect of non-registration was also discussed. Consent requirement for any transaction on land involving transfer of interest in land was looked into.

8.1 SUMMARY OF FINDINGS

The reforms introduced by the Land Use Act to ensure equal and easy access to land has not been substantially achieved because of poor implementation of the principles of the law resulting from corruption of the system of administration and deliberate non enforcement of the law. The government has not been held accountable and the family are still continuing as absolute owners of the land because of the failure of the land administrators (state and local government) to implement the provisions of the Land Use Act.

The expropriation of land and redistribution has not achieved its purpose because only the rich has opportunity to acquire land for keep and for sale. Most Kwarans still rely largely on accessing land through customary land holders because of the high cost of accessing land through the government and the absence of incentives. The majority of Kwarans only hold an unsecured title because of the difficulty of obtaining government consent or approval or outright ignorance of the existence of the requirement and the benefit of such consent and approval. This is leading to high level of poverty amongst the average Kwaran because the title they hold cannot be used to access financial support for their various businesses.

The supervised use of land that the Land Use Act seeks to achieve has been jettisoned and government does not have control over land use in Kwara State because of the absence of political will to enforce the law.

Land administration is still shrouded in secrecy and the failure to explore the information technology has really slowed down the process, so does the time frame with which title to land could be accessed and obtained. The process of application and filing for various purposes ranging from application for land, assignment, mortgage and lease are still done manually and usually takes months.

8.2 RECOMMENDATIONS

The major problem that is affecting land administration is administrative incompetence and failure. To address the challenge the government should put measures in place to encourage transparency. This could be achieved by forcing the respective government land administrative bodies in the state and local government to give account of their activities quarterly. All stake holders, that is, lawyers, land right activist, estate surveyors and town planners should stand up and request for periodic publication of the activities of the land administrators. This could be attained by invoking the Freedom of Information Act and applying to court to compel them to give account of their stewardship.

There should be the fusion of Right of Occupancy and Certificate of Occupancy into one document and the title should be published in a functional website of the bureau to ensure easy online search to replace the manual search of going through load of files that is currently obtainable. This will make the process of land transaction fast and will also increase the revenue generation of the government. Most search today are done by staff who do not ensure payment into government purse but for their personal pocket.

The land administrators at the state and local government should create an incentive window to enable the average citizen to access land from land redistribution by government, after compulsory acquisition. The outright payment within 30 days of allocation of land is a deliberate policy to deny the average middle class citizen the right of access to land.

The registration of title law of the Kwara State should be amended to provide for punishment for any lawyer who prepares any document evidencing transaction on land without the evidence of the prior consent and approval attached to the request by a client. There should be provision for the prohibition of administering oath on any such document by court. The use of “may” in section 6 should be amended to read, “shall”, that is: ‘Any instrument for any piece of land which is not within any development area

“may” be registered.’ It should be amended to read: Any instrument for any piece of land which is not within any development area “shall” also be register able.

A bill should be sponsored by the House of Assembly of Kwara State to, among other things, provide for the duration of time by which compulsorily acquired land should be kept and that at the expiry of said duration, the land should revert to the customary title holder. The customary holders should also be entitled to compensation for the denial of access to the land for the duration it was left not used. The bill when passed into law will solve the problems associated with keeping compulsorily acquired land not put to use. In order to provide checks, the government shall provide a detailed proposal to the House of Assembly of the state detailing the purpose of the proposed acquisition and the readiness of the government to implement the project. Such proposal shall provide the financial breakdown and the source of funding.

An-all-stakeholder orientation should be organised to educate customary land holders on the requirement of consent and approval for the validity of any sale of land and the advantages of such consent of the governor and approval by local government to customary title holder and the citizens that access land through customary title holder. The orientation should be taking to every local government area and be conducted in the local dialect of the community routinely. For instance, a land purchase from customary title holder with the prior approval of the local government or consent of the governor shall be a valid sale and such person shall be entitled to adequate compensation if the land is to be compulsory acquired as provided for in section 44 of the 1999 constitution. Section 44(1) provides:

> No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –
>
> a) Requires the prompt payment of compensation therefore; and
> b) Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.[398]

[398] 1999 Constitution (as amended).

The state government and the local governments should collaborate to fund a cadastral mapping of the Kwara State land. This is very important to enable the state government and the local government to have a comprehensive plan on land use and development. The local government should carry out boundary identification of the various customary land holders and establish official beacon in the respective boundaries. There should be the establishment of Rural Planning Authority by the local government to supervise land use and development in rural areas. The centralization of town planning authority in the hands of the state government has not been efficient in supervising land development in rural areas. This will ensure the sustainable use of land in the rural area and will prevent the disconnection that often characterises the delineation or upgrading of rural area to urban area.

The prohibition of persons below the age of twenty-one (21) to have access to land as of right except through a guardian is a breach of the right of Nigerians within the prohibitive age. So, many Nigerians within that age bracket are successful through legitimate means and earning, therefore, to prohibit such persons from owning land was a verbatim re-enactment from the Native Right Ordinance of 1916 and the Land Tenure Law of 1962. It is therefore counter-productive to retain such law. It is hereby submitted that the prohibitive section should be amended. The standard requirement should be a person that shows reasonable and genuine cause to desire a land.

There is no nation that develops quickly if it locks its doors to investment coming from outside. If any nation wants to build its economy then it must have a friendly immigration policy that will instil confidence in foreigners that are desirous of coming into the country to invest. A foreigner can only be granted a title to land in Nigeria by the council of state. The powers of the governor to grant a right of occupancy on any land that falls within the territory of its state does not cover a foreigner. The stringent procedure an alien goes through to have access to land is anti-development and anti-investment. It is hereby submitted that the Act should be amended to expunge the requirement of the council of state and give absolute right to the governors to grant land to alien without having to go through the council of state since all land in their respective territories are vested in their hands.

The ousting or suspension of the jurisdiction of courts in Nigeria from entertaining matters arising from the powers of the governor to grant a Right of Occupancy and compensation payable in situations where the governor compulsorily acquires land or revokes title granted over a land is absurd. It is a carryover of the military rule. The provision of the Act violates the Fundamental right of the Nigerian citizens of equality before the law and the right to fair hearing. The ousting of court jurisdiction in a democracy where rule of law is the hallmark is undemocratic .and unconstitutional. This provision has given the governors unquestionable powers to abuse the provisions of the law. It has placed the governors above the laws. This situation has continued for over forty years of the enactment of the Act. There has not been political will to carry out the necessary amendment by the successive governments simply because the government is benefiting from the deliberate faulty system. The inclusion of the Land Use Act to form a part of the constitution is a conspiracy against the Nigeria citizen because it makes the requirement of amendment very cumbersome. It is therefore submitted that the Nigeria citizens should task their political representative at the National Assembly to pursue an amendment of the Act to remove the clauses that oust the jurisdiction of the court, so that the Nigerian citizen will have unhindered right to seek redress on any subject matter that affect their right. It is further submitted that the Act should be amended to seize to form part of the constitution. This will pave way for further amendments and a less difficult process of amendment in the future.

The Act provides for the establishment or constitution of a special body or committee in every state of the federation that would oversee the implementation of the provisions of the Act. This provision is to put in place a special body because of the sensitive nature of the subject matter involve- which is land. Especially, as the Act has eradicated the long-time right that recognises the customary land owner as having absolute ownership and replaces it with the right of occupancy which is a leasehold. Because of the sensitive and complex nature of the job that will require the committee or body to build the confidence of Nigerians on the Nigeria new land policy and orientate every Nigerian on the positive and general advantages of the vesting of all land in the states in the hands of the respective governors and local governments to hold the land in trust for the

benefit of all Nigerian citizens. The general public would only have confidence in the system if actually the policy is beneficial to the general public.

It is the responsibility of the committee to carry out the task of ensuring that all Nigerians irrespective of where he or she comes from in terms of tribe or the religion they professes to have equal and unhindered right to land devoid of discrimination. It therefore means that for such committee to fulfil the lofty goal it is set out to achieve in terms of easy access to land, it must be an independent body devoid of any interference of Government because it is its independence that would actually give such a body the freedom and courage to treat all Nigerians with fairness and equity. It then means that the body is not supposed to be a mere assemblage of civil servants under the regular civil service rule. Rather, the committee should be a statutory body whose membership should cut across all stakeholders which should include the representative of the government, the professional bodies of estate surveyor, the Nigerian bar association, the representative of the customary land owners, the traditional rulers institution, the civil society with tenure of office that cannot be easily dissolved or manipulated. It is certainly not the way it is currently being seen and constituted.

The Kwara state only has a Department in the Bureau of Land that is headed by a Secretary who is a civil servant that is answerable to the government and does the government bidding. The secretary does not have the power to take any independent decision that will go against the government if he does his conduct will be seen as insubordination which is punishable under the civil service rule. With this type of atmosphere the Secretary and other civil servants that are in the department of land use and allocation committee cannot act independently and impartially for the benefit of Nigerians but rather for the benefit of their pay master. The present arrangement does not reflect the intendment of the drafters of the Act. The reason the land and allocation committee has been manipulated is because an average civil servant will not want to lose his job or suffer promotion because of his disloyalty to carry out the directives of his superior.

This present arrangement has led to administrative failures, and the glaring incompetence has led to poor implementation of the provisions of the Act. It is therefore submitted that the land use and allocation committee should be properly constituted to enjoy true independence and represent all stake holders, so that, the citizens will have confidence in the system and the present disconnection that exist between the government agency and the public will be breached. The reconstitution will address the corruption that has denied many Nigerians of their rights to land.

The written consent of the governor that must be applied for and approved before any transaction on the transfer of interest in real estate, for instance land, ranging from mortgage, assignment, and lease is one of the most important measures, through which the governor exercises control over land use and development, not only in the urban area of the state, but also on any property in rural area, as long as such property, is covered by a title issued and granted by the state Governor in form of Right of Occupancy or Certificate of Occupancy. However, the process for application for this consent is still done by applying manually and this system of application through the filing of Application form and submitting manually has really become so slow and suffers from bureaucratic bottleneck created by the irresponsibility of civil servants who do not take their job seriously or hardly knowledgeable enough to discharge their functions efficiently because of lack of adequate and efficient supervision. This has really led mostly to delays in transaction on land and real estate generally.

The application for consent does not come free of charge. It is actually accompanied by huge charges that are determined based on a specified percentage of the value of the property. These exorbitant charges sometimes frustrate an applicant that applies for consent, considering the fact that majority of applicant actually decide to transfer their interest in their property either through mortgage, lease, or sale to expand their businesses or in some cases fight poverty, but because of these exorbitant charges the poverty index is soaring higher. The insistence of corporate bodies like banks and other financial institutions on Certificate of Occupancy granted by the state governor alone as the only title recognisable and acceptable in Nigeria for the purpose of doing business renders other certificate such as customary right of occupancy worthless and useless

without any force of law and a violation of the sanctity of the law of Nigeria as a sovereign state.

The rejection of Customary right of Occupancy also puts pressure on the department of government that processes the consent of governor and also increase the poverty rate in the rural area because to seek governors consent on a property that is covered with customary right of occupancy, the applicant must first apply for another title from the state governor and the process requires that the customary right of occupancy earlier granted by the local government is first vacated and a new process that starts with surveying of the land which cost much is a repeat of the same process that culminated in the grant of the customary right of occupancy at the first instance, before then applying for consent. This certainly leads to waste of time and resources and reflects negatively in the global index of length of time it requires to process title in Nigeria and this could discourage foreign investors that are desirous and willing to do business in Nigeria. Whereas it would have suffix for a title issued by the local government in form of Customary Right of occupancy to seek the approval of the local government and such should be recognised and acceptable for business by any corporate body and other financial institution in general.

It is submitted that the process of seeking the Governors' consent should be digitalised, to make room for speedy approval and eliminate physical presence of applicants, so that any applicant could apply from anywhere in the world. There should be the eradication of charges in the form of taxes at the stage of application and even at the level of the granting of consent and when such is then used for transaction in form of mortgage, lease or sale then at that stage it should be taxed minimally. The present arrangement, where an applicant pays tax in form of charges at the stage of seeking consent and again pays for instance, two percent stamp duty on the value of the property at the level of the sale or mortgage amounts to double taxation. The state government must legislate on criminalising the non-recognition of customary right of Occupancy for the purpose of doing business in Nigeria. Such legislation must come with stringent punishment.

For instance, any government body or corporate or financial entity that refuses' to recognise the customary right of Occupancy for the purpose of transacting such business like mortgage, lease, sale or transfer of interest in real estate and any other purpose therewith, shall have its certificate of operation suspended for a specified period of time or duration in addition to being fined a specified amount of money. It is further submitted that the Government at the state and local government level should set up a complaint department where citizens can lodge complaint of rejection of such title issued or granted by the Local government and it should be the responsibility of such department to take up any cases resulting from such complaint on behalf of the complainant because one reason that citizens don't pursue their right when infringed upon in this kind of situation is the cost of employing the services of a private legal practitioners.

More so, a special court should be created to adjudicate on such complaints, because it is not enough to make legislation, rather, it's more important to establish a court where speedy dispensation of any complaint that arise or come up in that regard. The education of citizens of the existence of such legislative enactment and their rights to seek judicial redress against anybody corporate that refuses their title must be embarked upon. The respective local government administration must however put in place a well-established department that will be coordinating the issuance of the customary right of occupancy and appoint into such office or department seasoned professionals with enormous experience that understands the workings of real estate sector globally and such department must be technologically driven to eliminate corruption, administrative bottleneck and achieve speedily dispensation of application for title and consent. The local government could as well introduce the public/private partnership policy to address the challenge of funding which is always the excuse government hinges their inefficiency and poor performances on.

Drawing from the experiences of Tanzania, South Africa and other African countries, there is therefore the urgent need for Nigeria to embark on a sincere and genuine reform of the uniform 1978 Act to protect the indigenous land tenure system to provide for security of tenure. The only reform that the Act provided in relation to the indigenous

land tenure holder is the status of a deemed right .The deemed right does not provide any protection to the indigenous land tenure holders, it rather rob the indigenous land tenure holder of their old absolute ownership. The deemed right should ordinarily confer a right of occupancy but such right is not derivable automatically it has to be applied for and the process is expensive and no special incentive is provided. The Act did not provide for any special procedure to follow when one decides to acquire the deemed right of occupancy. This has brought about continued hardship and poverty is still very prevalent among the indigenous land tenure holders because of deliberate abandonment. The government does not attach any economic value to the land in exercise of their absolute power to compulsorily acquire the land except for the efforts of the land holders in form of physical development or farming efforts in form of crops and economic trees. The indigenous land tenure holders do not get compensation for their physical disconnection from their ancestral land and place of birth and the spiritual disconnection they suffer from their detachment from their ancestors. It is therefore so very important to provide or embark on reform to provide for security of tenure for indigenous tenure holder beyond mere legislation. The reform must be holistic and the government must provide the needed fund to carry out the implementation of the reform because one of the major setbacks of some of the reforms in some African countries is the lack of political will to implement the legislative reform holistically.

Based on the submission in 8.1 above, the security of tenure will enable the indigenous people access financial facilities to support their farming and this will go a long way to fight poverty among the indigenous people and guarantee their economic prosperity. The security of tenure will also ensure that the indigenous people are entitled to compensation should the government decide to compulsorily acquire their land. The compensation will make up for the discomfort the indigenous people suffer when their land and only source of livelihood is taken away and such compensation will also reduce poverty. The security of tenure will not rob the government of its power to compulsorily acquire land. This is actually one of the reasons and fear that has made the successive governments reluctant and not courageous to reform the land tenure to provide for security of tenure, rather the reform will help the government to play its supervisory role and ensure sustainable use and development of the land.

Nigeria has been faced with a bad security situation as a result of conflict between farmers and herders. So many lives have been lost. Farmers have lost so much farm produce and the herders have suffered significantly at the hands of cattle rustlers. The Federal Government recently came up with a ranching policy to restrict herders into a government supported grazing area. The policy was criticised, and some States refused to grant land for the establishment of grazing area because the State Governments are of the opinion that grazing is private business and as such does not meet or fulfil the overriding public interest requirements for compulsory acquisition. The local government by virtue of the provision of the Act has power to grant land for grazing purpose but no local government in Kwara State invoked that section because the local government equally believes that grazing is a private business that does not fall within public purpose thus rendering the provision of the Act unenforceable. So many lives have been lost and many more are been lost. Food prices has sky rocketed because farmers are afraid to go into their farm's for fear of been attacked or killed. Food security is no longer guaranteed. It is hereby submitted that there is the need to rethink the concept of overriding public interest to include any policy that will provide security for the life and property of Nigerians even if such policy is a private initiative. The shortage in housing mostly result from non-availability of land because of resistance by indigenous land owner from government acquiring their land for the benefit of Nigerians because it is a private driven initiative.

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