



## AN EXAMINATION OF THE POWER OF THE LOCAL GOVERNMENT TO REVOKE A RIGHT OF OCCUPANCY UNDER THE LAND USE ACT\*\*\*

### Abstract

In Nigeria, the ownership of land in the territory of each state is vested in the Governor who also administers the land in conjunction with the Local Government Councils all over the Federation. The Governor is further empowered by section 28 of the Land Use Act, to revoke a right of occupancy in respect of any land except those vested in the Federal Government, for overriding public interest upon the payment of compensation. However, it is doubtful whether the Local Government also has this power to revoke right of occupancy; and if it does, to what extent. In the light of the fact that the Local Government administers the land in the territory of each state with the Governor, this work undertakes a critical examination of the powers of the Local Government to revoke a right of occupancy under the Land Use Act. It was found that the Act empowers the Local Government to enter upon, use and occupy any land for public purpose and to pay compensation thereof. However, the Act failed to define the 'public purposes' in respect of which the Local Government may revoke land. In response, the work recommends an amendment of the Act to define the public purposes for which the Local Government may enter upon, use and occupy a land so as to avoid arbitrariness in the exercise of the powers conferred by the Act.

**Keywords: Revocation, Right of Occupancy, Land Use Act, Local Government.**

### 1. Introduction

The necessity for government use of the power of compulsory acquisition and general land use control powers have increased worldwide as the desire for public facilities, supporting infrastructures and the competition for usable or habitable space intensifies.<sup>1</sup> Thus, making the need for relatively large undeveloped areas of land for agriculture and conservation to compete with the government's obligation to provide land zoned for residential purposes, commercial, industrial development; and other largely urban uses.<sup>2</sup> More so, it is common knowledge that sustainable development requires acquisition of appropriate land.<sup>3</sup> In order to obtain this land when and where it is needed, governments retain the power of compulsory acquisition of land which enables them to compel owners of land to 'sell' the land to the government in order for it to be used for specific developmental purpose. In such instance ownership of such land is acquired by the government.<sup>4</sup>

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<sup>1</sup> A Otubu 'Compulsory Acquisition Without Compensation and the Land Use Act <<http://ssrn.com/abstract=2420039>> accessed on 08/03/2023.

<sup>2</sup> K Tsuyoshi & L C David, *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries* (US: University of Hawaii Press; 2002) p. 3.

<sup>3</sup> S Keith *et al*, 'Land Tenure Studies 10, Compulsory Acquisition of Land and Compensation <<http://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>> accessed on 08/03/2023.

<sup>4</sup> Ownership derived from compulsory acquisition is distinguishable from requisition which is only a temporary takeover of the use and occupation of private property by the government in the interest of the general public and/or for public use.



Compulsory acquisition is nothing more than the extinction of private ownership of land when it conflicts with public interest in the land.<sup>5</sup> It is the power of the government to acquire private rights with or without the willing consent of their owners in order to benefit the society.<sup>6</sup> The right of compulsory acquisition is founded on the existence of private property rights. Thus, it gives *a priori* recognition to such private property right.<sup>7</sup>

There is no doubt that the Land Use Act was promulgated for the purpose of unifying, defining and regulating enjoyment of land rights in Nigeria.<sup>8</sup> The Act regulates ownership, alienation, acquisition, administration and management of land in Nigeria.<sup>9</sup> The Act was promulgated because it was found that the diverse system of land tenure prior to March 28 1978 was rather unsatisfactory. This is because apart from the problem of protracted investigation of traditional title, which did not foreclose subsequent claims on title to land,<sup>10</sup> there was trenchant public concern over the high cost of land in Nigeria. This posed tremendous difficulties not only to individuals, commercial farmers and industrialists but also to government in need of land for sundry development purposes.<sup>11</sup>

Upon the introduction of the Land Use Act in 1978, it made an elaborate provision for the management and administration of land in Nigeria. The Land Use Act makes provisions for schemes or frameworks within which the general control and management of land should effectively be undertaken by the State Government and the Local Government.

In the first instance, section 1 of the Land Use Act in furtherance of its general principle vested the ownership of all land in the territory of each state in the Governor for the benefit of all Nigerians. Section 1 of the Act provides as follows:

Subject to the provision of the Act, all land comprised in the territory of each state in the federation are vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of Nigerians in accordance with the provision of the Act.

The effect of this piece of legislation on title to land is to reaffirm State Government's title over land within the territory of the respective states whilst preserving the title of the Federal Government and its agencies<sup>12</sup> over limited areas of land.<sup>13</sup> By this provision, the absolute forms of

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<sup>5</sup>For example, in South Africa, it has been judicially defined as a means of dispossessing or depriving an owner of his property: *Benckenstrater v Sand River Irrigation Board* 1964 (4) SA 510 (1) at 515 A. See also M Jacobs, *The Law of Expropriation in South Africa* (South Africa: Juta, 1982) 1.

<sup>6</sup> X Zhang & H Lu, 'compensation for compulsory Acquisition in China: To Rebuild Expropriated Farmer's Long Term Livelihoods' <<http://www.eschorldaship.org> > accessed on 05/03/2023.

<sup>7</sup>A Otubu, 'Private Property Right and Compulsory Acquisition Process in Nigeria: Past Present and Future' (2012) 8 *AUDJ*, 5-29.

<sup>8</sup> A Nnamani, 'The Land Use Act, 11 years After' (1989) *GRBL*, 31 S Butter, 'The Nigerian Land Market and the Land Use Act of 1978' <<http://www.focusonland.com/download/525525442d643>> accessed on 16/2/2023

<sup>9</sup> N B Udoekanem *et al*, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations' (2014) *Journal of Environment and Earth Science Vol. 4 No. 21, 185*. <[https://www.google.com/url?q=http://www.unoosa.org/pdf/reports/unispace/viennadecle.pdf&sa=U&ved=0ahUKewj3\\_fCd3ePLAhXLQBQKHb2NB1EQFggNMAA&sig2=eC\\_FIMHlc7BAXH5YYWS8Yg&usg=AFQjCNEMfvkBK7sZ71Yy-nvw-Upl7f\\_Kog](https://www.google.com/url?q=http://www.unoosa.org/pdf/reports/unispace/viennadecle.pdf&sa=U&ved=0ahUKewj3_fCd3ePLAhXLQBQKHb2NB1EQFggNMAA&sig2=eC_FIMHlc7BAXH5YYWS8Yg&usg=AFQjCNEMfvkBK7sZ71Yy-nvw-Upl7f_Kog)> accessed on 05/03/2023.

<sup>10</sup> See generally I O Smith, 'Security of Title to Land in Nigeria: Any Hope for the Future?' (1996) *Law and Development, Faculty of Law Lagos State University*, 53.

<sup>11</sup> I A Umezulike, *ABC of Contemporary Land Law in Nigeria*, (Enugu: Snapp Press Nig. Ltd, 2013) p. 49.

<sup>12</sup> Land Use Act s. 48.

<sup>13</sup> I O Smith, 'Title to Land in the Former Federal Capital Territory of Lagos upon Creation of Lagos State: Matters Arising' (2004) *Vol. 25 JPPL*, 21.



ownership that existed before the introduction of the Act became extinguished and became vested in the Governor of the state. The Governor became the ‘land owner’ or ‘landlord’ who now grants right of occupancy to other citizens. It must be observed that the Governor holds the land for the benefit of all Nigerians; this is irrespective of the state of origin of the person.

Secondly, the Land Use Act introduced a dichotomy between urban and non-urban areas. This distinction introduced by the Act has both theoretical and practical implications. An urban land, by virtue of Section 51, means ‘such area of the state as may be designated as such by the governor pursuant to Section 3 of this Act.’ Section 3 of the Act further provides that ‘subject to such general conditions as may be specified in that behalf by the National Council of State, the Governor may for the purpose of the Act, by order published in the State Gazette, designate the parts of the area of the territory of the state as constituting land in an urban area.’

The practical implication of this dichotomy as may be seen from several pages of the Act is that land in urban areas was to come under the control and management of the Governor, while lands in rural areas was to come under the management of the appropriate local government authority.<sup>14</sup> The Land Use and Allocation Committee constituted for each state by the Governor was to advise on the administration of land in urban areas while the Land Allocation Committee constituted for each Local Government Council were to exercise equivalent functions with respect to land in non-urban area.<sup>15</sup>

Another incident of the dichotomy is that the statutory right of occupancy granted or deemed granted by the governor relates to urban land<sup>16</sup> whereas customary right of occupancy granted or deemed granted by the Local Government relates to non-urban land.<sup>17</sup>

The implications of the dichotomy introduced by the Act between land in urban area and non-urban area is seen throughout the whole letters of the Act as it relates to the practical significance of the two distinct areas. For instance, there are majorly two types of Right of Occupancy- statutory and customary rights of occupancy with their different legal and practical implications as well as two basic types of Certificates of Occupancy- statutory and customary Certificates of occupancy- with their different legal and practical implications as well.

The foregoing distinction notwithstanding, the Act does not provide any distinction between a statutory right of occupancy and a customary right of occupancy as it relates to the powers of the Governor to revoke a right of Occupancy. In fact, the Act empowers the Governor to revoke any right of occupancy. In this wise, section 28 of the Act provides, inter alia, as follows;

**28. Power of Governor to revoke rights of occupancy**

(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, sub-lease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder;

(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;

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<sup>14</sup> Land Use Act s. 2(1) (a) & (b).

<sup>15</sup> Land Use Act ss. 2(2) & (5).

<sup>16</sup>Land Use Act ss. 5 & 34.

<sup>17</sup> Land Use Act ss. 6 & 36.



(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 purposes 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, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

(4) The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Government for public purposes.

(5) The Governor 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 of this Act deemed to contain;

(b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of this Act;

(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 governor under subsection (3) of section 9 of this Act

The wordings of the above provisions have led to a controversy as to whether the Local Government has the powers to revoke a right of occupancy.

It is against the foregoing background that this work proceeds to examine the powers of the Local Government to revoke a right of occupancy under the Land Use Act.

## 2. Right of Occupancy under the Land Use Act

It must be observed that the Land Use Act did not define the right of occupancy introduced under the Act. The implication being that an understanding of the nature of the right can only be discerned by having regards to the general provision and tenor of the Act. Thus, the nature of the right has been a source of extensive academic and judicial debate.<sup>18</sup> The closest to a definition of a right of occupancy is contained in Section 51 of the Act. A customary right of occupancy is defined as ‘the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act.’ Statutory right of occupancy on the other hand is defined as ‘a right of occupancy by the Governor under the Act’.

Having adopted the dual scheme of management and control of land between the Governor and the Local Government as we have earlier stated, the Act proceeded to empower the Governor and the Local Government to grant right of occupancy in appropriate cases.

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<sup>18</sup> IO Smith, ‘Security of Title in Nigeria: Any Hope for the Future?’ in I Ikhaliore (ed), *Law and Development* (Lagos: LASU Law Seminar Series) p. 49; P Adeoye, ‘The Use of Right of Occupancy as a Security for Title: A Caveat’ (1989) *JPPL*, 17; E Essien, *Law of Credit and Security in Nigeria* (Uyo: Golden Educational Press, 2000) p. 118.



## 2.1. Types of Right of Occupancy

A right of occupancy may be a statutory right of occupancy if granted or deemed granted by the governor or a customary right of occupancy, if granted or deemed granted by the local government.

### (a) Statutory Right of Occupancy

Under the Act, a statutory right of occupancy may be granted expressly or by operation of law (otherwise known as a deemed grant).

#### (i) Express Grant of Statutory Right of Occupancy

By the provisions of Section 5(1) of the Act, the Governor is empowered to grant statutory right of occupancy in respect of any land, whether in urban or rural area, to any person and for all purposes. The Act appears to have given the Governor an unfettered discretion in the exercise of this power. This is more so as Section 47 of the Act ousts the jurisdiction of the court from inquiring into any question concerning the exercise of such powers in this regard. However, as have been previously argued, this section cannot stand in the face of its inconsistency with several provisions of the Constitution.<sup>19</sup>

Any right of occupancy granted by the Governor under Section 5(1) shall be for a definite term and may be granted subject to the terms of any contract which may be made by the Governor and the holder not being inconsistent with the provisions of the Act.<sup>20</sup> The Act also forbids the Governor from granting a right of occupancy to a person who is under the age of 21.<sup>21</sup> However such a person may hold land through a trustee or guardian or next friend of full age and capacity.

#### (ii) Deemed Grant of Statutory Right of Occupancy

By virtue of Section 34(1) of the Act, all land in urban areas vested in any person prior to the commencement of the Land Use Act shall, subject to the provisions of the Act, continue to be held by such persons as if statutory right of occupancy has been issued by the Governor. For the purposes of that section, lands in urban areas are classified into developed and undeveloped land. Developed land is defined by Section 51 of the Act as land where there exist any physical improvements in the nature of a road, development services, water, electricity, drainage, building, structure or such improvements that may enhance the value of the land for industrial, agricultural or residential purposes.

Any other land not falling within this foregoing definition is undeveloped for the purposes of the Act. Such a person who is a holder of the land before the commencement of the Act shall, upon application, be entitled to be issued with a certificate of occupancy as evidence of his title thereof, if the governor is satisfied about his title.<sup>22</sup>

### (b) Customary Right of Occupancy

The Local Government is empowered by the Act to grant customary right of occupancy in respect of land not in urban areas. Such right of occupancy may be granted expressly or by operation of law (otherwise known as deemed grant).

#### (i) Express Grant of Customary Right of Occupancy

By virtue of Section 6(1) of the Act, the Local Government is empowered to grant a customary right of occupancy to any person or organization for residential and agricultural purposes; and for other purposes which include grazing purposes, etc., as may be customary in the local government concerned.

It is worthy of note that unlike the power of the Governor under Section 5 of the Act to grant any area of land for all purposes, the Local Government can only grant land for specifically

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<sup>19</sup> *Nkwocha v Governor of Anambra State, supra; Kanada v Governor of Kaduna State* (1986)4 NWLR (pt 35) 361; *Lemboye v Ogunsiji* (1990)6 NWLR (pt 155) 210.

<sup>20</sup> Land Use Act s. 8.

<sup>21</sup> Land Use Act s. 7.

<sup>22</sup> Land Use Act s. 34(3).



enumerated purposes and other purposes *ejusdem generis* thereto. Again, by virtue of Section 6(2) there is a limitation as to the extent of area of land over which a customary right of occupancy may be granted.<sup>23</sup> There is no age limit imposed by the Act on any person entitled to the grant of customary right occupancy.

**(ii) Deemed Grant of Customary Right of Occupancy**

A deemed customary right of occupancy may be granted in respect of two types of land, i.e., land used for agricultural purposes and developed land.

By virtue of Section 36(2), it is the person in occupation of agricultural land prior to the Act who is entitled to a customary right of occupancy.

The Act has succeeded in limiting the total interest an individual or community may have in land to a statutory or customary right of occupancy

**3. Certificate of Occupancy Introduced Under the Act**

In fulfilment of the Government's policy to control land in Nigeria, the Act introduced the certificate of occupancy to confer or articulate the rights granted by it.<sup>24</sup> The State recognizes no other superior or complementary document for that purpose provided the title of the bearer is not defective.<sup>25</sup> A certificate of occupancy introduced under the Land Use Act is a document under the hand of the Governor or the Commissioner to whom such powers have been duly delegated by the Governor certifying that the person disclosed therein is entitled to a right of occupancy over the land or property therein described.<sup>26</sup> The certificate of occupancy is specially introduced under Section 9(1) of the Land Use Act which enacts as follows:

It shall be lawful for the Governor -

- a. when granting a statutory right of occupancy to any person; or
- b. when any person is in occupation of the land under customary right of occupancy and applies in the prescribed manner; or
- c. when any person is entitled to a statutory right of occupancy -  
to issue a certificate under his hand in evidence of such right of occupancy.

It must be observed that by the foregoing provision, the authority to issue a certificate of occupancy is the prerogative of the Governor. Thus, no Local Government can validly issue a certificate of occupancy even in respect of a customary right of occupancy granted or deemed granted by it. The implication of this is that a certificate of occupancy purportedly issued by any Local Government authority is void and the terms and conditions contained therein ineffectual.

Thus even where a person entitled to customary right of occupancy applies for a certificate of occupancy with sufficient particulars as to the description of the land subject of the application, all the Local Government can do, after satisfying itself that the applicant was entitled to a right of occupancy over the land, is to register him as the holder of a customary right of occupancy and proceed to forward the application to the Governor or the Commissioner to whom the power to issue certificate of occupancy has been delegated. It must be observed however that, in practice, all application for the issuance of certificate of occupancy are made to the Governor through the Ministry of Lands.

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<sup>23</sup>Land Use Act s. 6(2).

<sup>24</sup> Land Use Act s. 9.

<sup>25</sup> *Ademola v Amao & Ors.*(1982) CGSLR 273, reported in JA Omotola, *Cases and Materials on the Land Use Act* (Lagos: Lagos University Press, 1983).

<sup>26</sup> Land Use Act s. 9.



The exclusive duty of the Governor to issue certificate of occupancy to the exclusion of the Local Government flows implicitly from the fact that even though the power of management of land in the non-urban area is within the portfolio of the Local Government, the ownership of such land is vested in the Governor of the state in which the Local Government is located.

### 3.1. Types of Certificates of Occupancy

Generally, there are two main types of certificates of occupancy under the Act and these relate to the broad categories of right of occupancy introduced under the Act viz:

- a. Certificate of statutory right of occupancy
- b. Certificate of customary right of occupancy

While the former is issued so as to evidence or certify the right over land subject of statutory right of occupancy whether expressly or deemed granted by the Governor, the latter is to evidence or certify the existence of customary right of occupancy over land either expressly or deemed granted by the Local Government.

### 4. Revocation of Right of Occupancy by the Governor under the Land Use Act

As we have earlier observed, compulsory acquisition is predicated on the existence of private property right and gives a priori recognition to individual ownership of land or private property right. This presupposes that the land, being acquired is owned by a person outside the government. This justifies the need for the payment of compensation. Thus, there cannot be compulsory acquisition in the absence of private ownership of land;<sup>27</sup> except where the interest which is acquired is less than ownership.

The Governor may revoke a right of occupancy by virtue of powers conferred by Section 28 of the Land Use Act for overriding public interest. Section 28(2) defines overriding public interest in the case of a statutory right of occupancy to mean unlawful alienation, requirement of land by the Local, State or Federal Government<sup>28</sup> for public purpose or the requirement of the land for mining purpose or oil pipelines or any purpose connected therewith. In the case of a customary right of occupancy, over-riding public interest is defined almost the same way as in the case of statutory right of occupancy the only difference being the addition of the requirement of the land for extraction of building materials.<sup>29</sup>

Where the purpose of the revocation is requirement of land by the Local, State or Federal Government for public purpose, any of the purposes stated in Section 51 of the Act is implied.

#### 4.1. Conditions for Revocation

The conditions for a valid revocation are contained in section 28 (6) & (7) of the Act as follows:

1. Revocation must be by a person who has the power to revoke i.e., the Governor or a public officer duly authorized by the Governor;<sup>30</sup>

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<sup>27</sup> A Otubu, *loc cit*.

<sup>28</sup> It is pertinent to note that the Federal or Local Government have no right to revoke a right of occupancy. The power is exclusively reserved for the Governor which he exercises personally or through his delegate - Land Use Act s. 28(6)

<sup>29</sup> Land Use Act s. 28(3).

<sup>30</sup> *Majiyagbe v Attorney General of Northern Nigeria* (1957) NNLR 158; *Umar Ali & Co. (Nig) Ltd v Commissioner for Land and Survey & Ors* (1983) 4 NCCR 571.



2. Notice shall be given stating the purpose of revocation as prescribed by the Act<sup>31</sup> and describing to specificity the subject-matter of revocation.<sup>32</sup>
3. Notice shall be served on the holder.
4. Notice must be proved to have come to the knowledge of the person concerned i.e., there must be proof of the receipt of such notice.<sup>33</sup> Upon the receipt of such notice issued on the holder of a right of occupancy, his title shall be extinguished forthwith or on such later date as may be stated in the notice.<sup>34</sup>

It is important to note that Section 29 of the Land Use Act provides for the payment of compensation upon revocation of a right of occupancy. This is in consonance with the provisions of Section 44(1) of the 1999 Constitution. However, the provisions on compensation do not apply where revocation is penal, for example, where revocation is on grounds of unlawful alienation or for breach of express or implied covenants in a certificate of occupancy. Where compensation is payable, it covers only unexhausted improvements on the land as at the date of the revocation.

### 5. Revocation of Right of Occupancy by the Local Government

One issue which has consistently constituted a subject of controversy is whether the Local Government has the power to revoke a customary right of occupancy. It is clear from the provision of Section 1 of the Act that all land comprised in the territory of each state of the federation is solely vested in the Governor of that state. The only exception is with respect to land vested in the Federal Government. No land either in urban or non-urban area of the state is expressed to be vested in the Local Government.<sup>35</sup> Umezulike has argued that the Act assigned to the Governor absolutely the ability to determine when a deprivation of a citizen's right in land was reasonably necessary for public purposes; thus, the Local Government lacks the power to revoke a right of occupancy.<sup>36</sup> The learned jurist took this position even after a detailed consideration of the provisions of section 6 (3) of the Act in the light of the Supreme Court's decision in the case of *Awaogbo v Eze*.<sup>37</sup>

Section 6(3)-(7) of the Land Use Act provides as follows;

- (3) It shall be lawful for a local government to enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not-
  - (a) land within an area declared to be an urban area pursuant to section 3 of this Act;
  - (b) the subject of a statutory right of occupancy;
  - (c) within any area compulsorily acquired by the Government of the Federation or of the State concerned;
  - (d) the subject of any laws relating to minerals or mineral oils, and for the purpose, to revoke any customary right of occupancy on any such land.

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<sup>31</sup> Where the revocation is for public purpose, it is not enough to state just that, there is the need to spell out the particular public purpose as stated in s. 51 of the Act – *Ereku v Military Governor of Mid-Western State* (1974)10 S.C. 59; *Obikoya v Governor of Lagos State* [1987] 1 NWLR (pt. 50) 385. Thus, to publish a blanket notice of revocation which fails to state what type of public purpose for which the revocation is being made is unlawful and void.

<sup>32</sup> *Provost of Lagos State College of Education & Ors v Edun & Ors* [2004] 6 NWLR (Pt. 870) 476.

<sup>33</sup> *Osho v Foreign Finance Corporation*, (*supra*).

<sup>34</sup> Land Use Act s. 28(7).

<sup>35</sup> In property law, to vest a land is to vest its ownership. See *Marble v Marictoba Farm Association* (1954) 14 NMLR 28.

<sup>36</sup> I A Umezulike, *ABC of Contemporary Land Law in Nigeria*, *op cit*, p. 229.

<sup>37</sup> [1995] 1 NWLR (Pt. 372) 393



- (4) The local government shall have exclusive rights to the lands so occupied against all persons except the Governor.
- (5) The holder and the occupier according to their respective interests of any customary right of occupancy revoked under subsection (3) of this section shall be entitled to compensation, for the value at the date of revocation, of their unexhausted improvements.
- (6) Where land in respect of which a customary right of occupancy is revoked under this Act was used for agricultural purposes by the holder, the local government shall allocate to such holder alternative land for use for the same purpose.
- (7) If a local government refuses or neglects within a reasonable time to pay compensation to a holder and an occupier according to their respective interests under the provisions of subsection (5) of this section, the Governor may proceed to the assessment of compensation under section 29 of this Act and direct the local government to pay the amount of such compensation to the holder and occupier according to their respective interests.

It is the position of this work that the practical effect of the provision of Section 6 (3) of the Act is a power upon the Local Government to revoke a customary right of occupancy. This is even more so as section 6(4) of the Act gives the Local Government exclusive possession to such land entered 'upon or occupied.'<sup>38</sup> Subsections (5), (6) and (7) of the said section also make provisions for payment of compensation and other considerations for protecting the right of persons who are dispossessed as contemplated under sections 29 and 33 for revocation of right of occupancy done by the Governor. What is more, the Act in section 6(5) & (6) refers to the act of entering and occupying by the Local Government as a revocation.

This view is supported by the Supreme Court when it asserted thus:

And until Ikwo Local Government acts under Section 6 (3) and Section 28 (3) of the Land Use Act, it cannot be said that the respondent has been dispossessed of the land in his possession and until then the remedies in Section 6 subsection (5) (6) and (7) do not come into operation. On the fact of the case, I cannot see how the Ikwo Local Government could have deemed to have acted under any of the provision of the Land Use Act.<sup>39</sup>

From the forgoing, it would seem that the Supreme Court would be willing to hold that a Local Government was empowered to dispossess a land in non-urban area of a state by 'entering upon and acquiring'<sup>40</sup> such land for purposes which are purely for public purposes. Moreso, there is no time limit within which the Local Government is allowed to disposes a holder of land. Thus, they can dispossess perpetually; and a perpetual dispossession amounts to revocation. This view is opposed by Umezulike who has asserted that such interpretation which will amount to revocation will cause confusion in the administration of the land under the Act and bifurcate the ownership of land in the entire state vested in the Governor under Section 1 of the Act.<sup>41</sup>

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<sup>38</sup> Emphasis mine.

<sup>39</sup> *Awaogbo v Eze (Supra)* at 393

<sup>40</sup> Emphasis mine.

<sup>41</sup> I A Umezulike, *ABC of Contemporary Land Law in Nigeria*, op cit., p. 231



It must be observed however that the powers of the Local Government to ‘revoke’ a right of occupancy is subject to the powers of the Governor over the right of occupancy in respect of the land within the territory of each state. In this wise, it is submitted that the Local Government cannot revoke the right of occupancy in respect of a land which the Governor has granted a statutory right of occupancy or issued a certificate of occupancy whether or not it is situate in a non-urban area.

It is also submitted that the Governor can revoke the right of occupancy in respect of a land which the Local Government is occupying pursuant to section 6(3).

It is pertinent to note that section 6(3)(c) does not constitute an authority for the Federal Government to revoke a right of occupancy as it does not have any such powers.

## **6. Conclusion and Recommendation**

It is concluded that in view of the foregoing exposition, that in case of a land which is in non-urban area and which is not subject of a statutory right of occupancy and in respect of which a certificate of occupancy has not been issued by the Governor, the Local Government may enter upon, use and occupy same for public purposes pursuant to section 6(3) of the Act. It is submitted that on the strength of section 6(3-7), such power to enter upon, use and occupy amounts to revocation of the right of occupancy under the Act with all its incidents. However, it must be observed that the Act has failed to define the public purposes for which the Local Government may revoke a customary right of occupancy and this has the tendency to lead to arbitrary revocation of people’s lands.

In view of the foregoing, it is recommended that the Act be amended to define the public purposes for which the Local Government may enter upon, use and occupy a land. As leaving the Act as it is may lead to arbitrary revocation of people’s land by the Local Government and in contravention of the intendments of the Act.