



## COMPENSATION FOR REVOCATION OF LAND; THE SUPREME COURT AND THE ERROR OF S. 47(2)) OF THE LAND USE ACT 1978

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### ABSTRACT

This paper interrogates the vexing issue of revocation of land under Nigerian law, the compensatory remedies in cases of revocation, and the rights of persons to ventilate in the recognised courts of the land when their right to prompt compensation and adequacy of such compensations arise. This paper adopting doctrinal research methods examined relevant provisions of extant laws on land rights in Nigeria, limits of such rights especially in the face of the exercise of the State's right to acquire any property for public purposes of providing infrastructure and other social amenities, the issue of compensation to be paid where there is a revocation and the right to approach the courts on issues of compensation. It was found that land rights, though constitutional, were limited by the provisions of the Land Use Act 1978, particularly its provisions on consent requirements and the right to revoke granted rights for public purposes. It was also discovered that the provisions of s.47(2) of the Land Use Act barred citizens from approaching the courts for the determination of issues concerning payable compensation arising from the revocation of rights contrary to the provisions of the Constitution. This Right of a citizen to sue was finally addressed by the Supreme Court in the case of *Controller-General of Prisons v. Elema*, where the provisions of S.47(2) of the Land Use Act 1978 were declared to be inconsistent with the provisions of the Constitution, heralding a new dawn in the exercise of rights of Nigerian citizens. This paper ended with concluding remarks.

**Keywords:** Land, Land rights, Revocation and Compensation.

### 1. INTRODUCTION.

The right to own property, albeit immovable property, in Nigeria is both domestically and internationally recognized and protected.<sup>1</sup> Ownership of realty therefore, is the evidence of an individual's title to land for which he exercises the right to hold, use, and dispose of the same without external interference. Ownership and possession are therefore twin concepts that demonstrate a person's exclusive right to a particular piece of property. They are usually characterized by "an intention to possess plus an appropriate amount of occupation or control of land...or it may be a right in itself...or it may mean effective, physical or manual control or

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<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 43, and the Universal Declaration of Human Rights, (UDHR) 1948; Art 17.



occupation of land or building.”<sup>2</sup>

Land is choice property which can be deployed to create wealth in the hands of the holder, and according to Goode,<sup>3</sup> land creates private wealth and enhances the progress of national as well as international trade by sustaining the flow of foreign capital and investment, which boosts the wealth of nations. In fact, it has been described as “the very basis of commercial and industrial enterprise in Nigeria.”<sup>4</sup> Land is therefore the foundation of societal developments as no meaningful progress can be made in any sphere of the economy, whether agriculture, health, education, religious, financial, and entrepreneurial endeavours, outside of the land and its resources.<sup>5</sup> The usefulness of land, to citizens, corporations, government and nations remains incontestable, hence the noticeable conflicts arising from claims and counterclaims of ownership and possession of land.

The right of citizens to own immovable property in Nigeria is not a general right but one limited by law, which has vested all lands in the Governor of a State and recognises the right of government to take land and utilise the same for developmental purposes, whether or not in private or corporate hands, so long as such a land is required for public purposes.<sup>6</sup> The government, whether at the State or Federal levels, thus has the statutory right to revoke and compulsorily acquire land in private hands so long as the acquisition is for the common good of society, captured in the phrase, “for public purpose.”<sup>7</sup> It is therefore very clear that while citizens have a right to own land, the government reserves the right to take the same land from citizens compulsorily whenever the need arises, which connotes the idea of obligatory release of land by citizens where the government so demands. The caveat to this right to compulsorily acquire land is that it should be made on the payment of prompt compensation so that the citizen does not go empty-handed, but is given a remedy for their loss of land. How good is this remedy? Who determines what compensation is commensurate? What are the yardsticks for measuring? What input, if any can or is the victim, whose land is revoked or compulsorily

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<sup>2</sup> Thomson Reuters; “Possession” in <https://uk.practicallaw.thomsonreuters.com> accessed 15/08/24; LexisNexis; “Possession (Physical versus Legal) Definition;” <https://www.lexisnexis.co.uk> accessed 15 October 2025.

<sup>3</sup> R. M Goode, *The Law of Company Security* (2<sup>nd</sup> edn. Sweet and Maxwell; 1881).

<sup>4</sup>Enefiok Essien, *Law of Credit and Security in Nigeria* (2<sup>nd</sup> edn.Toplaw Publishments Ltd, Uyo, 2012)1.

<sup>5</sup>G. O. Akolokwu, “Interrogating the Challenges of Real Estate Development and Secured Credit Financing in Nigeria” (June 2019) Vol 6; *Nnamdi Azikiwe University, Awka, Journal of Commercial and Property Law*; p. 2.

<sup>6</sup>Land Use Act; Cap L5, Laws of the Federation of Nigeria, 2004; s.1 and s.28; CFRN; s.44.

<sup>7</sup> M. I. Khan, “Land Acquisition Compensation in India: A Thumb Rule” (2015)2(1) *International Journal of Law and Legal Jurisprudence Studies* 1-21, CFRN s.44 and LUA s.28.



acquired, allowed to make? Where he is dissatisfied with the compensation paid, can he complain and seek redress? These and many more posers will guide this discussion on “Compensation for Revocation of Land in Nigeria; the Supreme Court and the Error of s.47(2) of the Land Use Act 1978” which has an introduction, an examination of relevant concepts and the law on revocation based on compulsory acquisition and compensation as well a discussion on the error of s.47(2), the Supreme Court’s intervention and concluding remarks.

## 2. CONCEPTUAL INTERROGATIONS

### Rights

Rights are claims that persons can legally make over property and other privileges. It is a power exercisable by citizens on things and positions backed by the provisions of extant laws, and the enjoyment of such claims when interfered with by other persons gives the person claiming such rights the power to enforce the same by recourse to the law and the judicial system. A right in a property is described as a legal share and can include any aggregation of rights, privileges, powers and immunities.<sup>8</sup> Rights which inure to a person over land are land rights and encapsulate the person’s power to exclude the interference of others from his enjoyment of the property. It equally creates in the person the legal authority to deal with the property as he desires. The right attached to a land is thus the recognised legal power to possess, use, and dispose of the land as the holder of the land desires.

### Land

Land is the immovable part of the Earth’s crust. It is the soil on which plants grow and on which houses are built. This is the ordinary meaning of land. Statutorily, land is defined in Nigeria to be “immovable property which include land and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real.”<sup>9</sup> Land is also defined to “include any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals.”<sup>10</sup> This means that if you own a

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<sup>8</sup> C. I.G. Agwor, Power of A Governor for Compulsory Acquisition of Land for Public Purpose for Public Purpose under the Land Use Act; A Critical Evaluation, (2025), 19(1).

<sup>9</sup> Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 2004; s3.

<sup>10</sup> Ibid; s. 18.



piece of land in which crude oil has been discovered, you can only exercise rights of ownership to the earth's surface and not to the minerals contained therein.

Another wide statutory definition of land is contained in the Property and Conveyancing Law of Western Nigeria 1959 which states that "land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), and other corporeal hereditaments, and an easement; right, privilege or benefit in, over, or derived from land."

Ututama,<sup>11</sup> It is "the earth's surface, subsoil, the air space above it, as well as things that are permanently attached to it." The Common law position is that land encompasses anything that is affixed to the earth, whether naturally or artificially, such as structures, trees, and minerals. It includes all kinds of land (marshes, meadows, woods, water-logged areas, etcetera.) So, under the common law, water bodies are species of land covered by water.

By its nature therefore, land can be "owned, "or possessed by persons and groups who are at liberty to transfer the same to others on agreed terms. It is trite that land in Nigeria was originally owned by families and regarded as "our land" as individual ownership of land was not recognized.<sup>12</sup> This position is no longer tenable with the evolution of the Nigerian society and the complexities of social, economic, and political interests. Individuals now have a constitutional right to own immovable property in any part of the country.<sup>13</sup>

The above definitions have been further expounded by the common law principle encapsulated in the latin maxim "*quic quid plantatur solo, solo cedit*" (meaning that whatever is affixed to the soil, belongs to the soil) and so he who owns the land owns whatever is affixed to it. This position is however debatable as alot depends on the type of fixture so affixed to the land.<sup>14</sup> The above definitions of land and the latin maxim show the increasing difficulty in determining the legal meaning of land. Land however is more than just the ground on which we tread but includes buildings and trees growing thereon. This paper adopts the definition of land in Section 3 of the Interpretation Act which explains land to be an "immovable property or "lands"

<sup>11</sup> A.A. Ututama, *Nigerian Law of Real Property* (Shaneson C.I. Ltd: Ibadan, 1989) 4.

<sup>12</sup> *Amodu Tijani v. Secretary, Southern Nigeria* [1921] 2 AC. 404, where the court recognised the notion of communal or family ownership of land and not individual ownership.

<sup>13</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 43.

<sup>14</sup> *Adebiyi v Ogunbiyi* (1965) NMLR 395.



include land and everything attached to the earth or permanently fastened to anything which is attached to the earth and all chattels real."

### **Revocation of land**

Revocation of land under Nigerian law is the cancellation of a citizen's right to occupy and use a piece of property for the purpose of directing the said piece of land to public use. Land is an immovable and indestructible three-dimensional area consisting of a portion of the earth surface, the space above and below the surface, and everything growing on it permanently affixed to it.<sup>15</sup> So, it concerns the lawful nullification of a person's legal title to land by the government and the substitution of the government as the *bonafide* and new owner of the land with a condition to pay compensation to the original owner. The rationale for the exercise of the right of revocation appears to be that without this power legally ceded to the government, societal growth and development may become stultified, as individuals with landholdings may refuse to release the needed land to the government for infrastructural needs.

### **Compensation**

This term will be discussed in relation to land acquisition by the government. According to Otubu,<sup>16</sup> it is a fair amount paid by the government to a holder of a right of occupancy, which has become compulsorily acquired so that the holder will not be put in a worse position after the acquisition. It is a form of remedial payment to a person or organisation whose right to land has been legally cancelled and the land becomes that of the government. Compensation in this sense therefore, is likened to the payment of damages for the wrong of taking away the property owned, used and possibly developed by that person. It is payment for a loss; or an amount of money paid to a person to replace what was lost; (and in this case, it is to replace the loss of land). Burns captures the meaning of compensation in real estate as "damages paid to a party injured by the act of another as it aims at restoring an injured party to his former position."<sup>17</sup>

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<sup>15</sup>C.I.G Agwor, and F.C. Amadi, 'Transfer on Interest in Land and Governor's Consent Under the Land Use Act : Some Emerging Issues: An Appraisal' *Journal of Private and Property Law*, (2022) 18 (1) 99-113.

<sup>16</sup>A. Otubu; 'The Land Use Act and Compulsory Acquisition without Compensation' (2016) 7(4) *The Gravitas Review of Business and Property Law*, 13-21.

<sup>17</sup>E. H. Burns; *Cheshire's Modern Law of Real Property* (12<sup>th</sup> edition, Butterworths, 1976) 24.



Issues of compensation to land are naturally the resultant effect of government's exercise of its powers to compulsorily acquire land.

### 3. LEGAL BASIS FOR LAND RIGHTS

Nigeria extant laws as well as international legal instruments to which Nigeria is signatory, provide for the rights of its citizens to own land. But for this paper, we shall only give cursory considerations to the nation's Constitution and the Land Use Act 1978.

#### Constitution of The Federal Republic of Nigeria 1999

The property rights of Nigerians are guaranteed under the 1999 Constitution.<sup>18</sup> The right to own land under this provision is declared to be a fundamental human right, which is not however absolute<sup>19</sup> but made subject to the provisions of other laws and even subject to other provisions of the same constitution. The effect of the above situation is a whittling down of the citizen's right to own property and exercise all the incidents of ownership, which arguably may mean that ownership of land rights in Nigeria is actually a mirage.

#### Land Use Act 1978

The Land Use Act<sup>20</sup> is the fulcrum of land legislation in Nigeria. It derives its strength from the 1999 Constitution, in which it is incorporated. According to Section 1 of the Act, the Governor of a State has all lands in the State vested in him with express authority to use all of the land within that State for the common good of all Nigerians, except the land which has been placed in the Federal government or its agencies. The Land Use Act 1978 is described as "the most impactful of all legislations touching upon the land tenurial system of this country before and after nationhood;"<sup>21</sup> as a piece of legislation whose "tenor is nationalization of all lands in the country;"<sup>22</sup> a legal instrument revolutionizing interests of Nigerians by

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<sup>18</sup> s. 43 which provides that every citizen has a right to acquire and own immovable property anywhere in Nigeria.

<sup>19</sup> CFRN, 1999 (as amended), s. 44(1) which provides for compulsory acquisition of land by government, the following words "no moveable property or interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be compulsorily acquired 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 and (b) gives to any person claiming such compensation a right of access for 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.

<sup>20</sup> s 28(2).

<sup>21</sup> *Nkwocha v. Governor of Anambra State* (1984) 6 SC 362 at 363, per Irikefe JSC (as he then was).

<sup>22</sup> *Ibid*; *per Eso, JSC*.



expropriating the radical title;<sup>23</sup> as a hybrid and a special kind of lease, “abrogating absolute ownership or freehold interest by the community, family and individual.”<sup>24</sup> This Act makes provisions for the grant of an interest in land in a State to citizens by the Governor of that State in form of a grant of a statutory right of occupancy or the recognition of the citizen’s prior interest via a deemed right of occupancy.<sup>25</sup>

#### **4. LAND REVOCATION UNDER THE LAND USE ACT**

The revocation of land occupied by a citizen of Nigeria by the government of a State is statutorily provided. <sup>26</sup> The revocation powers so provided is not to be exercised arbitrarily, or at will but for a statutorily provided reason to wit; for overriding public purposes. An examination of the purpose for granting the Governor of a State the powers to revoke land in the hands of a citizen shows that in the contemplation of the law, the State must be in such dire need of the land to be revoked and that clearly there are no alternatives. So, in the thinking of the law, the interest and well-being of more people should generally supersede the interest of a single individual who is actually equally captured in the collective. The Act also gave a clear explanation on what the overriding public interest means. Which states that it concerns the land requirements of the State, Local or Federal Government for public purposes or required for mining and pipeline purposes.<sup>27</sup>

Section 1 of the Act provides three reasons upon which the Governor can revoke a person’s right of occupancy. These reasons are for overriding public interest, on the ground that the holder of the right of occupancy has breached agreed covenants in the certificate of occupancy or on the ground that the holder of the grant has refused or neglected to accept and pay for the certificate of occupancy. The procedure for a valid revocation requires the issuance of a revocation notice to the holder of the right to land.<sup>28</sup> The Act however did not state the length of notice to be issued which throws up questions of what length of notice would be reasonable?

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<sup>23</sup> Umezulike, A, ‘Does Land Use Act Expropriate’ Another View (1986) 5 JPPL 61.

<sup>24</sup> Mabogunje, A L, ‘Land Reform in Nigeria: Progress, Problems & Prospects’ available at <https://aiteresources.worldbank.org> accessed 5<sup>th</sup> October, 2025.

<sup>25</sup> Land Use Act 1978, Cap L5, Laws of the Federation of Nigeria, 2004; ss.9 &34.

<sup>26</sup> Ibid; s.28 & s33.

<sup>27</sup> LUA s. 28(2).

<sup>28</sup> s.28(6).



This fact however was not addressed by the Act.

The interpretation provisions of the Act<sup>29</sup> expands public purpose to include “for exclusive Government use or for general public use; for use by any body corporate directly established by law...; for or in connection with sanitary improvements of any kind; or for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of a railway. It follows therefore that any revocation of a person’s interest in land for the purpose of granting the same land to another individual would be unlawful. This was the position in *Aderonpe v Eleran*,<sup>30</sup> where the appellant applied to the Kwara State Land Use Allocation Committee for a plot of land. His application was successful. By a letter dated 17th April 2005 (exhibit 1), he was allocated a plot of land in the State Government’s layout along Ajase-Ipo Road, Ilorin, Kwara State designated as plot No. 9, TPS/MISC.168. The letter stated the fees he was required to pay within 90 days. He paid the fees within 90 days. He was given a plan (exhibit 6) of the plots of land in the layout. Plot No. 9 allocated to him was clearly identified on the plan. On the instructions of the 3rd respondent, officers of the Ministry of Lands and Housing showed him plot No. 9 and put him in possession with the promise to deliver all documents on the part of the government as soon as possible. Thereafter, he fenced the plot of land.

On the other hand, the 1st respondent was allocated plot No. 6, TPS/MISC.168. At the time the appellant was placed in possession of plot No. 9 in TPS/MISC.168, the 1st respondent’s grant was for plot No. 6, TPS/MISC.168. However, a problem arose over that allocation and she was relocated to another plot of land in an entirely new layout known as plot No. 5, TPS/MISC.182. And she accepted the new plot of land. Subsequently, the 2nd and 3rd respondents claimed they discovered an error in the original plan of layout TPS/MISC.168. Therefore, they re-drew the plan. Plot No. 9 that was allocated to the appellant was re-numbered as plot No. 6 in the re-drawn plan but it retained the same beacon numbers of the original plot No. 9. The 2nd and 3rd respondents then allocated the re-numbered plot No. 6 on the re-drawn plan for layout TPS/MISC.168 to the 1st respondent, though the 1st respondent had accepted plot No. 5,

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<sup>29</sup>s.51.

<sup>30</sup>[2019] 4 NWLR (Pt. 1661)141.



TPS/MISC.182. No plot of land was allocated to the appellant in the redrawn plan of layout TPS/MISC.168.

The Land Use Allocation Committee (LUAC) intervened in the resultant dispute between the appellant and the 1st Respondent over the re-allocation of the re-numbered plot No. 6, TPS/MISC.168 to the 1st Respondent. The LUAC heard the parties and gave a date for its verdict. But before it could resolve and communicate its decision to the appellant and the 1st Respondent, the 3rd Respondent issued a certificate of statutory right of occupancy to the 1st Respondent over the disputed plot No. 9 (re-numbered as plot No. 6) on TPS/MISC.168. Further, the 3rd Respondent asserted that the Certificate of Occupancy foreclosed the right of the appellant in the entire layout without either withdrawing or revoking the grant made to the appellant over the same plot by Exhibit 1.

The appellant was aggrieved. He sued the Respondents at the High Court. Principally, he sought a declaration that on the 2nd and 3rd Respondents' offer of plot No. 9, TPS/MISC.168 along Ajase-Ipo Road, Ilorin, and on his acceptance of the offer coupled with his payment of consideration in full, he acquired title to and a vested right in the plot of land. He sought other declaratory reliefs, an injunctive order, and damages. The 2nd and 3rd respondents filed their defence and defended the suit. But the 1st respondent did not file her statement of defence.

At trial, CW2 testified that the Appellant was given a general approval for the grant of a statutory right of occupancy over original plot No. 9, TPS/MISC.168. Additionally, DW2 said that because the appellant had paid all fees required as consideration within the time stipulated in Exhibit 1, the Government owed the appellant a duty to grant him the statutory right of occupancy over plot No. 9, TPS/MISC.168. On their part, the 2nd and 3rd Respondents did not present evidence that the allocation or grant in Exhibit 1 was withdrawn or formally revoked for any reason.

In its judgment, the trial court found that, in law and in equity, the appellant was vested with an enforceable title over plot No. 9, TPS/MISC.168, because he had been shown the plot of land and had taken possession after paying the necessary consideration. The trial court found that the appellant had a better title to the plot of land than the 1st respondent; that the appellant's right to the plot of land could not be revoked in favour of the 1st respondent; and that the title



conferred on the 1st respondent over the plot of land was invalid and null. Consequently, the trial court granted all the reliefs sought by the appellant.

The Respondents appealed to the Court of Appeal. Amongst other grounds, they argued that because the Appellant entered the plot of land and erected a perimeter fence without approval, he lost the allocation made to him. The Court of Appeal found that no legal estate or statutory right had been conferred by the State on the respondent. It held that Exhibit 1 was a mere allocation of land in principle, and did not vest in the appellant, any enforceable right to claim title, damages, trespass in respect of the plot of land. It allowed the appeal and reversed the judgment of the trial court.

The Appellant appealed to the Supreme Court and urged the court to restore the judgment of the trial court. The Respondents countered that the grant to the appellant was an allocation in principle; that Exhibit 1 was not intended to be a title document; and that the appellant's payment of the statutory fees did not give him an equitable interest in the plot of land.

The court unanimously allowed the appeal, held amongst others that “under section 28 of the Land Use Act, the Governor has the right to revoke an allocation of land for breach of a fundamental term of the grant. In this case, the 2nd and 3rd respondents did not revoke the allocation made to the appellant before they issued a certificate of occupancy to the 1st respondent. Instead, they argued at the Court of Appeal, which erroneously accepted that the appellant lost the allocation made to him because he went on the plot of land and erected a fence on it. However, their failure to exercise their right of revocation suggested their acquiescence in the erection of the fence. That amounted to a waiver, and that also made it unconscionable, on grounds of estoppel by conduct on their part, for them to rely on the act they had condoned as justification for re-allocating the same plot No. 9 (or plot No. 6) on TPS/MISC.168 to the 1st respondent. In the circumstances, the issuance of a certificate to the 1st respondent was done in violation of the provisions of section 28 of the Land Use Act, and therefore a nullity.”

It is important to note that any land within a State, whether situated in an urban or rural area, can be subject to the Governor's powers of revocation for public purposes.

## **5. COMPENSATORY REMEDIES FOR REVOCATION OF LAND**



The Land Use Act did not leave a holder of a right of occupancy whose interest has been revoked or compulsorily acquired without a lifeline. It provided that such a person be paid compensation “for the value at the date of revocation of their unexhausted improvements” on the land. It further provides, compensation for an amount equal to the rent the occupier paid for the land in the particular year it was revoked. This provision did not capture any previous rents paid on the land by the holder and excludes compensatory payments where the holder failed to pay any rent for the land in the year of revocation; crops, buildings, installations, and improvements as may be determined by an appropriate officer. The Act also expressly directs that all disputes as to the amount of compensation paid be directed to the Land Use and Allocation Committee.<sup>31</sup>

It is important to state that the revocation that attracts compensation is the revocation of land arising from the compulsory acquisition of the land for public purposes only. The revocation arising from the breach of the covenants in the certificate of occupancy does not attract the payment of compensation.

## **6. THE ERROR OF S.47(2) OF THE LAND USE ACT 1978**

The error of section 47(2) of the Land Use Act is that it nullified the constitutional right of a citizen to seek redress where his rights are violated including his right to compensation upon a valid revocation for overriding public interests by stating that “no court shall have jurisdiction to inquire into any question concerning or about the amount or adequacy of any compensation paid or to be paid under this Act.” The effect of the above was simply that a citizen’s right to property could be revoked but he or she had no right to challenge the compensation paid, which *ab initio*, is a requisite condition for revocation. The section attempts to make a mockery of section 6 of the CFRN 1999 which protects the judicial powers of courts in Nigeria to adjudicate on matters between persons, or government or authority. It also ridicules the citizen’s right to seek redress as provided in section 46(1) of the Nigerian Constitution.

The right to seek redress was emphasised in the *Aderonpe’s* case where the Supreme court restated the position of “Section 44(1) of the 1999 Constitution which states that no movable property or any interest in any immovable property shall be acquired compulsorily in any part

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<sup>31</sup>LUA 1978; s.30.



of Nigeria except in the manner and for the purposes prescribed by a law that, among other things; requires prompt payment of compensation; and 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. In this case, the grant or allocation of plot No. 9, TPS/MISC.168 in principle to the appellant by the 2nd and 3<sup>rd</sup> respondents by exhibit 1 vested in him an interest in the plot of land that section 44(1) of the 1999 Constitution protects.

### **7. THE HELP OF THE SUPREME COURT IN *CONTROLLER GENERAL OF PRISONS v. ELEMA*<sup>32</sup>**

The above error in the Land Use Act which has held sway for the past 43 years, has been finally corrected by the bold decision of the Supreme Court in the *Controller General of Prisons* case. From the facts of this case, on 16th July 1998, at the Federal High Court, Benin, the respondents sued the appellants claiming compensation payable by the appellants to the respondents. The claim was based on the refusal of the appellants to pay the respondents compensation for their land compulsorily acquired by the appellants under the Public Lands Acquisition Law of Edo State and for their properties destroyed in the process of the said acquisition and occupation. The respondents claimed general and special damages as compensation therefor.

The trial Court in its judgment granted the claim but refused to award special damages to the respondents. Aggrieved, the respondents appealed to the Court of Appeal, while the appellants cross-appealed. While the appeal and cross-appeal were pending before the Court of Appeal, the appellants paid the judgment debt as adjudged by the trial court. The Court of Appeal in its judgment on 22nd November 2017, allowed the respondents' appeal and reversed the decision of the High Court, refusing to award special damages to the respondent. It therefore awarded special damages to the respondents. Dissatisfied, the appellants appealed to the Supreme Court. The appellants contended that having paid the judgment debt during the pendency of the appeal at the Court of Appeal, the matter had been completely settled. The respondents on their part, maintained that the judgment debt that was paid, did not include their claim for special damages. The appellants, for the first time, challenged the jurisdiction of the Federal High

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<sup>32</sup>[2021] 12 NWLR (Pt. 1790) 234.



Court over the matter. They placed reliance on Section 230 of the Constitution of the Federal Republic of Nigeria, 1979, as amended by the Constitution (Suspension and Modification Decree No. 107 of 1993), and argued that since the suit was in respect of land, it was not within the subject matter jurisdiction of the trial Federal High Court.

In determining the appeal, the Supreme Court considered the provisions of Section 47(2) of the Land Use Act, 1978 and Sections 1(3), 44(1), 251(1)(r) of the 1999 Constitution.

Unanimously dismissing the appeal, Ogunwumiju, J.S.C stated that:

The cause of action in this appeal is not one for declaratory relief in respect of possessory or radical title to land. It is for the compensation payable by the appellants to the respondents for the acquisition of 16.19 hectares of ancestral land compulsorily acquired. In this case, there is absolutely no dispute as to the person entitled to be paid compensation. Thus, clearly the decision of this court in *Adetayo &Ors. v. Ademola&Ors.*<sup>33</sup> is inapplicable. Since the claim stems from the refusal of the appellants being agents of the Federal Government, the proper Court seized of jurisdiction is the Federal High Court pursuant to S. 251(1)(r) of the 1999 Constitution. The jurisdiction donated to the trial court by S.251, being challenged by the appellants, did not exclude action challenging the executive or administrative matter of the Federal Government where it relates to compensation for acquired land. In fact, there appears to be no limitation to the areas where the Federal Government’s executive and administrative action in respect of any subject matter can be challenged and damages claimed from the Federal Government in that regard.

And on constitutionality of section 47(2) of the Land Use Act which states that no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount, or adequacy of any compensation paid or to be paid under the Act, the Supreme Court held that “taking away the right of access to court to determine the amount of compensation payable for a compulsorily acquired property, Section 47(2) is in conflict, unconstitutional and void by virtue of Section 1(3) of the 1999 which provides that: “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.” Section 47(2) is pronounced a void provision by the

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<sup>33</sup>(2010) 15 NWLR (Pt. 1215) 169.



Supreme Court, which liberates citizens can go to court to question the adequacy of not of the compensation paid for compulsory acquisition for public purposes.

Furthermore, to Agim, J.S.C, “the argument that by virtue of S.47(2) of the Land Use Act, the trial court lacked the jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act lacks validity here for two reasons. The first is that the claim in this suit is not about the determination of the amount payable as compensation or the adequacy of the amount paid or to be paid as compensation. The respondents’ case is simply that their land was compulsorily acquired, their tree crops and cultural properties destroyed and no compensation was paid to them therefore.

It did not raise the questions that S.47(2) of the Land Use Act 1978 precluded the court from inquiring into. The second reason is that s.47(2) which provides that “No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount, or adequacy of any compensation paid or to be paid under this Act” conflicts with s.40(1) of the 1979 Constitution (the same with s.44(1) of 1999 Constitution) that provides that “No movable 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- requires the prompt payment of compensation therefore; and gives, to any person claiming such compensation 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.”

S.40(1)(b) of the 1979 Constitution gave to a person whose property is compulsorily acquired and who has not paid compensation or adequate compensation for the said property, the right of access to a court for the determination of the amount of compensation due to him or her. S.47(2) of the Land Use Act by ousting the jurisdiction of court to inquire into questions concerning the amount or adequacy of compensation paid or to be paid, deprives the person whose property is compulsorily acquired the right of access to a court for the determination of the amount of compensation due to him or her, which right is given to him or her by s.44(1)(b) of the 1999 Constitution.”



**According to Ogunwumiju, JSC;** “The Land Use Act is an Act of the National Assembly embedded in the 1999 Constitution. The argument of the appellants is that by s.47(2) of the Land Use Act, the trial court lacked jurisdiction to inquire into any question concerning the amount of compensation payable under the Act. The said S. 47 of the Land Use Act is in violent conflict with s.44(1) of the 1999 Constitution which proscribes expropriation of property without compensation. In fact, the Constitution provides that prompt compensation be paid for acquired property. S.44(1)(b) of the Constitution gives the owner of acquired land the right to enter the land to assess the quantum of compensation he may demand. That argument by the Appellant that the Court cannot inquire into the amount of compensation payable cannot therefore hold up. This is simply because the Constitution is supreme. S.47 of the Land Use Act is thus in conflict with S. 46(1) of the 1999 Constitution and is void to the extent of its inconsistency with the Constitution.”

## **8. CONCLUSION**

The right of citizens to have access to the established courts to seek redress for violations of their rights remains sacrosanct, as anything to the contrary smirks of primordial and uncivilised sentiments. Land rights and the protection thereof remain topical in Nigeria and are regulated by extant laws. It remains arguable that individuals own land in Nigeria, as the ownership of land is greatly censored by the State which arrogates the power to own in itself by vesting all lands in the Governor leaving citizens with the right to apply for a portion which may or may not be granted for use and not for more than 99 years. As a further sign of control, it demands that citizens get its approval or consent before dealing with the land in the exercise of the qualified rights granted and reserves the right to terminate the grant, whether developed or not. The legal respite provided for citizens in cases of compulsory acquisition of property remains the payment of compensation or resettlement to an alternative accommodation.

It is however very curious that the victim of such an acquisition compulsorily made in the interest of the public under the Land Use Act, has little or no contribution to make in the amount of compensation to be paid to him as the decision remains the exclusive business of the Government through its agents appointed by them in the Land Use and Allocation Committees. In fact, by the provisions of the Land Use Act which this paper considers to be in error, such a citizen had no right to complain about any aspect of the compensation to be



paid. This position apparently left in its wake social disharmony with persons disgruntled and helpless to fight for better remedial actions. With the decision of the Supreme Court however, it is expected that other ingredients outside those stated in the law may be considered to enhance compensation paid, as this would guarantee more economic viability. It is also recommended that State governments should have a clear taxonomy of land in the State as well as clear plans for developmental purposes to reduce the incidence of compulsory acquisition. The remedy of resettlement rather than the payment of pecuniary compensation, which are usually inadequate, land exchange and compulsory purchase the government would possibly serve the interests of citizens better than compulsory acquisition while making land needed for societal development still available.