



AN ANALYSIS OF PROTECTION OF THE RIGHT TO OWN PROPERTY: INTERNATIONAL AND NATIONAL LAW PERSPECTIVES

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ABSTRACT

The paper analysed the protection of the right to own property in the perspective of the international law and the national law. Section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the rights to property, which is the foremost body of human rights regulating the acquisition of property in Nigeria. The constitution set out the extent of these rights and the limits of its enforcement as well as the powers of the State to acquire properties in public interest, beyond what is provided under the Nigerian Constitution, the Universal Declaration of Human and Peoples Rights which no doubt remains the umbrella instruments that provided for the human rights of the people, the African Charter on Human and Peoples' Rights as well as other rights instruments further provides for elaborate enforcement of these rights. In this paper, the position of the Universal Declaration of Human and Peoples Rights as well as the African Charter on Human and Peoples' Rights have been well discussed and extrapolated on the contrary with the constitutional provisions. It is found that, the law is united both at the level of statutes and judicial decisions as well as customary law to the effect that the human rights to own properties is both universal and constitutional, valid, thus needs the protections of the law as provided in the various human rights instruments. The paper gave some concluding remarks.

Keywords: *Property, Rights, Human Rights Protection, International Law.*

INTRODUCTION

The right to own property under the law as provided both under the Nigerian Constitutional and International law, finds clear expressions and protection under both the local and international laws, conventions and protocols. The protection of human right to own property is dated back to the Virginia Declaration of rights of 1776, which declared inter alia that the right to own



property is an inherent right of all men.¹ Similarly, the French Declaration of the Rights of Man from 1789 states that property is an inviolable and sacred right.²

Under the Nigerian constitutional regime, the right to own property whether movable or immovable is as contained or provided under the Constitution of Federal Republic of Nigeria especially Section 44(1) of the Constitution. The law guarantees special protection to these rights and ensure that the sanctity of these rights are protected.³ The right to own property connotes the right to possess and use material resources within legally defined limits. Each constituent of this right such as possession, use, and limits clearly shows it as a bundle of rights and not a single one.⁴ The protections accorded these rights exudes and guarantee the integrity of the owner of these rights to assert rights and influence over his or her property and to protect it from abuse and threat of destructions.⁵

The Nigerian judicial sphere is replete with decisions that clearly gave impetus to the protections of human rights to our properties. These rights translates into the realm of rights to exert some level of enjoyment and capacity to apply the property as it may down fit and within the limit of the relevant laws as provided. Property law as it relates to constitutional and human rights laws also seeks to protect the rights of the most vulnerable in the society as it relates to the protection of their rights to own properties, especially the rights of women to own properties as it conflicts

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¹ Yinka Olumojobi, *'Human Rights and Civil Liberties in Nigeria'* (Princeton and Associates Publishing, 2018) 316.

²*Ibid.*

³ Ese Malemi, *'The Nigerian Constitutional Law'* (Princeton Publishing Company, 2012) 309.

⁴ Olumojobi (n1).

⁵ John Kekes, 'The right to Private Property: A Justification' [2010] (27) (1) *Journal of Social Philosophy and Policy* in Olumojobi (n1).



with pre-existing traditions prevalent in some climes. The law have developed and determined to rescue situations of gross abuse of the rights to own property.⁶

The right to own property has been defined as one of the earliest and most important rights known to man.⁷ According to John Lock, one of the reasons why man save up his liberty under a social contract with the ruler was to secure his property.⁸ Property in the widest sense means all legal rights a person has. The 1999 Constitution defines property in the form of moveable and immovable property.⁹ The right to own property is entrenched in Article 17 of the Universal Declaration of Human Rights (UDHR), Article 14 of the African Charter on Human and Peoples' Rights.¹⁰ While Sections 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria, provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.¹¹

By virtue of the provisions of Section 28(1) and (4) of the Land Use Act, a right of occupancy can lawfully be revoked by the governor on behalf of the state upon issuance of notice by the Governor that the Land is required for overriding public purpose as provided under Section 51 of the Land Use Act. The Court has held in the case of *Sokoto Local Government and Others, v Alhaji Ishoho Amale and another*, that the compulsory acquisition of a property acquired by a grant of statutory right of occupancy, by the Local Government for the purposes of expanding the cattle market was legal and within the contemplation of the provisions of the constitution.¹²

⁶*Ibid.*

⁷*Ibid.*

⁸*Ibid.*

⁹ UDHR Art.17.

¹⁰(n9)

¹¹ CFRN s.43.

¹² LUA s.51.



In the case of *Ibafon Company Ltd v Nigeria Ports Authority* on the other hand that alienation of land acquired compulsorily for public purposes to persons who used it for private businesses was illegal, null and void.¹³ Thus, before a right of occupancy can be compulsorily acquired, notices of acquisition must be given to the holder of the Land Use Act. The case of *Sokoto Local Government v Ishoho Amale*, (Supra) further reveals the fact that the respondent was aware of the revocation order in accordance with the provisions of the Act, was enough to extinguish his grant of the right of occupancy over the relevant land. It is not enough to publish notice in the official gazette.¹⁴

The right to own property remains one of the heads of human rights that finds its application on the realities of human and peoples' rights both as protected under the constitution of a country and other international human rights instruments such as protocols, conventions and policies of government, as shall be discussed later.¹⁵

THE RIGHT TO OWN PROPERTY UNDER INTERNATIONAL LAW PROTECTION

The Universal Declaration of Human Rights, provides that, everyone has the right to own property alone as well as in association with others, thus, no one shall be arbitrarily deprived of his rights.¹⁶ The right to own property was initially not incorporated into the two International Covenants on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR and ICESCR however prohibits discrimination based on the right to property as part of the non-discrimination clause of the

¹³ (2000) 8 NWLR (pt.667) p.86 at 1000.

¹⁴ (2012) LPELR – 7842 SC.

¹⁵ LUA s.28(6).

¹⁶ UDHR Art.17.



relevant articles of the ICCPR and ICESCR, but they do not include the actual right to own property.¹⁷ It is suggested that, international human rights conventions embraced clauses that prohibit discrimination centered on property or in respect to property based on a person's sex, race, or religion.¹⁸ The Conventions relating to the status of Refugees 1951, though omitted the rights to property, however makes provisions for several clauses pertaining to movable and immovable property rights of refugees.¹⁹ Similarly, the Convention relating to the status of stateless persons adopted in 1954 has similar clauses protecting the property rights of stateless people.²⁰ It must be noted that, despite the non-inclusion of the right to property in the ICCPR and the ICESCR, a number of international instruments recognizes the right to property.²¹

The International Covenant on the Elimination of All Forms of Discrimination Against Women declare the equality of women and men in reverence to ownership of property.²² Another international instrument concerning the right of ownership and possession of the indigenous peoples, provides for the assertion of the peoples right over the land they customarily own and occupy, and the states' obligation to recognize this land and assure the indigenous peoples of effective protection of their rights of ownership and possession.²³ Under the Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) provides an exhaustive property clause in its Article 15 to the effect that:

¹⁷ ICCPR Art.24(1) and ICESCR Art.2(2).

¹⁸ Olomjobi (n1).

¹⁹ *Ibid.*

²⁰ CRSSP Art.13, 18, 19, 29 and 30.

²¹ *Ibid.*

²² CEDAW Art.15(2) and 16(i)(h).

²³ ILO No.169 (1989).



No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the Legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.²⁴

Under the Regime of the African Charter on Human and Peoples' Rights, Article 14 provides that, the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.²⁵ As noted earlier, despite not having a direct obligatory provision under international law central to the protection of property at the international level, the African Commission on Human and Peoples' Rights (ACHPR) has communicated on a decent amount of cases on the subject. For instance, the African Commission for Human and Peoples' Rights Communication in *Institute for Human Rights and Development on African v Angola* finds the respondent State's actions in violation of the right to property under Article 14 of the African Charter. In that case, the complainant alleges that in the course of arrest, the property of the victims was confiscated by Angolan authorities, including television sets, shoes, wrist watches and clothing. It further claims that the abruptness of their arrest forced them to leave behind all properties in Angola giving them no opportunity to make arrangements regarding the transportation or disposal of their belongings. The African Commission is of the view that the actions of the respondent State as shown in the preceding paragraphs not only denied fair treatment of the victims with opportunity to challenge their deportation but also failed to allow

²⁴ CPRMWF 1990 Art.15.

²⁵ ACHPR Art.14.



them opportunity to deal with their belongings. The complainant argues that the African Commission concurs that the type of deportation involved in the present case (that is mass expulsions without due process) challenges a series of rights and protections afforded by the Charter. It was held that, while the right to property under the African Charter is not absolute, the respondent State has not provided evidence to prove that its actions were necessitated either by public need or community interest.²⁶

PROPERTY RIGHT UNDER THE NIGERIAN LAW

The Nigerian Constitution secures the rights of all Nigerians to acquire and own immovable property anywhere in Nigeria. Section 43 of the Constitution provides that, subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.²⁷ This constitutional provision was applied and recognized in the case of *HRH Eze Sir J.E. Ukaobasi v Berthram Ezimora & Ors.*²⁸ With this right, every citizen of Nigeria can own immovable assets anywhere in Nigeria without any fear of intimidation or harassment. Irrespective of tribe or religion, a citizen can acquire and own property anywhere within the territory of Nigeria. This will lead to increased national integration and co-existence among Nigerians.²⁹

It must be noted that, the term immovable property refers to landed property. This suggests that section 43 applies only to landed property. However, a combined reading of section 43 and 44

²⁶ Communication 292/2004 Decided at the 43rd Ordinary session, May, 2008, 24th Activity Report.

²⁷CFRN 1999 s.43.

²⁸ (2010) LPELR – 40174 CA.

²⁹n 28..



shows that the constitution seems to create a single right to property.³⁰ Nevertheless, incorporated properties such as intellectual property rights seem not to be properly captured in this provision. In *Adewale v Jakande*, the court held that the proposed abolition of private primary schools by the Lagos State Government is inconsistent with the right against compulsory expropriation of property.³¹

COMPULSORY ACQUISITION OF PROPERTY

The right to own property is enhanced by the constitution and protected to the extent that such rights shall not be violated at will or for no justifiable reasons, and such reason must be in the interest of the public. Though the Constitution is said to have guaranteed the protection of the fundamental rights which includes the right to own property on one hand, on the other, it balances the conflicting interest by necessary restrictions in the rights.³² It can take away, derogate or limit the exercise of the fundamental rights in the interest of the State by laws which are reasonably justifiable in a democratic society on the grounds of defence, public safety, public order, public morality, public health and/or for the purposes of protecting the rights of other persons. The constitution provides that,

No movable property or any interest in an immovable property shall be acquired compulsorily in any part of Nigeria except in the manner as for the purpose prescribed by a law that, among other things

(a) requires the prompt payment of compensation therefore and

³⁰ (1997)1NWLR (pt.480) 194.

³¹ (1981) 1NCLR 262.

³² Ese Malemi, *The Nigerian Constitutional Law* (Princeton Publishing Company, 2006) 241.



(b) gives to any person claiming such compensation a right to 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.³³

The laws empowers the State to compulsorily acquire or take possession of it in compliance with a law enacted for that purpose which must make provision for the payment of adequate compensation to the right owner.³⁴ Such law must also allow the rightful owners access to court where there is dispute as to the amount of compensation payable in respect of the acquired property. In the case of *Ndigwe v Ibekendu & Anor*, the Court of Appeal stated that section 40 of the 1979 Constitution, now section 41 of the 1999 Constitution which guarantees the right against compulsory acquisition of property has two limbs namely: (i) compulsory possession; and (ii) compulsory acquisition. Thus, any compulsory acquisition of property that does not fall under any of the above listed exception is a violation of the constitutional right to acquire property.³⁵ In the case of *Peenok Investment Ltd. v Hotel Presidential Ltd.*, the court held that, the import of the provision is that no property, moveable or immovable shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that (a) requires the payment of compensation therefore and (b) gives the person claiming such compensation a right to 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.³⁶

³³ CFRN 1999, s.44.

³⁴ *Ibid.*

³⁵ (1992) 12 SC1 at 65, 109, 1110.

³⁶ CFRN 1999, s.44.



RIGHT TO PROPERTY UNDER THE LAND USE ACT

The Land Use Act is the principal legislation regulating and governing the administration and acquisition of land ownership and use of land in Nigeria. The laws vested the rights of administration of land within the territory of a State in the Governor. Thus by virtue of the provision of the Land Use Act which has been incorporated into the constitution by virtue of section 315(5) of the 1999 Constitution, the Land Use Act has now acquired the validity and force of the constitution, to the effect that, it can only be altered or repealed following the procedure for constitutional amendment.³⁷ This position was restated in the case of *Nkwocha v Governor of Anambra State*, where the apex court held so expressly that, although the Land Use Act is an extraordinary enactment, it is not an integral part of the Constitution which empowers the State to acquire land compulsorily for the purpose and in the manner prescribed by law which includes the Land Use Act.³⁸

The Land Use Act provides for compulsory acquisition of land by a State Governor for public purposes. The courts have sanctioned this in the *Provost Lagos State College of Education v Dr. Kolawole Edun*. The court in that case considered the provision of section 25 of the Public Lands Acquisition (Amendment) Edict, 1976 which permits compulsory acquisition of lands upon payment of compensation and held that it is not a violation of the constitution. Similarly, in the case of *Ononuju & Anor. v A.G. Anambra State and Ors.*, the Supreme Court stated that,

³⁷ CFRN 1999, s.9(2).

³⁸ (2004) 6NWLR (pt.870) 476.



what is important is that if there has to be a compulsory acquisition of land, it must be done in accordance with the law, that is to say, that the acquisition must be for public purpose of the State.

RIGHT TO PROPERTY, CUSTOMARY LAW AND DISCRIMINATION AGAINST WOMEN

The right to acquire and own immovable property is not affected by any practice in place under any customary law. The native law and custom of most communities in Nigeria deny women the right to own immovable property and this has been held a breach of their right to property. In the case of *Asika v Atanya*, where the appellants were women that had property bequeathed to them by their father in a will along with their brother. Their brother died and his son, the respondent claimed that under Onitsha customary law, he was entitled to all the property being the only surviving male in the family. The Court interpreted the provisions of section 43 of the 1999 Constitution to the effect that, every citizen of Nigeria has right to acquire and own immovable property anywhere in Nigeria. The Court of Appeal stated thus:

Again one may ask why in some parts of Nigeria women are by Subordinate laws and customs deprived of ownership and right of inheritance to acquire and own immovable property. Why are the women subjected to this disability or deprivation by reason only of their feminine attribute? The constitutional provisions are quite clear and unambiguous. Despite the lack of ambiguity in the constitution, Nigerian women in certain parts of Nigeria are not entitled to inherit any landed property as was envisaged in this appeal, and same could



be gleaned from the proceedings, the statement of claims, the statement of defence and indeed, the judgment itself.³⁹

To further borne out the discrimination against women in many parts of Nigeria, the case of *Nzekwu & Ors. v Nzekwu & Ors.* is instructive wherein the Supreme Court held that:

The rights of widow in her husband's property in customary law have been settled. A widow who chooses to remain in the husband's house and in his name is entitled, in her own right and notwithstanding that she has no children to go on occupying the matrimonial home and to be given some share of his farmland for her cultivation and generally to maintenance by her husband's family. Should her husband's family fail to maintain her, it seems that she can let part of the house to tenants and use the rent obtained thereby to maintain herself. Her interest in the house and farmland is merely possessory and not proprietary so that she cannot dispose of it out-and-out.⁴⁰

Similarly, in the case of *Timothy v Oforka*, the Court considered section 42 and 43 of the 1999 Constitution and held that:

Every individual both women and children are entitled to freedom from discrimination and have a right to acquire and own immovable property anywhere in Nigeria. The Court further held that the Oraifite native law and custom which does not allow women to deal in land is not only unconstitutional but repugnant to natural justice, equity and good conscience.⁴¹

SEIZURE OF PROPERTY BY LAW ENFORCEMENT AGENCIES

Section 44(2) (k) of the 1999 Constitution provides that nothing shall be taken as affecting any law relating to the temporary taking of possession of property for the purpose of any

³⁹ (2008) 17 NWLR (pt.1117) 484.

⁴⁰ (1989) LPELR-2139 SC.

⁴¹ (2008) 9NWLR (pt.1091) 204.



examination, investigation or enquiry. This provision empowers the authorities to take possession of property for the purpose of criminal investigation. Section 30 of the Economic and Financial Crimes Commission Act for instance provides that:

Where a person is convicted of an offence under this Act, the Commission or any authorized officer shall apply to the Court for the order of confiscation and forfeiture of the convicted person's assets and properties acquired, or obtained as a result of the crime already subject to an interim order under this Act.

Thus, the EFCC or any of its authorized officers can apply to the court for an order of confiscation and forfeiture of a convicted person's assets which are proceeds of the crime. The question that arises as it relates to the above provision is whether most officers of the commission acts in good faith. Confiscation of property without a valid court order in that respect will constitute a violation of the right to property under the Constitution. This is evident from the enabling section which categorically states that the Commission "shall" obtain an order of Court.⁴² Thus, mere suspicion of crime is not enough to seize or confiscate the property of an accused person. Where such occurs, it will amount to a clear violation of the accused person's right to own property. In *Nwigwe v Federal Republic of Nigeria*, the Court of Appeal held that provision of the EFCC Act 2004 which empowers the Commission to seize any asset suspected to be connected with the commission of an offence under section 28 of the EFCC Act is constitutional since its purpose is to secure the seized property. The Court further held that the provision for interim forfeiture of seized property before the accused person is convicted is inconsistent with the constitution.

⁴² (1996) 4NWLR pt.444) 584.



THE RIGHT OF DISTRESS

Section 44(2) (c) of the Constitution of the Federal Republic of Nigeria provides that the right to property shall not affect any general law relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts. This brings up the issue of the common law right of distress. Distress means the seizure of another's property to secure the performance of a duty, such as the payment of overdue rent.⁴³ The right of distress is a common law remedy. It allows a person to enforce a legal right or get a relief for civil wrong through seizure of movable chattels and keeping them as a pledge until there is satisfaction as evidenced in the decision of the Court in the case of *Co-operative and Commercial Bank (Nig) PLC v Richard Ozodu*.⁴⁴

In Nigeria, the right of distress has gained statutory prominence in some States in Nigeria in the area of Torts. Distress in this regard serves as a defence in an action for conversion or detinue.⁴⁵ The reason for this remedy appears to be that a person cannot complain against an act the doing of which the law permits.⁴⁶

CONCLUSION

Human rights as it may be applies to all facet of the laws inclusive of private and property law, the law clearly explained that everyone irrespective of sex, religion and political persuasion is protected and enabled under the regimes of constitutionalism. The essence of property rights is that, it is a tool for economic enhancement and social engineering. The constitutions have set out

⁴³ B. A. Garner, 'Blacks law Dictionary' (9th edn, Thompson Reuters, 2003).

⁴⁴ (1998) 3 NWLR (pt.541) 294, 297.

⁴⁵ Anambra State Torts Law, 1986 s.99.

⁴⁶*Ibid.*



provisions aimed at giving due protections and prompt elucidation to the rights to our property and further placed a deep expectation on government on procedures for acquisition of lands, which must be in public interest. What amount to public interest have been clearly set by judicial pronouncement, and it is beyond doubt that, no single person acting under the guise of State or official cover has the permission of the constitution to frustrate the operations of the laws regulating the acquisition of properties in Nigeria. The story is the same even at the international level, where there has been myriads of international instruments and conventions as well as protocols that guarantees the rights of the people not withstanding the categories or conditions they may find themselves, whether as refugees, stateless people or people classified as vulnerable category of people.