LAND ACQUISITION PROCESSES AND COMPENSATION LAWS OF NIGERIA AND INDIA: A COMPARATIVE STUDY

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ABSTRACT

The right to property is perhaps the primogenital real right of mankind. It pre-dates the models of fundamental human rights. It has been recognized as an automatic or natural right and derivative of nature. However, the contemporary polemics on property are certainly as old as humanity itself. Consequently, in the revolutionary era, the right to property was reckoned as a fundamental human right thus, embedded in the foremost international laws and Charters including but not limited to the United Nations Convention on Human Rights (UNCHR), 1945. It is against the backdrop of the sustenance of the right of man with respect to the right and processes of acquiring and owning land leading to the right to receive compensation in the event of compulsory and/or public acquisition that this article sought to contribute to existing literature by evaluating the efficacy, sustainability and effects of the existing legal regime in Nigeria and India on the subject matter. By adopting the doctrinal research approaches, the author examined and compared the various ways land can be acquired and compulsorily taken for public good within the Nigerian and Indian jurisdictions. The article reveals, amongst others, that India and Nigeria have similar modes of acquisition of property but that the compensation laws are very different in that the Indian LARR Act, 2013 has wide ranging provisions which address the issues of resettlement, damages and rehabilitation of land owners whose lands are taken by the government through compulsory acquisition which are not provided in the Land Use Act of Nigeria. It recommended that, the Land Use Act should be repealed and a new Act should be enacted following public consultations and, Nigeria should borrow a leaf from the Indian template for efficiency.

Keywords: Land Laws, Compulsory Acquisition, Nigeria, India.

JEL: H41, J33, Q15, Q24.

INTRODUCTION

The starting point of this segment is to deliberate carefully over Blackstone's[1] expression that: 'Nothing strikes the imagination and affects and engages the affections of mankind, as the right of property.' Though property can be moveable or immovable thus, capable of being owned, transferred and acquired. It is crucial to emphasize that this article is concerned with land - real property which are considered as immovable.

The right to procure, hold and enjoy real property has been chronicled from the ancient biblical era. In Leviticus 25: 23, it is stated, 'the land is mine'.Hence, God is declared as the creator and ultimate owner of land. In Genesis 1: 26-28, God permitted man to have dominion and use of land. In Deuteronomy 19:14, it is stated *inter alia*: 'You shall not move your neighbour's boundary stone which the ancestors have set.' In Deuteronomy 27: 28, it states: 'Do not move the ancient boundary or go into the fields of the fatherless.' Property, therefore, forms the most fundamental economic asset. However, the right to property is not outright. It is subject to the law of the State. Hence, the State can compulsorily acquire private lands where such mode of acquisition is enshrined in legislation.

In international law, the right to property is deep-rooted in Article 17 of the United Nations Declaration of Human Rights, 1945. Similarly, Article 14 of the African Charter on Human and People's Rights 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.' On this note, it is important to present the modes of acquiring land in Nigeria.

MODES OF ACQUIRING PROPERTY IN NIGERIA

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[1] W. Blackstone, Commentaries on the Laws of England 2nd Edition, Chicago, 1979.

Land ownership regime has passed through various phases in Nigeria. Prior to the colonial era, lands in Nigeria were exclusively owned by communities and families under the guidance of community and family heads. During the period of colonization, the ownership of land was regulated by British authorities through several laws including the Lagos Treaty of Accession of 6th August 1861; Land Proclamation Ordinance of 1900; Land and Native Rights Act of 1916; Public Lands Acquisition Act of 1917; State Land Acts of 1918 and the Town and Country Planning Act of 1947. These laws were intended to limit the property rights of natives.

With effect from 1960, when Nigeria became a sovereign independent State, the legal regime on land tenure system developed under two Statutes namely: The Land Tenure Law of Northern Nigeria of 1962 and Land Use Act of 1978. Under the 1962 Act, only the designated Minister was in-charge of all matters concerning lands in all part of Northern Nigeria whilst Southern Nigeria was governed by customary land tenure system. It is the Land Use Act, 1978 that unified the legal regime of the entire Nigeria. Nonetheless, the system of establishing ownership of land has not changed much from the pre-colonial era to this day.

In the event of disputes arising as to the true ownership of land, the courts often require the parties to establish a trail of the title. Where this happens, parties are under legal obligation to trace the title to the primary owner(s). A trace of title to the immediate past predecessor alone is not sufficient. The trail of successive ownership from the immediate past owner up to the primary owner is required in most circumstances. Hence, land titles are either original or derivative. The original title flows from the very root, and not resultant from any other cradles, it is the base of the title away from other title. Nonetheless, there are several ways of acquiring lands in Nigeria as follows:

(a) Land Acquisition by Conquest

Prior to the 20th Century, international law recognized acquisition by conquest as legitimate. It usually occurs when a territory is forcefully annexed in the course of defeat in war. Consequently, a community or an entire tribe can become owners of land captured from other communities or tribes as a direct result of conquest through acts of war. Therefore, ownership of lands conquered in war passes to the conqueror by right of conquest as illustrated in the case of *Mora v. Nwalus*[2] where the Privy Council held that it is not in doubt that proof of possession following conquest will suffice. In *Mora v. Nwalus,*[3]the court affirmed that community ownership of land could be derived from conquest where the lands of a community are conquered in inter-communal war.Hence, the conquered land passes to the conqueror by right of conquest. This was the case when the Hausa territories were captured by the Fulani during the Holy War of *Usman Dan Fodio* in northern Nigeria in 1804. This led to the creation of the Sokoto Caliphate, comprising of Emirates and Sub-Emirates in 1812.[4] This is a typical example of an effective conquest which takes place when physical appropriation of territory (annexation) is followed by 'subjugation' (i.e., the legal process of transferring title).[5] However, 'the doctrine of conquest and its derivative rules were challenged in the 20th Century by the development of the principle that aggressive war is contrary to international law.'[6]

[2] (1962) 1 A NLR 681.

[3] (1962) 1 A NLR 681.

[4] B. G. Martin, *Muslim Brotherhoods in Nineteenth-Century Africa* (Cambridge University Press, 1976).

[5]Britannica, The Editors of Encyclopaedia, 'Conquest'. *Encyclopedia Britannica*, 24 Sep. 2007, https://www.britannica.com/topic/conquest-international-law. Accessed 24 January 2024.

[6] Ibid.

Consequently, conquest as a mode of capturing and acquiring land has been outlawed.For example, in 1975, Indonesia invaded and annexed East Timor,[7] and in 1990 the Iraqi government of Saddam Hussein invaded and attempted to annex Kuwait.[8] In the latter case, the response of the UN Security Council, which endorsed military force to remove Iraq's troops from Kuwait, reinforced the unacceptability of conquest as a means of acquiring lands. In general, conquest is no longer legal in international politics as it once was, because territorial expansion is no longer a common ambition among states.[9] In the same vein, theacquisition of land by conquest under native law and custom in Nigeria resulting from tribal wars is no longer applicable in contemporary Nigeria.

(b) Acquisition of land as First Settlers

The acquisition of land under the doctrine of 'first Settlement' is recognized in Nigeria, for example, in *Owonyin v. Omotosho*,[10] the court held as follows:

> … Ownership or title must go to the first settler in the absence of any evidence that they jointly settled on the land or that a grant of joint ownership was made to the later arrival by the first. The question therefore, resolves itself to this – who was the first settler on the land.

[7] J G Taylor. East Timor, *The Price of Freedom* (Zed Books, 1999); P Hainsworth and Stephen McCloskey, *The East Timor Question: The Struggle for Independence from Indonesia* (I.B. Tauris, 2000); H Hill, 'Tiny, Poor and War-Torn: Development Policy Challenges for East Timor', [2001] (29)(7) World Development; J Ramos-Horta, *The Unfinished Saga of East Timor* (Trenton, NJ: Red Sea Press, 1987).

[8] R. A. Hinnebusch. *The international politics of the Middle East*. Manchester, (Manchester University Press, 2003) 209.

[9] Augustus Richard Norton, 'The Future of Civil Society in the Middle East', [1993] (47)(2) *Middle East Journal* 205–216.

[10] (1962) W.N.L.R 1.

In subsequent cases such as the cases of *Alli v. Alesinloye*[11] and in *Ajagunna v. Amusan,*[12]the verdicts were that settlement implies that the person who first settled on a particular parcel of land free from any other adverse claim is recognized in law as the owner. Therefore, first settlement on land means no more than first occupation or original settlement on land for whatever purpose whether or not accompanied by the exercise of dominion.[13] In other words, the first settler may show that, his possession of the land is factual and actual but not a mere intention to possess and settle. In establishing factual settlement, the settler must be able to prove a sufficient degree of physical custody and control of the land. In order to show an intention to possess, the first settler must be able to demonstrate an intention to exercise such custody and control on one's own behalf and for one's own benefits.

An extended explanation is that, the first settlement title is derived from the process of being the first to clear a forest and being the first to settle on a precise parcel of land free from any other adverse claim. Hence, first occupation creates the original settlement on land with the exercise of dominion. The settler could be construed as the first individual, the first family or the first community headed by the community leader. The title of the first settlers are thus, absolute.

(c) Acquisition of land by Customary Grants

Under the Nigerian customary land tenure laws, land is the property of the community, village or family. Therefore, it is customary to infer that:

[11] (2000) 6 NWLR (PT.660) 177.

[12] (2003) 9 NWLR (PT.825) 291.

[13] U. T. Ndukwe, 'Land Acquisition vs. Land Allocation: Ownership of Land in Lagos State'. Online at: https://www.oakwoodlegalng.com/assets/files/Land-AcquisitionvsLandOwnership.pdf Accessed 24 January 2024.

> Tenure system of land involves [the] system of rights, duties and responsibilities concerning the use, transfer, alienation and ownership security of land and its resources. From the ongoing, it is clear that land acquisition and use cannot be discussed extensively without incorporating land tenure system.[14]

In compliance with the native laws and customs of the relevant community, the partitioning of lands to members of the community is done in line with the customary governance system. Therefore, customary grants are usually done in such a way that head of the community (Chief or King) transfers land to persons that are members of that community usually in recognition or as reward to contributions of the individual to the growth of the community. Hence, under customary land tenure system, it is the community that owns land and not the individual. For example in *Amodu Tijani v. Secretary, Southern Nigeria,*[15] the Privy Council held that: '...the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village and the family, never to the individual.....'[16] This decision was followed in *Omowhosa v. Odiuzor;*[17] and in *Ali v. Alesinloye.*[18]However, some authorities have determined that individual ownership of property is viable and realistic. For instance, In *Ovie v Onoriobokinhe,*[19]family lands must have had their origin in individual ownership. Though, the responsibility is on him who claims individual ownership to show that the land belongs to him.

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[14] B. Oluwatayo I, Timothy O, O. Ojo A, 'Land Acquisition and Use in Nigeria: Implications for Sustainable Food and Livelihood Security' [Internet]; 'Land Use - Assessing the Past, Envisioning the Future' IntechOpen; 2019. Available at http://dx.doi.org/10.5772/intechopen.79997.

[15] (1921) 2 AC 399.

[16] per Lord Haldene.

[17] (1999) 1 NWLR (Pt. 586) 173; (1999) 1 SC 40.

[18] (2000) 4 SC (Pt.1)111, 136.

[19] (1957) WRNLR 1 69.

It should be noted that recent Supreme Court decisions have modified the authority of *Amodu Tijani v. Secretary, Southern Nigeria,*[20]For example, in *Otogbolu v Okeluwa & Ors;*[21]*Eze v Igilegbe;*[22]*Tongi v. Khalil*[23] and in *Ovie v Onoriobokinhe*[24]it was held that: '... Under customary law an individual could still own land."[25]

One of the very significant features of the customary land tenure system is that, it lacks the legal documentation mode of ownership.Thus, the use of title deed in proving ownership is not necessary. This was illustrated in *Chief Benjamin Nsirem & Ors v. Monday Nwakerendu & Ors,*[26] the case was an Appeal by the Andonis over the verdict passed by Mr J. v. Dewhurst, District Officer, who presided over the arbitration proceedings between the parties in 1939, concerning the present area of land occupied and known as Opobo in Rivers State. The crux of the appeal was based on the respondents' claiming ownership of all the land in dispute from Imo River to Ikuru Town in Andoni. The Appellants (Andonis) contended that the lands where the Opobos reside are the property of Andoni and, that it was the Andonis that granted customary tenancy to King Jaja and his followers following their eviction from Bonny Kingdom. The court held *inter alia*:

> … The radical title is in the Andonis, and that the Opobos have a right of occupancy, in accordance with the relevant native law and custom, in the seven settlements concerned, together with the other rights of usufruct … [therefore it is held as follows:]: (i) a declaration of title to the land known as "Andoni Mainland" (excluding Queenstown),edged pink on the plan, exhibit "I", such

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[20] (1921) 2 AC 399

[21] (1981) 6-7 SC 99.

[22] (1952) 14 WACA 61.

[23] (1953) 14 WACA 331.

[24] (1957) WRNLR 1 69 at 170

[25] Per Obaseki JSC

[26] (1955) 15 WACA 71; JELR 82295 (WACA).

> declaration to be subject to (a) the defendants' rights of occupancy in the seven settlements referred to as "Opobo" … and (b) such other rights of usufruct as the defendants … (ii) an injunction restraining the defendants from purporting to alienate or otherwise dealing with such land…[27]

Nwabueze[28] provided clearer explanation on the case of *Nsirem & Ors v. Nwakerendu & Ors,*[29]as follows:

> It is generally well known that the land being occupied by the Opobos originally belonged to the Andonis and was given to the founders of the Opobo community after they fled from Bonny during the civil war there some ninety years ago.

Nwabueze[30] further explained that, there have been several disputes between the Opobos and the Andonis over the nature of the customary grant. He affirmed that the Andonis acknowledge that the customary grant given to the Opobos on the portions of land where the main Opobo town is situated was granted out-rightly to the Opobo founders. However, that the Andonis contended that the "out-laying"[31] Opobo settlements and farmlands were granted to the Opobos by way of customary tenancy.

[27] Per *de Comarmond,* Ag. C.].

[28] B. O Nwabueze, *Nigerian Land Law* (Nwamife Pub.Ltd, 1973) 26-27.

[29] (1955) 15 WACA 71; JELR 82295 (WACA).

[30] B. O Nwabueze, *Nigerian Land Law* (Nwamife Pub.Ltd, 1973) 26-27.

[31] Ibid, 26.

In summary, *Nsirem & Ors v. Nwakerendu & Ors,*[32]hinged on the Andonis' claim of ownership of the lands presently occupied by the people of Opobo. The appeal centred on the interpretation of an arbitration award by a District Officer in 1939, and in particular on the meaning to be placed on the word 'ownership'. The Court held that the word 'owner' is loosely used in West Africa, and in the instant case of *Nsirem* that the respondents ('the Opobos') have a right of occupancy in accordance with the relevant Native Law and Custom in the settlements concerned, together with the other rights of usufruct. This implies that the customary grant given by the Andonis to the Opobos, has bestowed the Opobos with customary occupancy rights in perpetuity.[33]

(d) Acquisition by Succession and Inheritance

Succession and inheritance are sometimes used interchangeably in the customary laws of Nigeria. However, succession is universally regarded as the acquisition of rights to property by inheritance under the laws of descent and distribution.[34] Inheritance strictly refers to the property received from an ancestor under the laws of intestacy.[35]This implies that, succession and inheritance are mainly applicable to properties of the deceased. Where the property owner dies intestate or made a valid will, the process of transfer of the deceased property is through the High Court's probate division which oversees the distribution of the deceased person's assets, including land. For example, Section 22(1), High Court Law of Lagos State provides *inter alia*:

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[32] (1955) 15 WACA 71; JELR 82295 (WACA).

[33]*Fadil* v *Abiri* (1959) WRNLR 186; *Adewoyin* v. *Adeyeye* (1963) 1 All NLR 421.

[34] T.O.G Animashaun and A.B Oyeneyin, *Law of succession, wills and probate in Nigeria* (MIJ Professional publishers limited, 2010).

[35] O M Adekile, 'Succession at Customary Law - Addressing the Crossroads of Constitutional Conflicts' [2010](1)(1) *Olabisi Onabanjo University Law Journal* 21-47,

Available at SSRN: https://ssrn.com/abstract=1589648 Accessed 28 January 2024.

> … Court shall observe and enforce the observance of every native law and custom which is applicable and is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or indirectly with any law for the time being in force, and nothing in this Act shall deprive any person of the benefit of any such native law or custom.

In all circumstances, the High Courts must handle all inheritance and succession matters with strict compliance with the provision of section 14(3) of the Evidence Act which provides that 'in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity, and good conscience.' This was further reiterated in *Ukeje v. Ukeje,*[36] where the Supreme Court faulted the customary succession and inheritance system which deprived female children of acquiring parents' estate upon death.[37] The *Ukeje's* case was decided upon the strict application of sections 42(1) and 42(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Section 42(1) states:

> A citizen of Nigeria of a particular community, ethnic group, place or origin, sex, religion, political opinion shall not, by reason only that he is such a person: (a) be subjected either expressly by or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places or origin, sex, religion or political opinion are not made subject.

[36] (2014) 11 NWLR (PT.1418) 384.

[37] The judgment of the Supreme Court of Nigeria on *Ukeje v Ukeje* is consistent with Article 2 of the African Charter on Human and Peoples‟ rights in the following terms: 'Every individual shall be entitled to the enjoyment of the rights and freedom recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion national or social origin, fortune, birth or other status.'

Similarly, Section 42(2) provides that: 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.' The Supreme Court further held that: 'No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void because it is contrary to the provisions of section 42(1) and section 42(2) of the Constitution.'[38]

It is important to emphasize that section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is consistent with Article 1 of the *United Nations Convention on the Elimination of All forms of Discrimination Against Women* (CEDAW) which defines discrimination as 'any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural civic or any other field'.Thus, '... discrimination against women is anything that can bring about unequal treatment between men and women in the course of their livelihood'.

Nonetheless, in furtherance of the ban on discrimination against women in customary practice with regards to inheritance and succession rights, the court in *Sogunro Davies v. Sogunro Davies*[39]stated that where a widow chooses to remain in her husband's house and retain his name, she is to that extent, entitled to inheritance, notwithstanding that she has no children. However, she cannot transfer any of the husband's property outright to another.[40]

[38]Per Clara Bata Ogunbiyi, JSC.

[39] (1923)9 NLR 79/80.

[40] O M Adekile. Succession at Customary Law - Addressing the Crossroads of Constitutional Conflicts [2010](1)(1) Olabisi Onabanjo *University Law Journa*l 21-47, Available at SSRN: https://ssrn.com/abstract=1589648 Accessed 28 January 2024.

(e) Acquisition by *Inter Vivos* Gift

A gift is a voluntary method of disposing a *rem* without recompense. Some scholars including Nwanbueze,[41] suggest that: 'Customary law requires no writing for the transfer of land whether upon sale or by way of gift. In lieu of writing, however there must be actual handing over of the land to the donee in the presence of qualified witnesses and an acceptance by him of the gift.'[42]

A gift *inter vivos*, is usually a transfer of ownership of a property by the legal owner to another during his lifetime. The owner undertaking the transfer of ownership ('the Grantor') does the transfer voluntarily without coercion or duress. The transfer of property to the recipient is usually without any monetary compensation. However, in compliance with the provisions of the *Statute of Frauds Act 1677*, *inter vivos* gift of land must be effected through the execution of deed of gift. The Deed of Gift could stipulate the terms and conditions of the gift. *Inter vivos* gifts of estate in land are not subject to probate taxes since they are not part of the donor's estate at death. As a result, certain legal requirements must be met for an *inter vivos* gifts of land to be effective: (a) The donor must have mental capacity and a degree of understanding to make the gift; (b) There must be intention to make a gift; (c) The subject matter of the gift must be certain; (d) There must be a valid transfer of ownership; and, (e) the recipient must accept the gift. Simply put:

> A Deed of Gift is a gratuitous arrangement that voluntarily transfers and delivers the legal ownership, with the physical control over an existing real or personal property, by its owner ("the Donor"), to another person ("the Donee"), without any compensation, consideration or payment emanating from the Donee to the Donor, for the Gift. In essence, a Deed of Gift, once executed and delivered

[41] B. O Nwabueze, *Nigerian Land Law* (Nwamife Publishers Ltd 1992) 367-369.

[42] *Orido* v *Akinlolu* (2012) LPELR-7887(CA) Per Chinwe Eugenia Iyizoba J.C.A (pp. 16-18, paras. A-C).

> to a Donee, is irreversible and irrevocable. Note also that a Gift that is not delivered to the Donee is invalid in Law.[43]

In *Anyaegbunam v. Osaka*, the Supreme Court held that: 'A gift *inter-vivos* is an act whereby something is voluntarily transferred from the possessor to another person, with the full intention that the thing shall not be returned to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver … The essential thing to consider is that the Gift is complete when the Donee has accepted it, if that condition is satisfied, the donor has no right to revoke the gift.'

By the same token, in *Ekpechi v. Owhonda,*[44] it was held that, 'a grantor cannot derogate from his grant. He cannot seek to take away with one hand what he has given with the other hand. This obligation also binds not only the grantor but persons claiming under him'. In *Ekweozor & Ors v. Reg. Trustees of the Saviour's Apostolic Church of Nigeria,*[45] the Supreme Court held that: 'The simple truth is that it was the said appellants who affirmed, positively, that there was such a gift. They, thus, had the burden, both on the pleadings and on the evidence, to prove their assertion…The consequence is that, that claim of gift fails in the absence of any credible evidence to sustain it…'[46]

Similar decision was reached in *Madam Alice Orido v. Theophilus Akinlolu*,[47] where the court held that: 'Customary law requires no writing for the transfer of land whether upon sale or

[43] Ehijeagbon Oserogho. Deed of Gift – Estate and Tax Planning – Legal Alert. Online at: https://www.linkedin.com/pulse/deed-gift-estate-tax-planning-legal-alert-ehijeagbon-oserogho/ Accessed 27 January 2024.

[44] (1998) 3 NWLR (Pt 543) 627.

[45] (2020) LPELR-49568(SC).

[46] Per Chima Centus Nweze J.S.C (pp. 61-63, paras. E-B).

[47] CA/B/253/2004 delivered on 29th March, 2012, Iyizoba JCA.

by way of gift. In lieu of writing however, there must be actual handing over of the land to the donee in the presence of witnesses and the acceptance by him of the gift. Acceptance is as much as customary law as the delivery of possession in the presence of witnesses; without it the gift is invalid, such acceptance must be made with as much publicity as possible….. Actual delivery is not mere evidence of the gift but is part of the gift itself.'

Furthermore, in *Gabdo v. Usman,*[48]the court of Appeal held as follows: '… Respondent who relied on gift from his father of the land in dispute, he carried the burden of proving by credible evidence the following two essential facts, namely: (a) The fact of the gift *inter vivos* to him by his father. (b) The title of his father to the land in dispute which he transferred to him by gift *inter vivos*.'[49] By the same token, in *Enadeghe v. Eweka,*[50] the Court held that: 'A gift *inter vivos* must be made openly. There must be evidence of actual handing over of the land and acceptance thereof in the presence of witnesses under native law and custom.'[51] In the case of *Ayinke v. Ibidunni,*[52]the court held that: 'It is clear therefore that to prove gift of land *inter vivos*, there must be evidence of actual handing over of the land and acceptance thereof in the presence of witnesses.'[53] The court went further to expand its reasoning thus:

[48] (2015) LPELR-25678(CA) Per Biobele Abraham Georgewill,JCA (p. 50, paras. B-C).

[49] '…In other words, where a Plaintiff had relied, as in the instant case gift of the land inter vivos by his father, he must first prove this fact of gift and the most crucial fact of title in his father before he can rely on acts of ownership and possession. In the event of failure to prove the root of title pleaded, the Respondent cannot turn round to rely merely on acts of ownership and possession, no matter how long…' Per Biobele Abraham Georgewill J.C.A (pp. 54-56, para. A; in *Gabdo v. Usman* (2015) LPELR-25678(CA).

[50] (2014) LPELR-24479(CA).

[51] Per Uzo Ifeyinwa Ndukwe-Anyanwu, J.C.A (pp. 22-24, para. C); Also cited in *Olajide* v *Akinboboye* (2018) LPELR-46166(CA).

[52] (1959) 4 FSC 280 at 282; R. Udo, *Land use Policy and Land Ownership in Nigeria* (Ebieakwa Ventures Limited, 1990).

[53] Per Ademola CJF.

> …I also find myself in agreement with the learned trial judge that there are means whereby a man may dispose of certain properties before his death in accordance with native law and custom. It is my view that disposition of properties could be made under native law and custom by a gift followed by a transfer of the property, or a declaration by a man on his death bed in the presence of witnesses.[54]

In *Folarin v. Durojaiye,*[55] the Supreme Court, held *inter alia*: 'To transfer an absolute title under customary law, it ought to be pleaded and proved that the gift was made in the presence of witnesses. To that effect, names of those witnesses should also be pleaded as well as the fact that they witnessed the actual delivery or handing over of the land to the purchaser or donee.'[56]

(f) Acquisition by Will and Intestacy Procedure

It is an axiomatic principle of law that a land owner or a holder of any interest in land can voluntarily (without coercion) and subject to certain qualifications, dispose his land by last will and testament.[57] However, the beneficiaries of the gift from the will cannot assume ownership and control thereof without accomplishing the legal steps stipulated in the Wills Act, 1837 and the legal requirements stipulated by the State where the property is situated. Generally, the administrator(s) of a will must apply for probate.[58] Thus, upon receipt of probate, the beneficiaries

[54]n53.

[55](1988) NSCC 255 AT 265 cited in *Ezenwora & ORS v. Ezenwora* (2018) LPELR-43944(CA).

[56]Per Frederick Oziakpono Oho J.C.A (pp. 26-27, para. A).

[57] E. C Okonkwo, 'A closer look at the management, revocation and compensation principles under the Nigerian Land Use Act' [2013] (1)(1) *Journal of Sustainable Development Law and Policy*, 21-36.

[58] A. Ghosh, *The Land Acquisition Act 1894 Law of Compulsory Acquisition and Compensation*, Sixth Edition, (Eastern Law House, 1973).

can assume ownership of any property given to them in the testator's will.[59] In the event of the death of a land owner without a valid will; that is, where he died intestate, it is the probate court that issues letter of administration to an administrator to share and manage the properties of a deceased.[60]

In any case, be it disposition by will or by way of administration under the intestacy procedures, a 'land owner' is not allowed by law, to confer his interest in family land on his beneficiary.[61] Secondly, lands that are encumbered by restrictive covenants or by mortgage cannot devolve on the beneficiary until the encumbrances are settled.[62]

(g) Acquisition by Land Purchase

In contemporary Nigeria, land purchase is one of the most common methods of land acquisition. Land purchase is relatively straightforward. It comprises of the payment of the agreed sum of money to the legal title holder in exchange for the transfer of ownership rights without encumbrances. It is an important aspect of the transaction for the deed of assignment or deed of conveyance to be executed between the seller and the buyer in manners prescribed by law for the transfer to be legal. This is because section 22(2) of the Land Use Act (LUA)[63] stipulates that:

> It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any

[59] R. E Smith 'Land Tenure Reform in Africa: A shift to the defensive' [2003] (3)(3) *Dev Studies* 15.

[60] D. Brown, *Land Acquisition*, 3rd Edition (Butterworths, 1991)

[61] D C I Okpala, 'Accessibility distribution aspects of public urban land management: A Nigerian case, [1979] (5) *African Urban Studies,* 25-44.

[62] M. O. I Nwabuoku. & P. I Gasiokwu. Appraising the right to acquire and own immovable property in Nigeria and South Africa, [2022] (25)(6) *Journal of Legal, Ethical and Regulatory Issues,* 1-10.

[63] Land Use Act, 1978, Cap L5, Laws of the Federation of Nigeria (LFN), 2004.

> part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained…

The above mentioned section 22(1) refers to land transaction in urban areas. In the case of rural lands, the Act provides in Section 22(2) *inter alia:* 'It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever … without the approval of the appropriate local government.' Furthermore, section 26 of the LUA made it abundantly clear that: 'Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void.'

The aforementioned provisions of the Land Use Act were further clarified in two key cases. In the case of *Savannah Bank of Nigeria Ltd & Anor v. Ammel O. Ajilo & Anor,*[64]the Supreme Court held that, the failure to comply with the consequent requirements prior to alienation or transfer of land interest is void. However, in a subsequent case of *Awojugbagbe Light Industries Limited v. P. N. Chinukwe & Anor,*[65]the Supreme Courtmodified its position inthe previous case of *Savanah Bank v. Ajilo*[66]by holding that, the failure to obtain the required consent does not render the transaction void, however that, such transactions are inchoate. This implies that, the relevant parties to the transaction could regularize the transaction by seeking the omitted consent even if such consent is obtained after the execution of the deed of transfer.[67] Even so, the purchase of land

[64] (1989) LLJR-SC; [1989] N.W.LR (Pt 97) 305.

[65] (1995) LLJR-SC.

[66](1989) LLJR-SC; [1989] N.W.LR (Pt 97) 305.

[67] S. Udemezue, 'Requirement of Governor's Consent in Land Transactions in Nigeria: Does Savannah Bank v. Ajilo Still Reign?' June 5, 2023). Available at SSRN: https://ssrn.com/abstract=4470286 Accessed 4th February 2024.

involves total transfer of the unexpired residue in land by a seller to a purchaser at a given price, usually known as consideration.[68]

(h) Acquisition by government Allocation

Land allocation involves the distribution of government-owned land to private entities (human or corporate) for specific purposes. Thus, the process of land allocation occasions specific, officially authorized steps and procedures.

By virtue of the enactment of the Land Use Act,[69] the Nigerian government at national and State levels have arrogated the status of eminent domains, which place all lands under its ambits of total control. Therefore, the State and Federal government can and do engage in multiple land transactions including land allocation. Land allocation is a system whereby the government allots land to private entities (corporate and citizens) for specific usage such as Industry, agricultural, and residential purposes. Arguably, land allocation is supposed to guarantee the optimum use of land in the state and national interest, and to preclude private land owners from using it to the disadvantage of the state.

(i) Acquisition by Adverse possession

In law, the doctrine of adverse possession stipulates that a person (squatter or stranger) who enters the land of another could acquire valid title to it, provided that the stranger meets certain legal

[68] B. Oluwatayo I, Timothy O, O. Ojo A., 'Land Acquisition and Use in Nigeria: Implications for Sustainable Food and Livelihood Security' [Internet]. 'Land Use - Assessing the Past, Envisioning the Future' IntechOpen; 2019. Available from: http://dx.doi.org/10.5772/intechopen.79997.

[69] CAP L5 LFN 2004.

requirements. He thus, becomes the adverse possessor. The possession must be for a sufficient period of time, as defined by the laws of limitation of the relevant jurisdiction.

In addition to satisfactory proof of long term possession by the stranger, he must also show that possession of the property is continuous. Therefore, 'the continuity may be maintained between successive adverse possessors if there is privity between them.'[70] In Nigeria, the period of adverse possession is twelve years. However, the qualifier may go beyond proof of twelve years of uninterrupted possession as shown in *Majekodunmi v. Abina,*[71]wherein, the Supreme Court held as follows:

> It is not enough that a claimant is able to show that he has been in possession of land for the requisite number of years. The burden on him is higher than that. He has to show something more. He is the one claiming that land owned by the title holder has now become his. It has become his because the owner has either been dispossessed or has discontinued his possession. Therefore, the claimant has the clear *onus* to prove that the title holder has been dispossessed, or has discontinued his possession (per Uwaifo JSC).[72]

Similarly, in *Odubeko v. Fowler,*[73]it was succinctly put thus: 'That adverse possession may be used as a sword and a person in adverse possession can, upon the extinction of the title of the former owner following the expiration of the limitation period, maintain an action in trespass

[70] Adverse Possession. https://www.law.cornell.edu/wex/adverse_possession accessed 30 January 2024

[71] (2002) 3 NWLR (PT. 755) 720.

[72] Furthermore, it is incumbent on the claimant to show not only that he has been in possession for the requisite number of years, but also that the title holder has been dispossessed or has discontinued his possession.

[73](1993) 7 NWLR (Pt. 308) 637.

against the former owner or any person purporting to have acquired interest in the land through him.'[74]

(J) Compulsory Acquisition

Pursuant to section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), every citizen of Nigeria is free to acquire and own property in any part of Nigeria without any discrimination. Hence, the constitution guarantees the right to property of citizens. It is also clear that the right of citizens to own immovable property is not absolute. It is a qualified right which implies that there are exceptions.

One of the notable exceptions is that the Government can compulsorily acquire the private person's land for the benefit of public interest. This is the reason for the *proviso* in section 44(1) of the constitution and section 28(1) of the Land Use Act which essentially approves expropriation or compulsory acquisition of property on public interest grounds. Nonetheless, the problem with the provisions of the Constitution and the Land Use Act is that, there is a vacuum in the legal meaning of 'public interest'. Simply put, neither the Constitution nor the Land Use Act defines public interest. Hence, it is the courts that have attempted to fill the gap in the legislation by providing the legal meaning of the expression 'public interest'.

In *Belo vs. Diocesan Synod of Lagos*,[75] a notice of acquisition was declared null and void because the land was acquired by the Lagos State Development and Property Corporation for the development and expansion of a church. Expansion of a church was not accepted as serving the public interest.In *Goldmark Nigeria Limited v Ibafon Company Limited,*[76] the Court explained that,

[74] I. Smith, 'Application of the doctrine of adverse possession under English and Nigerian law: A comparative study' (2021) NUI Galway. Online at: http://hdl.handle.net/10379/16801 accessed 20 January 2024.

[75] (1973) 3SC 103.

[76][2012]10 NWLR (Pt 1308) (P. 356, paras. A-C).

for a particular reason to qualify as public purpose or public interest, it must not be vague and the way it benefits the public at large must be capable of proof. Hence, the test is whether or not the purpose is meant to benefit the public and not just to aid the commercial transaction of a company or a group of people for their own selfish or financial purpose. Secondly, in the event of unavoidable compulsory acquisition of private property by the government, two conditions must be met viz: (a) Giving sufficient notice and, (b) Payment of reasonable compensation. Though, 'reasonable' compensation is still a subject of recurrent legal debate.

With regards to giving sufficient notice, in several cases including *Ononuju v A.G Anambra State*;[77]*A.G Bendel State v Aideyan*;[78]*Provost, Lagos State College of Education v Edun*;[79] and *Okeowo v A.G Ogun State,*[80] publication of the compulsory acquisition notice in the gazette have been held not to constitute sufficient notice. There must be personal service served to the affected person(s). Furthermore, In *Amale v Sokoto State Governmen*t,[81] the Supreme Court held that:

> The provisions of section 44(1) and (2) [of the Constitution] are very clear and unambiguous. It gave a right of action to an aggrieved party whose property was compulsorily acquired without compliance with the provisions of the section. Where, however, the acquisition complied with the provisions of the section, no cause of action accrued to the aggrieved party as such action would be legal in the eyes of the law, *per* Fabiyi JSC.

[77](2009) 10 NWLR (Pt. 1148) 182.

[78] (1989) 4 NWLR (Pt. 118) 646.

[79](2004) 6 NWLR (Pt. 870) 476.

[80] (2010) 16 NWLR (Pt. 1219) 327(P. (356, paras. C-E).

[81][2012]5 NWLR (Pt1292), (pp. 201, paras. B-E 205-206, paras. E-B).

It is important to highlight another defect in the laws of Nigeria regarding compulsory acquisition of private lands and compensation for same. There are no far-reaching yardsticks by which the courts' compensatory orders are based in that, the courts can only make such orders on its own strength. Even so, the principles for computation benchmarks of compensation that the courts tend to use are: (a) The location of the land and, (b) The actual cost of the land.[82] The downside of the computation benchmarks is that, it is only the Government surveyors and valuers that undertake the valuation of the property.

In view of the goal of presenting a comparative analysis of Nigeria and India, the article shall proceed with legal regime in India to foster understanding.

COMPARATIVE PERSPECTIVES OF NIGERIA AND INDIA

India and Nigeria has been through similar turbulent and similar legal history having been colonized by the British Empire. It is this common colonial heritage that necessitated the comparison with regards to land acquisition, compulsory acquisition and Compensations. For ease of understanding and contribution to knowledge and literature, this comparison has been discussed in segments as follows:

Development of Land Acquisition Laws in India

India, like Nigeria had various traditional land tenure systems prior to colonization by the British. In 1824, the British enacted the first land acquisition Act known as Bengal Resolution I. The legislation was confined to only the Bengal Province. This is similar to the Treaty of Accession of Lagos of 1861.

[82] O. O. Sholanke OO, 'Three Supreme Court Cases on Compulsory Acquisition of Land in Nigeria' [2014] (58) (2) *Journal of African Law* 266-277.

In 1850, the British repealed the Bengal Regulation I and enacted a new law, with wider provisions which expanded into the territory of Calcutta. In 1857, all land related laws were merged into India Land Act VI which covered the entire colony of India. However, in 1870, a new law known as the Land Acquisition Act X was enacted to replace the 1857 legislation. The legislation was challenged in the case of *Radhey Shyam(D) Through LRs and Ors v. State of U.P. and Others,*[83] where the Supreme Court of India declared that the provisions of the legislation was contrary to good conscience hence, a new legislation was enacted in 1870 to replace it. India continued to model its land tenure system to mirror the British established laws until it passed the Land Acquisition (Amendment) Act in 2009.

India's 2009 Act provided for compulsory Social Impact Assessment (SIA) study where land acquisition involves large physical displacement of people and communities. It also made provisions to protect the rights of tribes, forest settlers and private persons that holds customary and legal right of occupancy. It provided for compensation covering damages caused to the land and crops found on the acquired land. Furthermore, the Act made provisions for wide ranging compensation including the costs of resettlement and rehabilitation of affected persons or families. Specifically, the Act explicitly provides that the value of compensation should be calculated based on the proposed use of the acquired land at the prevalent market prices. This is completely at variance with the provision of Nigeria's Land Use Act wherein no extended care is taken into consideration upon compulsory acquisition of lands by the government. As a result, the mode of acquisition of land and preservation of land rights between the two countries are somewhat similar with minor variations.

Compulsory Acquisition in India and Nigeria

The private citizens' right to own immovable property is guaranteed by Nigeria and Indian constitutions. As earlier mentioned in this article, section 43 of the Constitution of the Federal

[83] Civil Appeal No. 3261 decided on April 15, 2011.

Republic of Nigeria, 1999 (as amended) allows every citizen of Nigeria to freely acquire and own property in any part of Nigeria without any discrimination. On the other hand, Article 19(1) (f) and Article 31 of the Constitution of India guarantees all Indian citizens the right to acquire, hold and dispose of property.[84] Nonetheless, Article 19 (5) of India's Constitution authorizes the state to impose reasonable restrictions on this right in the interests of the general public.

Perhaps, one of India's most authoritative and valuable legislation is *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act*, (LARR Act) 2013. The LARR Act made provisions covering several matters that the makers of the Nigerian Land Use Act failed to contemplate. Section 4(1) of the LARR Act provides as follows:

> Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

In addition to consultation, Section 4(2) of the LARR Act stipulates amongst others, that no compulsory acquisition should take place without the evaluation of the consequential possible negative effects of the compulsory acquisition on the occupiers and people in the immediate area thus:'The appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.' On the contrary, the Land Use Act of Nigeria has no provisions for social impact assessment hence, section 28(1) states *inter alia*: 'It shall be lawful for the Governor to revoke a right of occupancy for overriding public

[84] N. C Saxena, 'Land Acquisition Law in India' [2018] (15)(1-2) *Journal of Resources, Energy and Development* 1-11.

interest.' However, revocation can only be valid in the face of overriding public interest including but not limited to the purpose of exclusive government use; development for public good; and on the grounds of preservation of public safety.

In India, section 10 of the LARR Act made provisions to safeguard food security wherein, it is unlawful for irrigated multi-cropped lands to be compulsorily acquired by the government. On the opposite of the scale, section 34(5) of the Land Use Act of Nigeria provides that the 'owner' of an undeveloped land not exceeding half hectare can continue to use it but where the size of the land exceeds half hectare, the remainder shall be surrendered to the government.

In Nigeria, there is no provision for the resettlement of land owners whose lands have been compulsorily acquired. In India, sections 16, 17, 18 and 19 of the LARR Act provide for the creation ofrehabilitation and resettlement scheme for land owners whose lands have been compulsorily acquired.Secondly, in Nigeria, the modality for calculating the amount of compensation to be paid by the government to the holder of the compulsorily acquired land is not stated in the Land Use Act but, in India, section 26 of the LARR Act stipulates the criteria for calculation of the monetary compensation as follows:

a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher: Provided that the date for determination of market value shall be the date on which the notification has been issued.

In furtherance of the compensation model of India, Section 28 of the LARR Act provides for extended parameters for compensation to include damages sustained by the land owners as follows:

(a) Market value for 'damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession;'
(b) Damages for persons compelled to change their residence or place of business, and the reasonable expenses (if any) incidental to such change;
(c) Damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land;
(d) Any other ground which may be in the interest of equity, justice and beneficial to the affected families.

Section 31 of India's LARR Act also provide for Rehabilitation and Resettlement Awards for families affected by the compulsory acquisition. Consequently, section 29 of LARR Act provides that compensations should be paid to the land owner on the value of things attached to land or building. Hence, 'in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.' These provisions are conspicuously absent in the Land Use Act of Nigeria.

CONCLUSION AND RECOMMENDATION

The mode of acquiring lands in Nigeria and India are evidently similar. However, there are significant differences in terms of the extant laws of both countries with regards to the provisions of law on compulsory acquisition processes, procedures, compensation and payment of damages. The Indian LARR Act of 2013 providesadequate safeguards against arbitrary displacement of land owners.[85] The law provides that no one shall be dispossessed until and unless all compensation and damages are paid and alternative sites for the resettlement and rehabilitation have been prepared for the land owners. However, for a land owner to be entitled to resettlement, he must have occupied the land for at least five years. In the event that the land owner refuses to accept the site of a resettlement, he is entitled to a one-time financial grant in lieu of same.[86] Nigeria's land Use Act has no resettlement and rehabilitation clauses.

Nonetheless, there is a consensus that compulsory acquisition in India and Nigeria, is considered a necessity for public purposes as stipulated in *Green v Frazier*,[87] where the court held that, the objective of public purpose should be to promote 'public health, safety, morals, general welfare, security, prosperity, and contentment of all the citizens.' Though, the decision of the Indian court of *Bombay v R.S.Nanji,*[88]on whose duty it is to decide what is public purpose is complicated in that it decided that, it is the State Government that is in the best position to determine which purpose is public.

In view of the discussions presented in this article, it is therefore recommended that, Nigeria's Land Use Act should be repealed in its entirety and replaced with a new land legislation upon the adequate public consultation with all segments of the country. Any such new legislation

[85] N. Maheshwara Swamy, *Land Laws*, (Asia Law House, Hyderabad, 2006).

[86] N. C Saxena, 'Land Acquisition Law in India' [2018] (15)(1-2) *Journal of Resources, Energy and Development* 1-11.

[87] 176 N.W. 11, 17, 44 N.D. 395.

[88] (1956) SCR 18.

should borrow ideas from the LARR Act, 2013 of India especially, on the aspects of rehabilitation and resettlement of land owners whose lands are compulsorily acquired by the government.