



REVOCATION OF RIGHT OF OCCUPANCY: REVIEW OF ABBA v. ABBA AJI.

by

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ABSTRACT

The substantive purpose of the law is to do justice. Justice must be done according to the law. Thus, it is the duty of the court to adjudicate strictly according to the law. The interesting and agitating questions are, what would the court do where the law makes no provision for the bone of contention? Would the litigants be helpless? In such situation, the court would be affixed with the function of the draftsman to determine the justice of the case. Judges have repeatedly maintained that they are not robots or zombies in strictly following the letters of the law. However this `one eyed justice` always sparks controversies and unending arguments amongst scholars and academia hence the gist of this article. We shall faithfully interrogate the rationale behind the recent decision of the apex court in Abba v. Abba Aji with respect to the inherent powers of the Governor to revoke a statutory right of occupancy to correct an anomaly.

INTRODUCTION:

The law is settled that the power to revoke a statutory right of occupancy resides in the Governor. This is a statutory fulfillment of the Land Use Act, ss1 and 28.³ It is also an incontestable fact that the Land Use Act is the principal statute regulating land management in Nigeria.⁴ Therefore it behoves upon the court to make recourse to the Act and stay guided by its lucid provisions in adjudicating disputes between parties. The Act is clear that revocation of a statutory right of occupancy shall be necessitated by overriding public interest, public purpose and breach of the contractual provisions. Notably, these grounds are disjunctive and not cumulative that is an existence of one can activate the powers of revocation. In this work, we shall x-ray the provisions of the Act vis – a-vis the case of *Abba v. Abba Aji*.⁵

THE FACTS IN DR. SHETTIMA ABBA V. ALHAJI MUSA ABBA AJI & 2 ORS⁶

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³ Land Use Act, Cap L5 LFN 2004.

⁴ D. Nelson, 'An Examination of the Right to Compensation for Compulsory Acquisition of Land in Nigeria' [2015] 6 (3) *The Gravitas Law Review of Business and Property* 37.

⁵ [2022] 11 NWLR (Pt. 1842) 545.

⁶ (n 3).



The Borno State Government, the 3rd respondent, owned the property known as Government Quarters situated at No. 24 Benue Road, Old GRA, Maiduguri. In 1983, it allocated the said government quarters to the 1st respondent who was a civil servant in the employment of the 3rd respondent and the 1st respondent continued to be in occupation and his rent was being deducted from his salary up to 2003.

In 2002, the 3rd respondent introduced a policy whereby civil servants occupying various government quarters were given the right to apply for the purchase of the Government Quarters. The policy was aimed at making them own the houses occupied by them. However, influential citizens hijacked and benefited from the policy even though they were not occupants of the quarters, thereby depriving those eligible to benefit in accordance with the policy. The 1st respondent was one of those who happened to be victims of the policy.

The 1st respondent applied to the 3rd respondent for the purchase of the quarters on 20/5/2002. Pursuant to the policy, the appellant, who was the Secretary to the State Government, also applied on 10/9/2002 to the 3rd respondent for the purchase of the Government Quarters in spite of the fact that the 1st respondent was in occupation of the house as a civil servant of the 3rd respondent at the time. The appellant's application was processed and approved expeditiously and the said government quarter was sold to him by the 3rd respondent with a statutory right of occupancy No. BO/41496. This was done even though the appellant never occupied the house at any given time, which was a pre-condition for applying for the house. In 2005, the government intervened and revoked the sale of the houses to those influential citizens including the appellant and sold same to those legally to benefit (1st respondent) in accordance with the owner-occupier policy.

Trial court found in favor of the appellant while the Court of Appeal set aside the trial court's judgment and allowed the 1st respondent's appeal. Upon further appeal to the Supreme Court by the appellant, the apex court dismissed the appeal and held *inter alia* that the Governor can revoke a statutory right of occupancy to correct an anomaly.

CONCEPTUALIZATION



Certain key concepts such as right of occupancy, revocation and inherent power are very relevant to this article. Nonetheless, it is near impossible to have a universally accepted definition of any term. We are of the view that such terms are better described or identified whenever they are mentioned for discussion and deliberation. Therefore, attempts shall be made to unravel the meaning of the aforesaid concepts sequentially.

Right of Occupancy

The Land Use Act, being the principal legislation that affects land tenure, allotment and administration in Nigeria⁷ did not give any definition of right of occupancy. Essentially, right of occupancy is the maximum interest which a private person can enjoy over land in Nigeria. This right may be statutory or customary right of occupancy. It is statutory when it is granted or deemed to be granted by the State Governor in respect of lands in urban areas and customary when granted by the local government.⁸ It can also mean the right to possess or use a land subject to the stipulations of the Land Use Act.⁹

To some learned authors, the right of occupancy is likened to a lease especially when it is statutory.¹⁰ This appreciative approach appears to be consistent with the meaning ascribed under the Land Tenure Law of Northern Nigeria.¹¹ Another scholar observed that the right of occupancy was a hybrid form of right; something between a personal and a proprietary right.¹² It was further argued that there is nothing wrong in the right being a new form of right as the categories of right over land need not be closed.¹³

Also, it is the grant of term of years to a citizen to hold, occupy and use the land.¹⁴ This right of occupancy is likened to trusteeship wherein the governor of a state, holds the land in trust for her citizens (beneficiaries) as captured in section 1 of the Act.¹⁵ Furthermore, a right of occupancy whether customary or statutory right of occupancy may be an actual or deemed

⁷ LUA (n 1).

⁸ LUA 1978, s 2 (1) (b), 6, 36; *Awaogbo v Eze* [1995] 1 NWLR (Pt 372) 393; *Dielu v. Iwuno* [1996] 4 NWLR (Pt 445) 622.

⁹ D. U. U Umoatan, 'The Land Tenure System and the Right of Occupancy in Nigeria' [2018] 4 (2) *International Journal of Legal Development and Allied Issues* 108; O. Igwe, 'Use of Right of Occupancy as a Security for Advances and its Role in Land Development in Nigeria' [2022] 4 (1) *International Journal of Comparative Law and Legal Philosophy* 111.

¹⁰ T O. Elias, *Nigerian Land Law and Custom* (London: Routledge and Paul 1962) 284, M. O. Onwuamaegbu, *Nigerian Law of Landlord and Tenant*, (London: Sweet & Maxwell 1966) 216

¹¹ 1962.

¹² J. A. Omotola, *Essays on the Land Use Act* (University of Lagos Press) (1980) 24.

¹³ *Ibid.*

¹⁴ *Ezenna v. Attah* [2004] 7 NWLR (Pt. 202) 1858 at 1884 .

¹⁵ (n 4) s 1.



grant.¹⁶ It is actual when it is granted by the governor of a State, or local government while a deemed grant is one that exists by operation of law or before the commencement of the Act.¹⁷ A holder of a right of occupancy therefore means a person entitled to a right of occupancy and includes any person to whom a right of occupancy has been validly assigned, or has been validly passed on the death of a holder but does not include any person to whom a right of occupancy has been sold or transferred without a valid assignment, nor a mortgagee, sub-lessee or sub-underlessee.¹⁸

Thus, it is evident that the holder of an exclusive right of occupancy has a title which confers on him exclusive right to the land and sole right to and absolute possession to all improvements thereon and a title which is only liable to be extinguished upon revocation of the right pursuant to the Act. The exclusive right of the holder of a Statutory Right of Occupancy to the land which is subject of a Statutory Right of Occupancy, no doubt includes the right to the use and occupation of the land and the right to deal with it, howsoever would be, ‘ subject to the provisions of the Act, any condition of grant and as always to the rights of others.’¹⁹ It is therefore important to state that the holder of a right of occupancy is in all respect the proprietor of the right during the subsistence of the right. A statutory right of occupancy automatically extinguishes all existing rights in respect of the parcel of lands over which it is granted.²⁰

The powers of the governor to grant the right of occupancy can be delegated.²¹ The governor can delegate such power to a state commissioner to grant any person the right of occupancy subject to such restrictions, conditions, and qualifications, consistent with the provisions, or general intendment, of the Act as the Governor may specify²². Notably, where there is a subsisting grant of right of occupancy of a land, any other deemed grant in respect of the land would be invalid.²³ To this end, a certificate of occupancy (C of O) is a prima facie evidence that a right of occupancy has been granted. However same is not a conclusive proof but merely evidence of title or possession but a holder is presumed to have exclusive right to the land until the contrary is proved.²⁴

¹⁶.Kyari v. Akali [2006] 6 NSCQR 819 at 847, Per Iguh (J.S.C); LUA 1978, s. 5, 6.

¹⁷ (n 1) LUA, s 36 (2).

¹⁸ (n 1), s, 51 (1); (n 3) 582 Paras C-G.

¹⁹ Major Sheu Ibrahim v. Dr. Junaid Salik Mohammed [2003] 13 NSCQR 647 Per Ayoola (J.S.C).

²⁰Olagunju v Adeseye [2009] 9 NWLR (PT 1146) 225.

²¹ LUA, Cap L5 LFN 2004, s45.

²² Ibid.

²³ Eleeran v Aderoupe [2008] 11 NWLR (Pt. 1097) 50

²⁴ Ogunleye v. Oni [1990] 2 NWLR (Pt. 135) 745; LUA 1978 s 9; Madu v. Madu [2008] LPELR-22732 (SC); EA 2011, s 133-134; Orlu v. Gogo Abite [2010] 8 NWLR (Pt.1196) 307 SC.



Revocation

The term `revocation` refers to recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existed until the act of revocation made it void. It may be either general, of all acts and things done before; or special, to revoke a particular thing.²⁵ Accordingly, we shall examine the above concept with respect to revocation of right of occupancy as provided in the Land Use Act²⁶

It is instructive to state that the right of occupancy can be revoked for overriding public interest (unlawful alienation, acquisition by State or Federal Government for public purpose, requirement of land for mining purpose or purposes connected therewith and requirement of land for the extraction of building material – in cases of customary right of occupancy). It can also be revoked for public purpose (government or general use, for use by a body corporate in which government owns shares or debentures or other interest, for or in connection with sanitary improvements, construction of public works like road, railway etc, telecommunication or provision of electricity, mining purposes, planned rural or urban settlement, educational or social services) or revocation as a result of breach of terms and conditions or a breach of any special contract made under section 8 or a refusal or neglect to accept or pay for a certificate of occupancy that was issued in evidence of a right of occupancy but has been cancelled by the Governor under section 10.²⁷

Apparently, the statute went further to provide the procedures for a valid revocation of a right of occupancy granted under same.²⁸ Based on the provisions of the Act, revocation of right of occupancy is done by sending a notice of revocation to the holder of a right of occupancy. The notice is required to be signed by a public officer duly authorized by the Governor and the title of the holder of the right of occupancy will cease once the notice is received by him or on any other date stated in the notice.²⁹ Issuance of notice of intention to revoke a right of occupancy is not required in all instances of revocation. The notice is mandatory if the revocation is to be carried out for overriding public interest under section 28 of the Act.

²⁵ B. A Garner, *Black's Law Dictionary* (10th edn: West Publishing Company 2014) 1515; <<http://www.thelawdictionary.org/revocation>> assessed 2nd January, 2023.

²⁶ LUA, s 28.

²⁷ (n3).

²⁸ LUA 1978, s 44.

²⁹ *Ibid*, s 28 (7).



Notably, where the revocation is for public purpose (as against penal revocation under section 28(5) of the Act, the holder or possessor or the occupier would be compensated for the value at the land for unexhausted improvements or under any relevant legislation. It is safe to say that the right to compensation is a constitutional one.³⁰ Payment of compensation therefore is a mandatory one. Compensation is not a pre-requisite to valid revocation but only a fall out of it.³¹ However any dispute as to the amount of compensation calculated shall be referred to the appropriate Land Use and Allocation Committee.³² Also, it is the law that notice shall be issued stating the purpose of revocation that is either for public purpose or for breach of conditions of grant.³³ A revocation for any purpose outside those pre-scribed can be declared void.³⁴

It is therefore the requirement of the law that notice will be served either personally, by leaving at the usual or last known place of abode of the holder, by sending via prepaid registered post addressed to the holder at his usual or last known place of abode; In the case of a corporate entity or company, by delivery to the company secretary or clerk or by sending via prepaid registered post addressed to the registered or principal office or by sending in a prepaid registered letter addressed to the secretary or clerk of the company; Where it is not practicable to ascertain the name and address of the holder or the occupier of land then the notice may be addressed to the person as ‘holder’ or ‘occupier’ and by delivery to a person on the premises. Where there is no one on the premises to take delivery of the notice then it may be affixed on a conspicuous part of the premises. Failure to comply with the aforesaid procedure renders the revocation invalid.³⁵ Also notice of revocation must be proved to have come to the knowledge of the person concerned i.e. there must be proof of receipt of such notice.³⁶

Inherent Power

Inherent power is the principle that allows the court to deal with diverse matters over which they are thought to have intrinsic authority or an authority possessed without it being derived

³⁰ CFRN 2010, s 44 (1); *Elf v Umah* [2018] 10 NWLR (Pt. 1629) 428 at 431; *Osho v. Foreign Finance* [1991] 4 NWLR (Pt.184) 157.

³¹ E. Emudainwho, ‘A Critical Appraisal of the Method of Revocation in the Nigerian Land Use Act and Government’s Compliance’ [2021] 12 (3) *Beijing Law Review* 750-761.

³² LUA 1978, s 30.

³³ *Obikoya & Sons Ltd. v Governor of Lagos State* [1997] 1 NWLR (Pt. 50) 385.

³⁴ *Ereku v Military Governor of Mid-Western State* [1974] 4 ANLR 695.

³⁵ *Osho v. Foreign Finance* [1991] 4 NWLR (Pt.184) 157; *Nitel v. Ogunbiyi* [1992] 7 NWLR (Pt. 255) at 543.

³⁶ *Attorney General Lagos State v. Sowande* [1992] 8 NWLR (Pt 261) 589 at 601-602.



from another. It could also be a right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another.³⁷

Interestingly, the writers shall consider the above concept in the light of the powers of the court and the Governor. Inherent power was mentioned in the Constitution being the *grund* norm and apex law of the land.³⁸ Similarly, His Lordship, Karibi Whyte (JSC) was loud and unequivocal when he posited thus:

the inherent powers of the court can be invoked in the interest of justice to supplement the statutory jurisdiction where the exercise of such jurisdiction was likely to result in injustice. The inherent powers which a court is entitled to exercise merely because it is a court seems to me to be the exercise of an equitable jurisdiction which enables the court to fulfill itself as a court and to do substantial justice where necessary in the particular case.³⁹

Inherent power can therefore be likened to implied power or a second thought power which in the instance was not provided by statute or any law. Inherent powers are powers of a branch of government not specifically listed in the constitution. They are powers given to a branch of government, like the executive branch, to perform the essential duties of government. They are not powers or rights that are available to private citizens or corporations, but rather are purely used for the government to perform its duties and function properly.⁴⁰

IS THE POWER OF THE GOVERNOR TO CORRECT AN ANOMALY STATUTORY?

It is obvious that the ultimate and principal legal issue arising from the above judgment is whether facts and reasoning as captured by the court reflect the correct provision and application of the Land Use Act, s28 on the statutory powers of the Governor to revoke a right of occupancy. Unarguably, it is the law that the Governor can revoke a statutory right of occupancy on the grounds of overriding public interest, public purpose and breach of contractual terms as earlier examined in this work. In view of this, our interrogation first would be whether the facts in *Abba v. Abba Aji* fall under any of the conditions mentioned. Of course, our answer is in the negative. Interestingly, the court also maintained this

³⁷ (n 23) B. A Garner; <<http://www.thelawdictionary.org/inherentpower>> assessed 3rd January, 2023.

³⁸ CFRN 2010, s 6 (6) (a).

³⁹ *Adigun v. Oyo State* [1987] 2 NWLR (Pt. 56) 197; *Covalent Oil & Gas Service (Nig) Ltd v. Ecobank (Nig) Plc* [2021] LCN /15135 CA; *Ogwuegwu v. Agomuo* [1999] LPELR – 6686 CA; *Connelly v. D.P.P* [1964] A.C 1301.

⁴⁰ <<http://www.study.com/academy/lesson>> assessed 3rd January, 2022.



admission while arriving at the decision.⁴¹ We wonder what then is the law if an omnibus ground of revocation is `that a Governor has an inherent power to revoke a right of occupancy to correct an anomaly`.

Notwithstanding, the court went further to state that the Governor has an inherent power to revoke a statutory right of occupancy to correct an anomaly which was a case of misrepresentation in the *Aba Aji`s case*. By this, the court is saying that the said anomaly is such that was not captured by the Act *simpliciter*. This very reasoning agitates certain questions. The iniquity of the State cannot be visited on the appellant. Where due diligence was carried out as it ought to, nothing would give rise to this case.

It must be carefully observed that before an applicant is successfully granted a right of occupancy, the application is usually supported with documents and proof of ownership and possession. Beyond that, the Governor or whoever acts in his stead must investigate the origin and authenticity of such documents put forward by an applicant. Where the application met the provisions of the various land use laws and regulations then it will be treated with merit. In the instant case, the court said that the Governor would not have granted the approval for the sale of the house in dispute to the appellant if he had known that the 1st respondent was in possession of the house and paying his rent as expected.

We are of the firm view that this is a case of lack of due diligence on the side of the government being the granting authority in exercise of their statutory duties. With great respect to the venerable law lords, an appellant must not suffer on the account of a wrong partly contributed by the government. The facts itself revealed that it was a government owned property and that the Appellant misrepresented that he was in possession when he was in fact not. To our mind, this reasoning is not in order as the 3rd Respondent (Government of Borno State) ought to have knowledge of actual or constructive possession before grant of the right.

IMPACT OF THE DECISION

Regrettably, we expected the apex court in their mindedness of equity as acclaimed in the judgment to also descend on the executive arm for their carelessness rather than clothing such act under the guise of `inherent power`. To us, the light of this decision will trigger many contentious matters in future, as the Governor of any State may wake one morning and allege that due process was not followed and that he has inherent powers to correct such mistake.

⁴¹(n 3) 579-580, Paras F-D.



Again, we must at this point mention lightly the case of *Ilona v. Idakwo*⁴² where the apex court held that the right of occupancy conferred on the appellant was held invalid because there was a subsisting statutory right of occupancy which has not been revoked. While we are open to the growth of Nigerian jurisprudence on land law, it is our humble view that inherent powers, discretion and the like should be exercised judicially and judiciously.

Finally, with great respect to the learned justices, it is the view of the writers that the decision in the case under review does not accord with the law and equity in this issue. We are however optimistic that another judicial opportunity would present itself for the apex court to properly delineate areas where their inherent powers would be put to use.

CONCLUSION

The law remains that a Governor can revoke a statutory right of occupancy on the grounds of overriding public interest, public purpose and breach of contractual terms. While we know that misrepresentation can in fact be occasioned by an overzealous applicant, notwithstanding the situation, justice should be done according to law. However, Judges are not robots or zombies who have no mind of their own except to follow precedents,⁴³ but the fact remains that where equity must intervene; the court must strike a balance, as equity is not at enmity with the law but must follow the law and not supersede it.

⁴² [2003] 11 NWLR (Pt. 830) 53.

⁴³ *Magit v. University of Agriculture, Makurdi* [2005] 19 NWLR (Pt. 959) 211 Per Acholonu JSC.

