



ORIGINAL RESEARCH ARTICLE

OPEN ACCESS

THE LAND USE ACT AND ECONOMIC REJUVENATION IN NIGERIA: THE LEGAL CONUNDRUM

¹Enyia, Jacob Otu and ²Miebaka Nabiebu

¹Senior Lecturer, Department of Commercial and Industrial Law Faculty of Law, University of Calabar – Nigeria

²A Doctoral candidate, Faculty of Law, University of Calabar-Nigeria and a corporate/legal consultant Port Harcourt, River State – Nigeria

ARTICLE INFO

Article History:

Received 17th September, 2018
Received in revised form
21st October, 2018
Accepted 18th November, 2018
Published online 31st December, 2018

Key Words:

Land, Act, Administration,
Government, Legal, Economic,
Reforms, Infrastructure,
Rebirth, Rejuvenation.

ABSTRACT

The administration of Land in Nigeria involves certain diversified issues such as the act of running and controlling Land affairs or taking decisions over the use and disbursement of Land and its resources. It also connotes the idea of supervising and administering the use to which land is put in the society. More so, it involves all conceivable measures adopted by Government to keep, protect and develop land and its resources for productive adventures such as farming, grazing, mining, wood processing and so on. The Federal Government of Nigeria has carry out series of reforms in the Land sector, one of such is the promulgation of the Land Use Act, 1978. These various attempts apart from the positive impact on the availability of land have not substantively been able to promote a programme of Land Use and management that support effective wealth creation, economic growth, food security, poverty reduction, enforceable and land rights and housing delivery and infrastructural rebirth. This paper attempt to appraise the impact of the Act on the economic rejuvenation in Nigeria and the attendant Legal inhibitions.

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Citation: Enyia, Jacob Otu and Miebaka Nabiebu. 2018. "The land use act and economic rejuvenation in Nigeria: the legal conundrum", *International Journal of Development Research*, 8, (12), 24912-24920.

INTRODUCTION

The consequences of the population pressure, urbanisation and socio-economic growth have great social and economic impact on land issues in Nigeria. Modernisation saw people moving from the rural areas into urban centres where modern facilities are available. Population pressure in cities and towns made residential accommodation in particular, a problem in those centres. The congested urban areas are in need of expansion but land where this expansion is to be made is scarce.¹ The growth of Nigerian economy due mainly to the discovery of oil which made large number of people rich enough to build better houses and maintain large farms contributed to high demand for land in urban centres. Heavy and large industries were established and thus, bringing about more demand for land and increased in the exodus of people from rural to urban areas.² For government as well, land became so expensive and acquiring land for public purposes became very difficult and

sometimes even impossible because of the cost of compensation.³ Also, the guarantee of a piece of land by the law to everyone was a problem.⁴ Thus, it became generally agreed that the government should do something about land distribution in Nigeria.⁵ The Rent Control Panel appointed in 1976 to study the system of land distribution and speculation recommended, inter alia, that the Federal Military Government should take over all undeveloped land in the country.⁶ Similarly, the Constitution Drafting Committee (CDC) set up in January, 1976 to prepare the 1979 Nigerian Constitution strongly recommended the nationalisation of all undeveloped lands in Nigeria to allow the landless, a land for shelter and sustenance.⁷ Consequently, the Federal Government decided to act by looking into the land problem in the country. Thus, in June, 1977 the Federal Government set up the Land Use Decree Panel headed by a Supreme Court Justice with the following terms of reference:

*Corresponding author: Enyia, Jacob Otu,
Senior Lecturer, Department of Commercial and Industrial Law Faculty of Law, University of Calabar – Nigeria

³Ibid.

⁴Ibid.

⁵See Oluyede, P.A.O., Nigerian Conveyancing Practice, Drafting and Precedents (Heinemann Educational Books (Nig.) Plc, Ibadan, 1994) 324.

⁶Yakubu, op. cit., at 10.

⁷Ibid at 10.

¹Yakubu, MG, Notes on the Land Use Act (A.B.U. Press Ltd, Zaria, 1986) 9.

²Ibid.

- (i) to undertake an in-depth study of the various land tenure, land use, and land conservation practices in the country and recommend steps to be taken to streamline them;
- (ii) to study and analyse all the implications of a uniform land policy for the country;
- (iii) to examine the feasibility of a uniform land policy for the entire country, make necessary recommendations and propose guidelines for implementation;
- (iv) to examine steps necessary for controlling future land use and also opening and developing new land for the needs of government and Nigeria's population in both urban and rural areas and to make appropriate recommendations.⁸

The reports of the Panel culminated in the enactment of the Land Use Act, 1978. The Land Use Act sets out a framework for a national land policy in Nigeria.⁹ The Act was enacted as a military decree and came to force on 29 March, 1978. The decree assumed the appellation of an Act in 1980 through the Adaptation of Laws, (Re-designation of Decrees, etc.) Order, 1980.¹⁰ Given that the Act is designed to control Land Use, it is a planning law. The Land Use Act is an existing law in terms of the Constitution of the Federal Republic of Nigeria, 1999¹¹ The Act is, therefore, beyond repeal or modification by the State Houses of Assemblies, changes therein, are only possible in accordance with the stringent provisions of the Constitution relating to amendment.¹²

Basic Philosophy and Objectives of the Act

The basic philosophy of this Act is evident in its preamble which states:

“WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law: AND WHEREAS it is also in the public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved.”

Four main objectives have been identified as the reasons for enacting the Act, and they are:

- (a) to remove the bitter controversies resulting at times in loss of lives and limbs, which land is known to be generating;¹³
- (b) to streamline and simplify the management and ownership of land in the country;
- (c) to assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place

⁸James, R.W., *Nigerian Land Use Act: Policy and Principles* (University of Ife Press Ltd, Ile-Ife, 1987) 26-27.

⁹Ibid at 1.

¹⁰See ss 1 & 13 of the Adaptation of Laws, (Re-designation of Decree, etc.) Order, 1980.

¹¹See s. 315(5) of the Constitution of the Federal Republic of Nigeria, 1999.

¹²James, op. cit. at 1.

¹³Land, which is one of the factors of production, has become a factor for constant litigation, bickering, attacks, deaths and violence in different communities in Nigeria. It got to a stage that it caught national attention. Hitherto, the land tenure law and the general law were in operation in the Northern part of Nigeria. The various customary methods of holding land and the general law regulating land existed in the southern part of Nigeria too. In order to solve the intractable problems relating to land, the Land Use Act was promulgated.

where he and his family will live a secured and peaceful life; and

- (d) to enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitating planning and zoning programmes for particular uses.¹⁴

When the Act was promulgated into law on 29 March, 1978, it received mixed feelings and reactions from various individuals, organisations and institutions in the country. While many, particularly, Trade Union Leaders, workers and other individuals strongly favoured the Act, many others, particularly, the traditional rulers criticised it as depriving them of their tradition and property.¹⁵ Workers and individuals saw the Act as highly acceptable and believed that with the Act in place, they could now apply for land to build their own houses without having to purchase land at exorbitant prices from land speculators.¹⁶ For instance, the then President of the Nigerian Labour Congress described the new land policy as “the wisest measure ever taken by the Government.”¹⁷ However, with the Act having been in operation for four decades now, the enthusiasms it received, especially from workers and individuals have died down. Majority of the populace has come to the realisation that the Act has caused a lot of problems and created a great complexity in the land transactions in the country. There have been calls from different angles in the country in the recent times, calling for either the amendment of the Act or its total abrogation as it has worked a lot of injustice to the people and has nearly paralysed the mortgage industries which is a catalyst for economic rejuvenation.

Fundamental Features of the act

System of Land Holding Under the Land Use Act: The Land Use Act creates a tripartite system of land holding in Nigeria namely: state, federal and private/individual land holding Systems.¹⁸ Section 1 of the Act vests the title of land comprised in the territory of each State in the Governor of the State to be held in trust and be administered for the benefit of every Nigerian. The exact import of the provision of section 1 of the Land Use Act has attracted divergent interpretations from judicial authorities and textbooks writers. It has been suggested that the word “vest” in the provision implies the vesting of ownership.¹⁹ It is important to note, however, that the provision of section 1 of the Act is prefaced by the expression, “subject to the provision of this [Act]...” This qualification indicated that there were some lands in each State which were not intended to be vested in the Governor of the State.²⁰ One of such exception is all land which immediately before the commencement of the Act was vested in the Federal Government.²¹ In this regard, section 49 of the Act exempts the management and control of land held by federal government or any of its agencies from control of the State Governor. The said section 49 provides:

¹⁴See Omotola, J. A., *Essays on the Land Use Act, 1978*, (Lagos University Press, 1984)

¹⁵Yakubu, op. cit., at 11.

¹⁶Ibid, at 12.

¹⁷Ibid

¹⁸See ss 1 & 49 of the Act.

¹⁹Abugu, U., *Principles of the Land Use Act, 1978* (Joyce Graphic Printers & Publishers, Kaduna, 2008) 13.

²⁰James, op. cit., at 31.

²¹Abugu, op. cit., at 16.

“Nothing in this Act shall affect any title to land whether developed or underdeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act, accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.” Section 1 of the Act states: “[s]ubject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.” This section vests the radical title to the land in the governor devoid of the possessory interest of the erstwhile landowners, upon trust.

It should be noted that a governor is not beneficially entitled to the land so vested in him, but he is only a trustee of the land for the benefit of all Nigerians in that State. In this regard, he holds only nominal ownership of land because a settled principle of law dictates that a trustee is not the real owner of a trust property but only has control and holds nominal title in the land for the purpose of accomplishing the objectives of a particular trust. Thus, the effect of this contention is that governors are vested with bare title to land to the extent that may be necessary for them to administer the land within the territories of their States for the purpose of achieving the objectives of the Act.²²

Control and Management of Land

Section 2(1) of the Act provides thus: “As from the commencement of this Act, (a) all land in urban areas shall be under the control and management of the Governor of each state; and (b) all other land shall, subject to this Act, be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.” To ensure an effective control and management, the land vested in the Governor is zoned by section 3 of the Act into urban and non-urban lands.²³ Section 2(2) of the Act establishes in each State, a body known as the “Land Use and Allocation Committee.” This Committee consists of such a number of persons as the governor may determine and shall have in its membership: (i) not less than two persons possessing qualifications as estate surveyors or land officers of not less than five years standing, and (ii) a legal practitioner.

The committee has the responsibilities of

- (a) advising the appropriate authority on any matter connected with the management of land to which section 2(1) (a) of the Act relates;
- (b) advising the appropriate authority on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and
- (c) determining the disputes as to the amount of compensation payable under this Act for improvement on land.

Section 2(5) of the Act also establishes for each local government, a body to be known as “the Land Allocation

Advisory Committee” which shall consist of such persons as may be determined by the Governor acting after consultation with the local government and shall have responsibility for advising the local government on any matter connected with the management of land in non-urban area. Section 2(2)(c) provides that the Land Use and Allocation Committee shall have responsibility for determining disputes as to the amount of compensation payable under the Act for improvement on land. Section 47(2) of the Act ousts the jurisdiction of the court on the issue concerning the amount or adequacy of compensation payable. It provides: “[n]o court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.” It is submitted that section 47(2) constitutes an ouster clause which is a derogation of the fundamental right of access to court. In terms of the current Constitution, this provision is void.²⁴ Section 47(2) of the Act, therefore, calls for an amendment to make it conform to the provision of the 1999 Constitution as required of every existing law under section 315 of the Constitution.

The Right of Occupancy Under the Act

The Land Use Act introduces two types of rights of occupancy. A right of occupancy granted by the Governor which is called the Statutory Right of Occupancy (SRO) and a right of occupancy granted by the local government called the Customary Right of Occupancy (CRO). Section 50 of the Act defines the statutory right of occupancy as a right of occupancy granted by the governor under the Act while customary right of occupancy is defined as the right of a person or community lawfully using or occupying land in accordance with customary law and it includes a customary right of occupancy granted by a local government under the Act. However, in terms of section 5(1)(a) of the Act, “[i]t shall be lawful for the Governor in respect of land whether or not in an urban area to grant statutory rights of occupancy to any person for all purposes.”²⁵ Section 5 of the Land Use Act deals generally with the powers of the governor to deal with land in respect of the issues mentioned in the section. From this provision, the power of the Governor to grant statutory right of occupancy is not limited to land in urban area, he/she may as well grant a statutory right of occupancy in respect of the land designated as non-urban area. It is submitted that the determining factor in this case is not the location of the land (urban or non-urban), but the status of the person who grants the right of occupancy. The governor of a State has the power to grant statutory right of occupancy whether or not the land concerned is in urban or rural area.²⁶ The Act empowers the local government to grant customary rights of occupancy in respect of land not in an urban area to any person or organisation for agricultural, or for other purposes ancillary to agricultural purpose such as grazing, residential and other purposes.²⁷

²⁴See ss 1(1) & (3), 6 (6)(b) & 36(1) of the CFRN, 1999; see also, *Prince Kolawole Mustapha v. the Governor of Lagos State* [1987] 2 NWLR (pt. 58) 552; *Garba v. Federal Civil Service Commission* [1988] 1 NWLR (pt. 71) 449.

²⁵The power of the governor to grant a statutory right of occupancy under s 5(1) of the Act was emphasized by the Supreme Court in its decision in *Daba v. Abdullahi* (2005)29 WRN 1. See also, *Anthony v. Governor of Lagos State & Anor* [2003] 10 NWLR (pt. 828) 288 at 304.

²⁶See *Ologunju v. Adesoye* [2009] 9 NWLR (pt. 1146) 225 at 265 (Sc); see also, *Teniola v. Olohunkon* [1999] 5 NWLR (pt. 602) 280; *Gankon v. Ugochukwu Chemical industries Ltd* [1993] 6 NWLR (pt. 297) 55.

²⁷See s 6(1) of the Act

²²See Utuama, A. A., *Nigerian Law of Real Property*, (Shaneson C.I. Ltd, Ibadan, 1990) 119.

²³See *Salati v. Shehu* [1986] 1 NWLR (Pt. 15) 210; *YahayaYari v. Ahmed Shehu Ibrahim* [2002] 5 NWLR (pt. 761) 587 at 617; *Chindia v. Aniadi* (2002) 11 WRN 72 where the Court of Appeal states how the classification of land as urban or rural should be determined.

A right of occupancy under the Act may either be granted or deemed issued. This means that the right may be acquired by express provisions of the Act or by operation of the law. Right of occupancy, either statutory or customary is granted or acquired expressly by virtue of sections 5(1)(a) & 6 (1)(a)&(b) of the Act.²⁸ A right of occupancy is deemed issued or by operation of the Act by virtue of sections 34 and 36 of the Act, among others. A right of occupancy under the Act is a possessory interest in land. It is devoid of the concept of absolute ownership or radical title in view of the provision of section 1 of the Act. As noted above, it may be acquired by express grant or by implications of the Act, i.e. a deemed grant. The person entitled to a right of occupancy is called a holder and a holder may be sole (individual) or group.²⁹ It is submitted, however, that contrary to what the title of the Act suggests, the Land Use Act is not concerned with the control of land use within a particular State but rather with the rights over land which in the present context is the issue of ownership of land. Thus, the Act has as its pre-occupation, the divesting of citizens of ownership rights in the land and re-vesting same in the various Governors while leaving the original (erstwhile) owners with, at best, mere rights of occupancy. Given that most lands were before the Act came into operation owned by various private persons (customary owners), the Act is presumed to have first divested those owners of the ownership of their land before it could, in the legal sense, vests same in the State through the Governors in terms of section 1 of the Act.³⁰

The Certificate of Occupancy

Section 9 of the Act provides

“(1) It shall be lawful for the Governor

- (a) When granting a statutory rights of occupancy to any person; or
 - (b) When any person is in occupation of land under a customary rights of occupancy and applies in the prescribed manner; or
 - (c) When any person is entitled to a statutory right of occupancy to issue a certificate under his hand in evidence of such right of occupancy.
- (2) Such certificate shall be termed a certificate of occupancy and there shall be paid therefore by the person in whose name it is issued, such fee (if any) as may be prescribed.”

It is submitted that in terms of the provisions of section 9(1), sections 34(3), 34(9) and section 36(3) of the Act, a Governor is required to satisfy himself that the applicant for a certificate of occupancy is entitled to a right of occupancy in the land before issuing him/her a certificate in evidence of that right.

The pertinent issues, however, are: what evidence of title should satisfy the governor, and how should the governor proceed in his search so as to determine that the applicant has a genuine claim? The Land Use Act provides no guidance as to the kind of evidence that a Governor may act upon or how he/she is to go about the task of investigating the claim of the applicant. However, under the Registration of Titles Law, the Registrar, in addition to advertising the application, must also make enquiries from the neighbourhood and act only on acceptable document of title. It should be pointed out that there are no such provisions in the Land Use Act. In the absence of necessary guidelines, governors have discretions and they may act on different evidence including advertisements.³¹ It is submitted that the arrangement under the Land Use Act is unsatisfactory. A large percentage of Nigerians is still illiterates who may be unable to read or write. If the application is advertised, such category of persons may not know or read with understanding such advertisement for them to enter a caveat. In addition, there are many newspapers in circulation as such, even the literates, at times, may not be aware of when and which newspaper carries the advertisement so as to enter a caveat. The procedure under the Registration of Titles Law is preferred and same is recommended for the purpose of the Land Use Act.

Certificate of Occupancy and Title to Land

A certificate of occupancy is prima facie evidence of exclusive possession of land to which it relates and the onus of proof is on the person who asserts the contrary.³² It is important to note, however, that a certificate of occupancy is not a conclusive proof of title and ownership of land, as such the issuance of a certificate of occupancy in respect of any land would not validate any defect in the title of the holder.³³ In *CS.S. Bookshops Ltd v. Registered Trustees of Muslim Community in Rivers State & 3 Ors*,³⁴ the Supreme Court emphasised it that the mere grant of a right of occupancy over a land in respect of which there is already a right of occupancy, or an existing interest in favour of another person, does not amount to the revocation of the prior right of occupancy or existing interest. Any person without title to a parcel of land in respect of which the certificate of occupancy is issued acquires no right or interest which he did not have before. Thus, where it is shown that another person has a better right to the grant, the court will set aside the certificate wrongly issued.³⁵ In the same vein, in *First Bank of Nigeria Pic v. Okeiewu*,³⁶ it was held that the grant of a certificate of occupancy to a person does not extinguish the right of an existing customary owner. This is because the prior holder is deemed to be the holder of a customary right of occupancy over such a land, unless and until such a prior holder's interest is revoked a subsequent grant is not valid.

³¹Ibid, at 44.

³²See *Emy J. BilaAula v. Chief Willy jbe* [2003] 13 NWLR (pt 837) 247 at 266 (SC); *Chief A. J. Jiwul v. Nde Joshua Dimlong* [2003] 9 NWLR (pt 824) 154 at 214; see also, *Ogunleye v. Oni* [1990] 2 NWLR (pt 135) 745; *Registered Trustees Apostolic Church y Olowoleni* [1990] 6 NWLR (pt 158) 514.

³³*Mrs. Mofisola Edebiri v. Prince Omotayo Daniel & Anar* [2009] 8 NWLR (pt 1142) 15 at 27-28 & 31.

³⁴[2006] 11 NWLR (pt 992) 530 at 567-568; see also, *J6rahim v. Mohammed* [2003] 6 NWLR (pt 817) 615; *Otohunde v. Adeyoju* [2000] 10 NWLR (pt 676) 562; *Ilona v. Idakwo* [2003] 11 NWLR (pt 830) 53.

³⁵*Hannah K. Agundo v. Mercy N. Gberbo & Anar* [1999] 9 NWLR (pt 617) 71 at 97-98; *Ogbahon v. Reg. Trustees of Christ Chosen Church of God & Anor* [2002] 1 NWLR (pt 749) 675 at 713; *Omiyale v. Macaulay* [2009] 7 NWLR (pt 1141) 597 at 628; *Ogunleye v. Oni* [1990] 2 NWLR (pt 135) 745.

³⁶[2013] 13 NWLR 435 at 467.

²⁸29 S 1(5)(a) states: “it shall be lawful for the governor in respect of land, whether or not in an urban area-(a.) to grant statutory rights of occupancy to any person for all purposes.” 56(0)(a) & (b) states: “[i]t shall be lawful for a Local Government in respect of land not in an urban area-(a) to grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural, residential and other purposes; (b) to grant customary rights of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the Local Government Area concerned.”

²⁹See s 29(3) of the Act; see also, *Ojerne & Ors v. Momodu II, Ogirruo of Irruo & Ors* (1983) 3 SC 173 at 187.

³⁰See Omotola, op. cit, at 122.

Also, in *SaiduChiroma v. MadeusYeamSuwa*,³⁷ the Court of Appeal dismissed the action of the appellant for trespass against the respondent in respect of the land in which the appellant held a certificate of occupancy when evidence revealed that prior to the issuance of the certificate the appellant had sold the land to the respondent.³⁸ Also, in *Osazuwa v. Ojo*,³⁹ the Court of Appeal held thus:

“A certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the certificate of occupancy then the court can revoke it.”⁴⁰

Alienation of Rights of Occupancy

Both the statutory and customary rights of occupancy are transferable subject to consent requirement. It should be noted that the rule that the consent of the governor or that of the local government must be first had and obtained before any transfer of right over land is the most potent provision of the Act which enhances security of title. By requiring the consent of the governor to such transfers, it will be possible to control and regulate them and keep proper records of all transfers.⁴¹

Section 22 of the Act provides thus:

“It shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the governor first had and obtained...” Omotola has argued that the word “granted” in the above provision is intended to draw a distinction between statutory right of occupancy actually granted and those deemed to be granted and to limit the consent requirement, in the provision to the former; that is, statutory right of occupancy actually granted by the governor under section 5.⁴² In *Savannah Bank Ltd v. Ajilo*,⁴³ the scope of the provision of section 22 of the Land Use Act came up for determination. In that case, Chief F.R.A. Williams, SAN contended that the provision of section 22 of the Act does not include a holder of deemed issued or deemed granted right of occupancy under section 34. The contention was based on the premise that distinction is drawn between actual and deemed grants of right of occupancy throughout the provisions of the Act and particularly section 39 which deals with the jurisdiction of the courts. The court rejected this contention and held that the preservation of the object of the Act is to make “the land in Nigeria available for the use and enjoyment of all Nigerians and the best approach to achieve this objective was to vest all land comprised in the territory of each state in the governor of that state” and

consequently, “all land in urban area came under the control and management of the governor of each state” and that the governor’s consent requirement in section 22 applies equally to holders of rights of occupancy actually granted as well as those deemed granted under the transitional provisions. The court noted that the history of the Act does not admit of “two categories of right of occupancy, one subject to the provisions of the Act and the other outside its regulatory force.”⁴⁴ However, section 22 of the Act provides for some exceptions namely:

- (a) the creation of legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the governor; and
- (b) thereconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the governor.

In the two instances mentioned above, consent of the governor is not necessary. It is important to note also that improvement made on land comprised in a statutory right of occupancy cannot be alienated by a holder without prior consent of the governor.⁴⁵

The transfer of customary right of occupancy is controlled by the provisions of section 21 which provides as follows:

“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 —

- (a) without the consent of the governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable sheriffs and civil process law, or
- (b) in other cases without the approval of appropriate local government.”

It is submitted that this section is inelegantly drafted and its provision is not very clear. However, in terms of this provision, it is unlawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sub-lease without the consent of the governor in cases where the property is to be sold by or under the order of any court. In other cases, the approval of appropriate local government is required. Under this section, transfer of a customary right of occupancy will in general require the consent of the local government and only when sale is to be made by order of the court that the consent of the governor is to be obtained. However, section 36(2) of the Act states: “[t]he following provisions of this section shall have effect in respect of land not in an urban area which was immediately before the commencement of this Act held or occupied by any person.” In section 36(5), the Act further provides: “[n]o land to which this section applies shall be subdivided or laid out in plots and no such land shall be transferred to any person by the person in whom the land was vested as aforesaid.” Section 36(6) of the Act voids whatever instrument purporting to transfer any land to which the section

³⁷[1986] 13 NWLR 751.

³⁸See also, *Dzungwe v. Gbisha* [1985] 2 NWLR (pt 8)528; see also, Utuama, op. cit. 137.

³⁹[1999] 13 NWLR (pt 634) 286.

⁴⁰M.O. Dada & Anor v. *Abiodun Williams* [2013] 2 NWLR (pt 1338) 260 at 276-277; See also *Haruna v. Ojukwu* [1991] 17 NWLR (pt 202) 207; *Dabub v. Kolo* [1993] 9NWLR (pt 317)254 at 269-270.

⁴¹See Omotola, op. cit, at 26.

⁴²Ibid, at 27-28.

⁴³[1987] 2 NWLR (pt 57) 421.

⁴⁴See also s 34(7) of the Act.

⁴⁵See s 15(b) of the Act.

relates. It makes it an offence punishable with a fine or one year imprisonment. It is submitted that section 3 6(5) of the Act which forbids transfer (though with limited application) seems to be in conflict with section 21 of the same Act. In such case, it is submitted that section 21 should prevail because to convey meaning, section 36(5) of the Act should not be read in isolation but together with the provision of section 21 and other relevant provisions of the Act. The Act cannot approbate and reprobate at the same time; it cannot by section 21 of the Act allow alienation subject to consent and by section 3 6(5) of the same Act, disallows alienation in its entirety. The history of the Land Use Act does not admit of these two conflicting regimes as the Supreme Court pointed out in *Savannah Bank Ltd v Ajilo*.⁴⁶ By virtue of section 22 of the Land Use Act, the holder of a statutory right of occupancy granted by the Governor cannot alienate his right of occupancy or part thereof without the Governor's consent first had and obtained.⁴⁷ Lack of the appropriate consent where consent is required may lead to revocation of the right of occupancy. Governor may revoke right of occupancy where it is alienated without the consent of the appropriate authority.⁴⁸ Lack of consent may also make the transaction unlawful and illegal. It also makes it an offence punishable with fine or imprisonment.⁴⁹ In the same vein, section 26 provides that "[a]ny transactions 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."⁵⁰ Thus, in *Savannah Bank Of Nigeria Ltd v. Afilo*,⁵¹ the Supreme Court held that all transactions under which an interest in land is being transferred require the government's approval for their validity. It is submitted that the duty to procure consent for the transfer of statutory or customary right of occupancy is that of the holder of such rights.⁵²

Revocation of Right of Occupancy for Overriding Public Interest

Section 28 of the Act says that a right of occupancy may be revoked by the governor for overriding public interest.⁵³ This power is exercisable in respect of either statutory right of occupancy or customary right of occupancy.⁵⁴ The power of revocation is also exercisable in respect of right of occupancy granted or deemed granted by the government.⁵⁵ For the purpose of section 28 of the Act, overriding public interest includes the following: alienation by the occupier of any right of occupancy or part thereof contrary to the provisions of the

Act or any regulations made there under; requirement of the land by the government for public purpose; requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith; and requirement of the land for the extraction of building materials, in the case of customary rights of occupancy.⁵⁶

Section 28(5) of the Act further provides that the governor may revoke a statutory right of occupancy on the ground of:

- (a) a breach of any of the provisions which a certificate of occupancy is by section 10 of this Act deemed to contain;
- (b) a breach of any term contained in the certificate of occupancy or in any special contract made under section 8 of this Act; and
- (c) a refusal or neglect to accept and pay for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the governor under subsection (3) of section 9 of this Act.⁵⁷

It should be noted that revocation under section 28 of the Act must accord with the intentment of the provisions of the Act.⁵⁸ Any exercise of the power of revocation for purposes outside those outlined or enumerated by section 28 of the Act, or not carried out in compliance with the provisions of the section will be against the policy and intention of the Act and will be declared void.⁵⁹ Although the Land Use Act does not expressly state that the specific ground(s) of the revocation of a right of occupancy must be stated in the notice, however, following judicial decisions, where a right of occupancy is stated to be revoked for public purpose, there is the need to spell out the public purpose in the notice of revocation.⁶⁰ It should be noted that revocation of a statutory right of occupancy in connection with economic, industrial or agricultural development of a private company or of an individual is not for overriding public interest within the meaning of the Act.⁶¹ Thus, in *The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v. Samuel David Eke-Spiff & 3 Others*,⁶² the Supreme Court observed that the 1 respondent's right of occupancy was revoked and the same land was re-allocated to Major General Sani Abacha. It held that the re-allocation to Major General Sani Abacha could not be assimilated to an action taken in the overall public interest given that Major General Abacha, in the context, was an ordinary citizen.⁶³ It held further that it is unconscionable, unlawful and unconstitutional to take away a piece of land already allocated and re-allocate same to someone else without serving a notice

⁴⁶Supra.

⁴⁷See *Federal Mart gage Bank of Nigeria v. Dr Elisha Bamidele Babatunde* [1999] 12 NWLR (pt 632) 683 at 689. The author was one of the appellant counsel in this case.

⁴⁸See s28 (2)(a) & (3)(d) of the Act.

⁴⁹See generally, ss 21, 22, 23 34(5), (6) & (7) (8), and sec 36(2), (4) & (6) of the Act.

⁵⁰See *Olalorni industries Ltd. v. Nigerian Industrial Development Bank Ltd.* [2009] 16 NWLR (pt 1167) 266 at 292-293 & 301 (SC); *Union Bank of Nigeria Plc v. Ayodare & Sons (Nig.) Ltd* [2007] 13 NWLR (pt 1052) 567 at 584.

⁵¹Supra.

⁵²See ss 14 & 22 of the Land Use Act. See also s 50 of the Act on the definition of holder of right of occupancy.

⁵³See *The Administrators/Executors of the Estate of General Sani Abacha (Deceased) v. Samuel, David Eke-Spiff & 3 Others* [2009] 7 NWLR (pt 1139) 97 at 130, 131 & 132; C.S.S. Books hops Ltd v. Registered Trustees of Muslim Community in Rivers State & 3 Ors [2006] 11 NWLR 530 at 564 & 577 (SC).

⁵⁴See also, s38 of the Act.

⁵⁵See *Lagos State Development and Property Corporation & Ors v. Foreign Finance Corporation* [1987] 1 NWLR (pt 50) 385 at 413.

⁵⁶See generally, s 28(1)-(3) & s 50 of the Act. See also, *C.S.S. Bookshops Ltd v. Registered Trustees of Muslim Community in Rivers State & 3 Ors* (supra) at 564, 577 & 582-583.

⁵⁷See *Bookshops Ltd v. Registered Trustees of Muslim Community in Rivers State & 3 Ors* (supra) at 564, 577 & 582-583 & *Agundo v. Oberbo* [1999] 9 NWLR (pt 617) 71.

⁵⁸See *Danishosho v. Mohammed* (2003) 30 WRN 61.

⁵⁹*Bookshops Ltd. v. Registered Trustees of Muslim Community in Rivers State & 3 Ors* (supra) at 565-567, 578 & 583-584.

⁶⁰See *Bookshops Ltd. v Registered Trustees of Muslim Community in Rivers State & 3 Ors* (supra) at 577-578; see also, *Osho v. Foreign Finance Corporation* [1991] 4 NWLR (pt 184) 157; *Eruku u Mil. Gov. of Mid-Western State* (1974) 10 SC 59; *Adukwu v. Commissioner for Works, Land & Transport, Enugu State* [1997] 2 NWLR (pt 487) 588; *Nigeria Engineering Works Ltd v. Denap Ltd* [1997] 10 NWLR (pt 525) 481.

⁶¹See *Lagos State Dev. & Property Corp'n v. Foreign Finance Corp'n* (supra); *Ereku & Ors v. Military Governor of Mid-Western State* (1974) 1 All NLR 163.

⁶²Supra.

⁶³At 130, 131 & 132.

of revocation on the earlier allottee and not paying that person compensation.⁶⁴ Acquisition of land has to follow due process and procedures especially where it will involve displacement of individual rights.⁶⁵

Compensation for Revocation

In, line with section 44 of the Constitution of the Federal Republic of Nigeria, 1999 which guarantees prompt payment of compensation, the Land Use Act prescribes the payment of compensation upon revocation of a right of occupancy, Thus, the Act provides that where a right of occupancy is revoked for the public purpose, the holder or the occupier shall be entitled to compensation for the value of the land at the date of revocation of their un-exhausted improvements.⁶⁶ Where the right of occupancy is revoked in respect of any developed land on which residential building has been erected, the government may offer, in Lieu of pecuniary compensation, resettlement in any other place by way of a reasonable alternative accommodation where the circumstances permit.⁶⁷ In terms of the provision of section 30 of the Act, any dispute as to the amount of compensation calculated in accordance with the Act shall be referred to the appropriate Land Use and Allocation Committee. The High Court has jurisdiction to determine any question as to the persons entitled to compensation payable under the Act.⁶⁸

The Legal Conundrum

The Effect of the Act on Mortgage Transactions

An important way in which the Land Use Act and land administration have impacted on economic transactions in Nigeria is the requirement of governor's consent in relating to mortgage transactions. As sections 21 and 22 of the Act stipulates, it shall not be lawful for a holder of a statutory right of occupancy granted by the governor to alienate his/her right of occupancy or any part thereof by assignment, mortgage, transfer of possession, among others, without the consent of the governor first had and obtained. It is submitted that one of the major problems confronting land security in Nigeria is the requirement of consent by the appropriate authority for any dealing in land. A mortgage is a transfer of property (often an interest in land) as security for the repayment of a loan.⁶⁹ Strictly defined, a mortgage is a real right in respect of the immovable property of another, securing a principal obligation between a creditor and a debtor.⁷⁰ It is a conveyance or other disposition of land to secure the payment of money or the discharge of some other obligations.⁷¹ Mortgage as a form of credit transaction in Nigeria is decisively important, and of course, constitutes a significant expression of and contributor to the national development.⁷²

⁶⁴ At 132

⁶⁵ See *Ononuju v. Attorney-General, Anambra State* [2009] 10 NWLR (pt 1142)182 at 211 (SC); *Mrs Mojisola Edebiri v. Prince Omotayo Daniel & Anor* [2009] 8 NWLR (pt 1142)15 at 32, Ogunbiyi, JCA.

⁶⁶ S 29(1) of the Act.

⁶⁷ S 33 of the Act.

⁶⁸ S. 39(1)(b) of the Act.

⁶⁹ See Egwummuo. J. N., *Modern Law and Practice of Conveyancing* (Academic Publishing Co., Enugu. 2005) 232.

⁷⁰ de Bois. F. et. al. Wille: *Principles of South African Law*, 9th ed., (Juta & Co., Cape Town, 2007) 631: see also. Bray, J., *Unlocking Land Law* (1-lodder & Stoughton. London, 2004) 351.

⁷¹ *Santley v. Wilde* (1899) 2 Ch. 474.

⁷² Umezulike. I. A., *The Land Use Act, More than two Decades After and Problems of Adaptive Strategies of Implementation* (College of Law,

A mortgage is also defined as "a legal or equitable conveyance of title as a security for the payment of a debt or the discharge of some other obligation for which it is given subject to a condition that the title shall be reconveyed if the mortgage debt is liquidated."⁷³ According to Oluyede, a mortgage is a conveyance of land or assignment of chattels as a security for the repayment of a debt or the discharge of some other obligation for which it is given.⁷⁴ The procedure for obtaining the required consent under the Act is cumbersome and very expensive with adverse effects on commerce.⁷⁵ As Obaseki, JSC aptly captured it in *Savannah Bank (Nig.) Ltd. v. Ajilo*,⁷⁶ "the Land Use Act is bound to have a suffocating effect on the commercial life of the land and house owning class of society who use their properties to raise loans and advances from the banks. I have no doubt that it will take the whole working hours of a Governor to sign consent papers (without going half way) if these clauses are to be implemented." Since the commencement of the Act, a number of legal problems have arisen from this form of credit transaction including a number of issues which are of such concern to the banks and mortgage institutions, industries, individuals, legal practitioners, conveyancers and the general public.⁷⁷ It is submitted that security for credit or mortgage transaction is valueless if the mortgage cannot be realised without difficulty when the need arises. A good security must, therefore, be readily ascertainable and reasonably stable over a fairly long time)⁷⁸ It must also be transferable without undue cost and trouble to the mortgagee including, the ability of the said mortgagee to obtain indefeasible title with minimum trouble and delay without incurring a residual obligations and liabilities to third party in the process.⁷⁹ The Land Use Act has brought a great deal of revolution to mortgage transactions by the requirement that consent of the governor must be obtained to the transaction before the mortgagor can transfer his interest to the mortgagee).⁸⁰ Mortgagees have special preference for land security for their credits. Thus, mortgages of land have increased in commercial importance in their security portfolio. That is why it is necessary to examine whether in the light of the provisions of the LUA, the mortgagee's final potent remedies are still extant.⁸¹ It is, however, settled on the authorities that the validity of mortgage of statutory right of occupancy depends on whether at the time of its creation the consent of the governor was sought and obtained.⁸² Other problems include the prohibitive consent fee and other fees payable by the mortgagor. The process of land acquisition by individuals is very difficult due to the government

Igbinedion University, Okada, 2004) 105.

⁷³ *Stamley v. Wilde*, (1899) 2 Ch. 474. Lord Lindley, M.R.: Mortgage may also be described as transfer of an interest in property (mainly real property) as a security for a debt. This arrangement enables the creditor (mortgagee), in the event of the debtor (mortgagor) being unable or unwilling to pay off the debt, to enforce the said debt against the mortgaged property, say by selling it and recouping what he is owed.

⁷⁴ See Oluyede. P. A. O., *Nigerian Conveyancing Practice, Drafting and Precedents* (Heinemann Educational Books (Nig.) Pic, Ibadan. 1994) 14

⁷⁵ Wilson. I., "Enhancing Nigeria's Economic Development: A Case for Institutional and Regulatory Reforms in Nigeria's Banking Sector" paper presented at the BBI 2nd National Stakeholders Forum on Removing Bottlenecks to Business in Nigeria, held at Nicon Hilton, Ahuja. Nigeria. (19th and 20th April, 2005) 1-14 at 6.

⁷⁶ [1989] NWLR (Pt. 97) 305 at 329.

⁷⁷ Umezulike. op. cit.. at 105.

⁷⁸ *Ibid* at 107.

⁷⁹ *Ibid* at 107-108.

⁸⁰ Aluko. O. *The Law of Real Property and Procedure*. 2nd ed. (Brighter Star Law Series, Ibadan, 2001) 126.

⁸¹ Umezulike, op. cit. at 108.

⁸² See *Savannah Bank Ltd. v. Ajilo* (supra).

bureaucracy.⁸³ Precious time is wasted in processing the application for consent which may take months and at times, years to go through. The existence of a cumbersome process of title documentation of land ownership which is reinforced by inadequate cadastral system makes mortgage financing very difficult.⁸⁴ It is certain that there would be very few people who have not been at the receiving end of the cumbersome process of obtaining Governor's consent in Nigeria. The process of obtaining consent is truly herculean, tortuous and laborious.⁸⁵

Insecurity of Title to Land in Nigeria

As is normally the case in human affairs, the promulgation of the Land Use Act in 1978 raised expectations.⁸⁶ But, what is the reality of the situation now? It is submitted that the existing system of landholding and administration in Nigeria is fraught with numerous problems and challenges.⁸⁷ The Act aims at streamlining and simplifying the management and ownership of land in the country. Security of land is essential for economic development in any society.⁸⁸ It is a well-known fact that the current state of land management in the country has failed to guarantee security of title, thereby, impacting negatively on economic development in the country. Part of the problems that led to the enactment of the Act was sharp practices, which often led to the same piece of land being sold to more than one person, creating vague and defective titles. For instance, in *Ogunbambi v. Abowaba*,⁸⁹ the Supreme Court noted as follows:

“The case is indeed in this respect like many which come before this court: one in which the Oloto family either by inadvertence or design sell or purport to sell the same piece of land at different times to different persons. It passes my comprehension how these days, when such disputes have come before this court over and over again, any person will purchase land from this family without the most careful investigation, for more often than not they purchase a law suit, and very often that is all they get.” This problem still exists today. As Omotola rightly pointed out, “our insecurity of title to land has multiplied, disputes over title to land continued unabated. The courts are as busy as ever sorting these out. Land is now more difficult to acquire. Processing of document of title takes years to complete. Many applications for grant of right of occupancy have been abandoned...”⁹⁰ Even the grant of certificate of occupancy does not at time solve this problem. For instance, in *Saude v. Abdulah*,⁹¹ there was a grant of right of occupancy to two persons over the same land. One of the issues determined by the Supreme Court was the effect of a subsequent grant of

the right of occupancy on a land over which there subsists an earlier grant. In what appeared to be a literal interpretation of the wordings of section 5(2) of the Land Use Act, the Supreme Court held that “upon a proper interpretation of subsection (2) of section 5 of the Land Use Act, a later statutory right of occupancy extinguishes all rights created by an earlier grant.” It is submitted that the implication of this is that the issue of whether title is secured or not may turn out to depend on the cannon of interpretation adopted by the court.⁹² At the same time, in *S. O. Adole v. Boniface B. Gwar*,⁹³ the Supreme Court held that the Land Use Act was not promulgated with the objective of abolishing all existing titles or rights to possession existing prior to its promulgation. It is also submitted that a title to land is not secured even upon grant of certificate of occupancy. A certificate of occupancy is only, prima facie, evidence of exclusive possession of land to which it relates.⁹⁴ A certificate of occupancy is not a conclusive proof of title and ownership of land. Thus, the issuance of a certificate of occupancy in respect of any land would not validate any defect in the title of the holder.⁹⁵ In *C.S.S. Bookshops Ltd v. Registered Trustees of Muslim Community in Rivers State & 3 Ors*,⁹⁶ the Supreme Court emphasized it that the grant of a right of occupancy over a land in respect of which there is already a right of occupancy or an existing interest in favour of another person does not amount to the revocation of the prior right of occupancy or existing interest. Any person without good title to a parcel of land in respect of which a certificate of occupancy is issued acquires no right or interest. Thus, where it is established that another person has a better right to the grant, the court will set aside the certificate wrongly issued.⁹⁷ In this regard, in *SaiduChiroma v. MadeusYeamSuwa*,⁹⁸ the Court of Appeal dismissed the action of the appellant for trespass against the respondent in respect of the land in which the appellant had a certificate of occupancy when evidence revealed that prior to the issuance of the certificate the appellant had sold the land to the respondent.⁹⁹ Also, in *Osazuwa v. Ojo*,¹⁰⁰ the Court held thus:

“A certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another

⁹²Compare with the earlier decision of the same court in *Dzungwe v. Gbisha* [1985] 2 NWLR (pt 8) 528.

⁹³[2008] 11 NWLR (pt 1099) 562 at 588 & 606; see also, Hannah K. Agunda v. Mercy N. Oberbo&Anor [1999] 9 NWLR (pt 617) 71 at 98(CA); Kyari v. Alkali [2001] 10 NWLR (pt 724) 412; Adisa v. Oyinwala [2000] 10 NWLR (pt 724) 412.

⁹⁴See *Emy J. BilaAutu v. Chief Willy Ibe* [2003] 9 NWLR (pt 837) 247 at 266 (SC); *Chief A. J. Jiwul v. Nde Joshua Dinlang* [2003] 9 NWLR (pt 824) 154 at 214; see also, *Ogunleye v. Oni* [1990] 2 NWLR (pt 135) 745; *Registered Trustees Apostolic Church v. Olowaleni* [1990] 6 NWLR (pt 158) 514.

⁹⁵See *Mrs MojisolaEdebiri v. Prince Omotayo Daniel &Anor* [2009] 8 NWLR (pt 1142) 15 at 27-28 & 31.

⁹⁶[2006] II NWLR (pt 992) 530 at 567-568; *Ibrahim v. Mohammed* [2003] 6 NWLR (pt 817) 615; *Olahunde v. Adeyaju* [2000] 10 NWLR (pt 676) 562; *Ilana v. Idalcwo* [2003] II NWLR (pt 1) 830 53.

⁹⁷Hannah K. Agitudo y Mercy N. Gberbo&Anar [1999] 9 NWLR (pt 617) 71 at 97-98; *Ogbahon v. Reg. Trustees of Christ Chosen church of God &Anor* [2002] 1 NWLR (pt 749) 675 at 713; *Omiyale v. Macauley* [2009] 7 NWLR (pt. 1141) 597 at 628; *Ogunleye v. Oni* [1990] 2 NWLR (pt.135) 745.

⁹⁸[1986] 1 NWLR 751.

⁹⁹See also, *Dzungwe v. Gbisha* [1985] 2 NWLR (pt 8) 528 see also, *Utuaama*, op. cit 137.

¹⁰⁰[1999] 13 NWLR (pt 634) 286.

⁸³Nuhu. M. B., “Public Land Policy, New Trends: Challenges in Nigerian Institutional Frameworks for State and Public Sector Land Management” FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, (September 9-10, 2008) 10.

⁸⁴Sanusi. J.O., “Mortgage Financing in Nigeria: Issues and Challenges” Being a Paper Presented at the 9th John Wood Ekpenyong Memorial Lecture. Organized by the Nigerian Institution of Estate Surveyors and Valuers, (January 29, 2003) 1-21 at 16.

⁸⁵Bahalakin& Co., “Key Constraints to Real Estate Development in Nigeria” Available at <http://www.babalakinandco.com> (accessed on 24/05/2012) 7.

⁸⁶See Omotola, J.A. (ed), *The Land Use Act (The Report of a National Workshop held at the University of Lagos, 25-28 May, 1981)* (Lagos University Press, Lagos, 1982) 11.

⁸⁷Banire, M.A., *Land Management in Nigeria: Towards a New Legal Framework* (Ecowatch Publications (Nig.) Ltd. Lagos, 2006) 9.

⁸⁸Ibid, at 10.

⁸⁹(1951) 13 WACA 222 at 223, per Verity Ag. P.

⁹⁰As quoted in Banire, op. cit., at 11.

⁹¹[1989] 4 NWLR (pt 116) 387.

person had a better title to the land before the issuance of the certificate of occupancy then the court can revoke it.”¹⁰¹

Access to Land in Nigeria

One of the objectives of the Land Use Act is to assist the citizenry, irrespective of his social status, to realise his ambition and aspiration of owning a place where he and his family will live a secured and peaceful life. As earlier stated, the importance of land cannot be over emphasised. Thus, in *Ibrahim v. Mohammed*,¹⁰² the Supreme Court stated that the Land Use Act was promulgated as a whole with a view to making land available to all Nigerians irrespective of where they live. However, in reality, reverse is the case as lack of access to land remains germane in Nigeria. It is a fact that not everyone has access to land as promised by the Act. The Act was enacted to address some problems but it is difficult to see the extent to which it has solved most of these problems. It should be noted, however, that access to land alone cannot provide a way out of poverty, for access and control over land to be productive and sustainable; it must be linked to a range of other services and infrastructure, such as affordable credit and access to markets.¹⁰³ Since it is on land that food is cultivated to sustain life, the outward manifestation of this right in Nigeria is, therefore, greatly depend on the management of land through the norms and mechanisms of the Land Use Act.¹⁰⁴ Land occupies a central position in economic development in any country. Land, being a scarce and a unique resource, its careful management is essential to economic development and should, therefore, be taken very seriously.

It is submitted that the utility to which a nation puts its land that makes it to be classified as developed, developing and third world country.¹⁰⁵ Whatever may be the prevailing method of land administration in a society, land has always been one of the most important assets in a country. Virtually every form of investment or development by government and private entities is dependent upon land in one way or another.¹⁰⁶ It is generally accepted that poor land administration can impede economic development and social welfare. The quality and quantity of land determine the extent of man's development, k is generally acknowledge that land is central to any solutions offered to the process of development and poverty.¹⁰⁷

Conclusion and Recommendations

The importance of land management to a society cannot be over emphasised, irrespective of the level of economic development in that society. Good land management ensures that property rights are well defined, thereby minimising the incidence of conflicts and disputes relating to land. With property right well defined and with good land management,

people will be encouraged to make investments in improving land assets in view of the fact that the assurance of property rights in land increases the certainty that holders of such right will be able to benefit from improvements made on such land.¹⁰⁸ As already considered, land serves as security for the relevant credit facility. Property right will ensure that there is enhanced access to credit facilities for the purpose of improving or developing land for economic purposes. This will ensure that land is put to the best use, thereby facilitating economic progress and social development. The legal inhibitions inherent in the Land Use Act 1978 as it affects mortgage finances, insecurity of title to land, access to land and matters of compensations requires urgent legal review to bring it in tandem with the need to drive economic development. Economic development is a function of availability of land, investible funds, growth in savings, expansion in investments, high yield or returns on investment outlay, and employment creation. It is suggested that long bureaucratic process involved in allocation of land should be streamlined in order to ensure timely approval of land allocation and subsequent transactions in land should be fasten. Also, the cost incurred in the process of getting the certificate of occupancy should be reduced to a minimum amount. Experts and high technical skilled manpower should be employed to minimize the problems of double allocation. The issue of consent should be critically looked at. The requirement of prior consent of the government either to assign or mortgage a property has been one of the greatest impediments to the development of real estate market in Nigeria. Land Use Act reform/review currently embarked on by the National Assembly should be competed with dispatch and should take into consideration those problems highlighted. Also, adequate and fair compensation should be paid promptly any time the government acquires individual land for public use. Compensation must be just and equitable, reflecting a fair balance between the public interest and the interests of those affected.

In deciding on the amount of compensation, all relevant circumstance, including the current use of the property, the history of ownership and the use of the property, market value of the property and many more should be considered.¹⁰⁹ It should be noted that fair compensation is not always the same as the market value of the property; market value is but one of the items which must be taken into account when determining what would be a fair compensation. A wider range of socially relevant factors such as resettlement costs and, in appropriate circumstances, solace for emotional distress should also be taken into account. To have rapid and meaningful economic development in Nigeria, in addition to regulating land use and management, governments at all levels should also endeavour to eradicate corruption within their domains.

¹⁰¹ See also *Haruna v. Ojukwu* [1991] 7 NWLR (pt. 202) 207 *Dabup v. Kolo* [L993] 9 NWLR (pt. 317) 254 at 269-270.

¹⁰² (2003) 17 WRN 1.

¹⁰³ See Khoza, S. (cd.), *Socio-economic Rights in South Africa*, 2nd cd. (Community Law Centre, University of Western Cape, 2007) 200.

¹⁰⁴ 58 Udombana. N.J., “Weighed in the Balances and Found Wanting: Nigeria's land Use Act and Human Rights” in Smith, I.O. (cd.), *The Land Use Act, Twenty Five Years After* (Department of Private and Property Law, University of Lagos, Lagos, 2003) 62.

¹⁰⁵ See Onalaja, M. O., “The Courts and the Problem of Compensation for Land Rights” in Adigun, O. (cd.), *The Land Use Act. Administration and Policy Implication* (University of Lagos Press, Lagos, 1991) 156.

¹⁰⁶ *Banire. op. cit.* at 4.

¹⁰⁷ Adigun, O. “Legal Theories of Property-The Land Use Act in Perspectives” in Adigun, O. (ed). *The Land Use Act. Administration and Policy implication* (University of Lagos Press, Lagos, 1991) 10.

¹⁰⁸ *Banire. op. cit.*, at 8-9.

¹⁰⁹ See Khoza, ap. cit., at 203. See also, *HaakdoornbultBoerdery CC and Others v. Mphela and Others* 2007 (5) SA 596 (SCA) para 48; *Mphela and Others v. HaakdoornbultBoerdery CC and Others* 2008 (4) SA 488 (CC) para 13.