# Land Administration in Nigeria: 45 Years After the Enactment of the Land Use Act, 1978. Any Lessons Learnt from the Inadequacies of Its Provisions?

## Prolegomenon

Kindly permit me to commence this presentation, as I would rather put it, and not a lecture, in view of the quality of the audience, majority of whom I am not in a position to lecture on anything, much less the subject matter of our engagement—land administration—with my congratulatory message to the honoree, Alhaji Femi Okunnu, OFR, SAN. Thus, I take this session as a refresher of our knowledge generally, in a critical form.

The honoree is not only an elder statesman in Nigeria but one of the founding fathers of Lagos State. He is a great uncle to all Lagos State indigenes, of which I am proud to be one, and other Nigerians. In our local context, I will say, he is our 'father'. *Baba wa ni won n se*! Happy birthday and many happy returns in good health and prosperity, Sir. At times, when the latter wish is made for someone, it is often misconstrued as a prayer for material wealth, but this is a misconception as this transcends material things into the realm of knowledge, spiritual upliftment and wisdom. More wisdom, greater spiritual upliftment and good health, Sir. *Ajinde ara a ma je o*!

When I was invited to appear and share my thoughts on the topic of this discussion, it was with some good measure of excitement that I received the invitation and, upon a little prompting as to how the choice of my person was arrived at, I was more elated to know that the honouree of today suggested me as the presenter and that my profile lent credence to his choice. I believe that no endorsement could be greater, coming from a distinguished and accomplished personality like him.

Apart from the fact that my specialization is in this area of law, as a doctoral degree holder in Private and Property Law with a bias towards Land Law, I have actively practised Land Law for over three decades while also having had the privilege of impacting knowledge in the same area at the Faculty of Law, University of Lagos, in the past. In addition, I am also a disciple of the honouree in this area and have actually worked with him in the development of Land Law in this country. In view of this pedigree, I was unable to resist the acceptance of the invitation, and more, I could not dishonour the summons, so to say, handed down by the honouree, coupled with the command of my parent body, the Nigerian Bar Association. Upon reflection, therefore, I realise that truly and proudly, "*emi lokan and emi lo ye*". May I, therefore, specially appreciate the Lagos branch of the Nigerian Bar Association for this honour done to our uncle and father, God bless the Association and the branch.

As many of us might know, as remarked above, I had the privilege of being a lecturer in the Department of Private and Property Law of the University of Lagos, where I rose to become a senior lecturer before stepping aside to serve in the cabinet of my great State, Lagos State. Unfortunately, by the time I was done with the government of Lagos State, my continuous stay at the university had become statute barred. By the University Regulations, you can only be away for the maximum period of eight years on a leave of absence but regrettably, I had served for a period of twelve years continuously in the Lagos State government and had to resign from the university since I could not return there. You might be wondering what the relevance of this is to my presentation. The import is simply that I never had the opportunity of becoming a professor and am consequently unable to deliver an inaugural lecture. Therefore, I seize this as an opportunity to deliver my version of an inaugural lecture outside the academic community. So, do not be bewildered if I proceed in that manner and style.

I am sure that there is no need for me to start recounting the profile of the honouree, which presumably would have been presented, and if otherwise, I consider it too voluminous to offload on this audience as it could be the subject matter of a separate lecture. Suffice, however, to simply state that Alhaji Femi Okunnu is a great man. Anyone who disagrees with this conclusion can embark on their own voyage to reach a different one.

My topic presumes the inadequacy of the provisions of the Land Use Act in addressing security of title to land, a desideratum to economic development which has posed a challenge to the dreams of the draughtsman of the Act. The correctness or otherwise of this assumption will unveil as we progress. For us to appreciate the import of this discussion, may I start with conceptual clarifications of the key terms of the topic.

## CONCEPTUAL CLARIFICATIONS.

Land administration, in my view, presupposes the structural and official mode of regulating dealings in lands. This implies the bureaucratic ways and manners in which officials deal and relate with matters pertaining to lands. Thus, it has not so much to do with the apportionment of land rights, which is in the realm of management. So, to a certain extent, the word 'administration' as used in the context of our engagement will appear to be a misnomer. I would rather, therefore, be much more comfortable with the word 'management' which I now take the liberty to adopt instead. This, in my view, will aptly draw out the essentials of the issues arising from the topic. Thus, land management involves the adjustments and resolutions of the various conflicting land rights within the political space called Nigeria. To this extent, a communal reading of Sections 1, 2 and 49 of the Land Use Act espouses this management concept. Section 2 particularly says:

"2. (1) 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.

(2) There shall be established in each State a body to be known as "the Land Use and Allocation Committee" which shall have responsibility for-

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

(3) The Land Use and Allocation Committee shall consist of such number of persons as the Governor may determine and shall include in its membership—

a) not less than two persons possessing qualifications approved for appointment to the civil service as estate surveyors or land officers and who have had such qualification for not less than five years; and
b) a legal practitioner.

(4) The Land Use and Allocation Committee shall be presided over by such one of its members as may be designated by the Governor and, subject to such directions as may be given in that regard by the Governor, shall have power to regulate its proceedings.

(5) There shall also be established 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 or after consultation with the Local Government and shall have responsibility for advising the Local Government on any matter connected with the management of land to which paragraph (b) of subsection (1) of this section relates."

These provisions essentially dictate the style or form of management to be adopted by Governors over lands in their respective States and the President in respect of land under the control of the federal government or its parastatals and agencies. Thus, our pre-occupation shall focus on land management in Nigeria, with particular reference to the Land Use Act which is the epochal legislation on the subject. The Land Use Act (hereinafter referred to as the Act), as a legislation regulating use of land in Nigeria, was introduced in 1978, first as a Decree of the Federal Military Government and subsequently as an Act of the National Assembly upon the transition to a civilian administration in the country.[1] The Act is, therefore, the main legislation that has governed the management of land in the country from 1978 till date.

Another relevant term worthy of definition or description is "land". In attempting to define the term, however, let me remind us of the admonition of Niki Tobi, JSC ( of blessed memory) in the case of *Federal Republic of Nigeria v Mike*[2], where His Lordship stated that:

> Definitions are definitions because they reflect the idiosyncrasies, prejudices, slants and emotion of the person offering them, while a definer of a word (concept) may pretend to be impartial and unbiased, the final product of his definition will, in a number of situations be a victim of bias.

With this caution in mind, let me first consider what land is according to Edward Coke. In the words of Coke,

[1] See The Adaptation of Law (Redesignation of Decrees, Edict) Order No. 13 of 1980.

[2] (2004) 1 SC (Pt. II) Pg. 27 at 25.

> Land, in its restrained sense, means soil, but in its legal acceptation, it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath; it includes all houses, mills, cattles and other buildings, for with the conveyance of land, the structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxims, *cugus est solum ejus est usque* and *coelum et ad inferos*…".[3]

The latter Latin phrase means that the owner of such land is presumed to be the owner of whatever is beneath and on top of it. In further emphasis of that connotation of land is the maxim *quic quid plantatur solo solo cedit*. However, in the Nigerian context, land is said to include any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals.[4]

Bolaji Oseni[5], adopting the definition in the Black's Law Dictionary, 7th Edition, defines land as "An immovable and indestructible three dimensional areas consisting of a portion of the earth's surface the space above and below the surface and everything growing on or permanently affixed to the land".

In his words,

[3] Coke, On Lyttleton, 4a – quoted in Jowitt's Dictionary of English Law (1977), 2nd Ed.), Vol. 2, pp. 1058 – 1059.

[4] This is understandable as by the Minerals Act, all minerals in the country are vested in the federation. See Section 18(1) of the Interpretation Act, 1964, LFN, 2004.

[5] Legal Concept of Land, an article published in http://nigeriaenvironment.blogspot.com/2014/09/legal-concept-of-land.html on NGEnvironment and accessed on 4/3/23 at about 8.56 am.

> what emerges from the definition above is that land may have both a natural and artificial content, though its natural content namely the ground and its subsoil and things below or above the earth's surface, where an artificial content includes building and other structures or trees, has been added. It further explains that land is immovable. However, the question has arisen whether such additions form an integral part of the ground so as to accrue to the owner of the ground.

A troublesome question arises as regards the applicability of the maxim *quic quid plantatur solo solo cedit* to customary law and has been a source of fruitful disputations amongst legal scholars. Citing Ezejiofor (1989), Lloyd (1962) and Obi (1963), Oseni contends that the maxim is not "a remarkable aspect of African customary law" as "land does not include things growing on, attached to the soil and that neither economic trees nor houses form a part of the land on which they stand. In Yoruba's customary law, a definition is drawn between land (the soil) and improvements thereon."

Kludz[6] (1974) is in support of this position as he postulated that a similar position subsists among the Ewes in modern day Ghana as land means the soil itself as well as the subsoil and anything under the soil such as soil minerals but that does not include things attached to the soil such as trees, houses or other permanent fixtures. This school of thought has been consistent in upholding this position and to a large

[6] A. K. P. Kludze: Ghana, I. Ewe law of property. (School of Oriental and African Studies. Restatement of African Law, 6.) XXXV, 324 pp. London: Sweet and Maxwell, 1973 published online by https://www.cambridge.org/core/journals/bulletin-of-the-school-of-oriental-and-african-studies/article/abs/k-p-kludze-ghana-i-ewe-law-of-property-school-of-oriental-and-african-studies-restatement-of-african-law-6-xxxv-324-pp-london-sweet-and-maxwell-1973-775/7EA7F3C27C506B69C0D738AC0E2BC3EE and accessed at 4.59 am on 9/03/2023.

extent, one may contend that they are correct as Yoruba customary law does not yield land to the owner of the improvement on it.

The position of the statutes in Nigeria is not uniform as regards what amounts to land as stated by the English law, as some pay respect to severance of mineral resources embedded in the soil as not forming part of the land. Thus, for example, Section 3 (Miscellaneous Provisions) of the Act defines land as including "land, everything attached to the earth, and chattels real, but does not include minerals". On the other hand, we have the Property and Conveyancing Law of Western Nigeria which provides that land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments and an easement, right, privilege or benefit in, over, or derived from land. The implication of the above is that the inconsistency between the respective positions of the Act and the Property and Conveyancing Law may be resolved by resorting to Section 4 of the Constitution, which makes any Law of a State which is inconsistent with an Act of the National Assembly to be void to the extent of its inconsistency in so far as the subject matter is within the legislative competence of the National Assembly.

Following the position of the statutes above, Nwabueze (1982), Coker (1966), and Olienu (1962) maintained that land includes everything embedded in or attached to it and the more expressive language of Olienu, "the term land as understood in customary law has a wide application. It includes things on the soil which are employed with it as being part of the land by nature e.g. rivers, streams, lakes, lagoons, growing trees like palm trees, cassava tree or as being artificially fixed to it like houses buildings and structures, whatever it is also includes

any estate, interest into or over the land denotes e.g. the right to collect snail, herbs or to hurt on land."[7]

From the definitions and views above, it is indisputable that what amounts to land is not completely uniform and save for the fact that statutes have provided what is meant by land, one can, therefore, say that such disputations may pale into insignificance since the statutes must be enforced. To that extent, aside from minerals embedded in land which may yield to the Federal Government, whatever is attached to the land forms part of the land.

These proffered definitions, as apt as they are, however, do not sit comfortably into our discussion as they only define or describe what may be construed to be land but do not emphasise the importance of land in our own society in terms of its utilitarian value. To this end, I will adopt the pragmatic connotations of the word "land", as given by some of our erudite scholars. This is with a view to conveying the utilitarian value of land in our society but not to strictly define it. In Fekumo's view[8],

> Land is the most precious commodity of the ancient Nigerian. Its value to the modern Nigerian is still very high. Our fathers lived on and by land, to them it meant everything. It is for this reason that our whole existence and activity was tied to land and its ownership.

Omotola[9] underscores this point aptly thus:

> Every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the

[7] N. A. Olienu, Customary Land Law in Ghana, Sweet & Maxwell, London, p. 37.

[8] Fekumo, J. F., Principles of Nigerian Customary Land Law (F & F Publishers, Port Harcourt, 2002).

[9] J A Omotola, Law and Land Rights: Whither Nigeria? An Inaugural Lecture delivered at the University of Lagos on Wednesday, June 29, 1988.

> foundation of shelter, food and employment. Man lives on land during his life and upon his demise, his remains are kept in it permanently. Even where the remains are cremated, the ashes eventually settle on land. It is therefore crucial to the existence of the individual and the society. It is inseparable from the concept of the society. Man has been aptly described as a land animal.

In the same vein, Olayide Adigun (of blessed memory) describes land[10] as,

> …the nucleus of man's livelihood and survival and the quality and quantity of land determine the extent of man's development. Whatever ideological approach is considered- whether it is the collectivist African approach, the capitalist or socialist perspective of land, it is generally acknowledged that land is central to any solutions offered to the process of development and poverty. A closer look at the various theories of property associated with various ideological schools reveal one main aim, the need for an egalitarian land policy. Within any national boundary any policy on housing, food, shelter, education, etc, must view land as essentially inseparable from the concept of civil society and the social and economic relations within that society.

From all of the above, it is deducible that man and land are ever intertwined. It is impossible to divorce man from land and vice versa. In fact, no socio-economic activity of man can take place without land. Thus, without land, human survival, economic development and social welfare are impossible. This emphasizes the need for a robust policy aimed at the effective management of land in society.

[10] The Land Use Act – Administration and Policy Implication, ed Olayide Adigun, Department of Private and Property Law, 1991, page 10.

PRE-LAND USE ACT SYSTEM

Prior to the introduction of the Act, Nigeria as a country ran a dual tenurial system. A land tenure, according to C. O. Olawoye[11], is

> the body of rules which govern access to land and the relationship between the holder of land and the community on the one hand, and/or that between the holder and another party [which, in the Nigerian situation, could be community] having superior title. Tenure therefore defines what interests may subsist in land, the conditions under which the interests are held, the mode of acquisition and transfer as well as the rights and liabilities of holders of land.

In the then Northern region of Nigeria, the Land Tenure Law, 1962, regulated entirely all transactions on land. This statute is considered to be the forerunner to the Act as the Act is substantially patterned on the then Land Tenure Law with some degree of modifications. In the southern part of the country, however, there was no statute regulating the rights in lands as, substantially, the traditional or customary tenurial system was the mode of regulation of land rights. However, in between these major tenurial systems were other instruments regulating land in the southern part of the country: the Registration Laws, the Kola Tenancy Law, the Conveyancing Act, the Property and Conveyancing Law of Western Nigeria, the State Land Laws, etc.

It is only important to mention the Laws above in order to understand the evolution of land management in Nigeria and a detailed discussions of these various Laws will not be of much utility to this gathering either as legal practitioners, land practitioners, land speculators and, I dare say, land grabbers. The incursion of the Act, therefore, as succinctly

[11] The Land Use Act, Report of a National Workshop, Department of Private and Property Law, University of Lagos, page 14.

put by R. W . James[12] was radical. In his words, 'In matters of land policy, it represented a shift from the colonially inspired laissez faire policy of "dualism" in the southern states to one of "trusteeship"; and in the northern states, a modification of the inherited policy of "paternalism" to accord with the "trusteeship" policy.'

The next enquiry is, therefore, why the Act? What factors prompted the conception and introduction of the Act? These, we can broadly state to be the challenge of the insecurity of title, land and access to land generally, particularly for developmental purposes. The pronounced adverse effect of all these is that foreign trade and investment was discouraged due to the unreliability of land transactions; national development was jeopardized and physical planning was impracticable. During this period of retrogression and confusion, the judiciary strived as much as possible to bequeath to us a stable jurisprudence in the area of customary land tenure system. By way of illustration, the courts settled the fact that in order to have a valid alienation of family land, the concurrent consent of the family head and the principal members must exist, as established in the *locus classicus* cases of *Solomon v Mogaji*[13] and *Alli v Ikusebiala*[14]. Further also to that, if a person, although a family head, conveys family property in his personal capacity as the beneficial owner of the property to a third party, the transaction is void, and where a family head conveys family property to a third party without the consent and approval of the principal members of the family, the transaction is valid but voidable at the instance of the principal members of the family.

Notwithstanding this effort at establishing the principles, much was still desired in addressing and confronting the identified plagues

[12] R. W. James, Nigerian Land Use Act: Policies and Principles, University of Ife Press Ltd, Ile-Ife, Nigeria, 1987, page 92.

[13] (1982) LPELR-3102(SC).

[14] (1985) LPELR-428(SC).

associated with the customary tenurial system. As indicated earlier, those vices were not present in the northern part of the country where the Land Tenure Law played a prominent role. Land was effectively statutorily regulated in that part of the country. It will be recalled that by virtue of that legislation, land was effectively in the custody of the government for the people. Thus, beyond the duality of tenure in Nigeria as a whole, associated afflictions identified with the tenurial system continued to haunt and hurt the system, hence, the need to carry out an investigation of the challenges and prescription of solution. It is in this connection that the then Federal Military Government set up a panel which worked for three months with a view to fashioning out a new scheme for the optimal use of land in the country as a whole. The outcome of the investigation and the report of the panel, hurriedly put together, ultimately led to the promulgation of the then Decree, now Act, in order to remedy the challenging situation.

## THE LAND USE ACT AND ITS OBJECTIVES.

As mentioned above, amongst the objectives of the Act is to harmonize the land tenurial system in the country, so that one system would not be existing in one part of the country while another system would be operational in the other part of the country. This dislocation certainly would not give a good representation and account of the country. In fact, it would not portray the country as one that is ready for foreign trade or investment generally as the rule of land transactions would have appeared unruly. How does a potential investor easily ascertain title rights in Nigeria without stress? This was proving intractable. The country's tenurial system was as such unreliable. The Act, towards rectifying the anomaly in the system, sets its goals as captured in the preamble thus:

> 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.

Hence, the purpose of the Act includes the unification of the land tenurial system in the country, that is, the harmonization of the land management practice in the two regions of the country so that the same rights would become available to all citizens irrespective of their location; the creation and grant of access to land to the people and the government; security of title in the country; and orderly physical planning. Essentially, therefore, the realization of these values in the Act focuses on the need to avail and assist all Nigerians, irrespective of social status, to own land and satisfy their aspirations to own their places of abode; to enable the government streamline and control the use to which land can be put in all parts of the country, thereby facilitating planning and zoning for particular uses; to prevent land speculation; and to remove the bitter controversies and violence that often resulted from land disputes. These are basically the reasons for the introduction of the Act in the country. The poser, therefore, is how the Act has fared in these and other regards in its 45th year of existence? The response to this will constitute the fulcrum of the conversation today. Except we carry out this assessment by way of diagnosis, we might not be able to unveil the lessons learnt in the almost five decades of the existence of the Act.

## EVALUATION OF THE LAND USE ACT

There is not a more convenient point to start a conversation of this nature on the Act than the observation of the erudite scholar and mentor of mine, Professor Omotola Jelili, in his inaugural lecture in 1988,[15] where he opined:

[15] J. A. Omotola, Land and Land Rights: Whither Nigeria? An Inaugural Lecture delivered at the University of Lagos in Wednesday, June 29, 1988 page 12.

> It must be admitted that if there be any award for bad drafting, the draftsman of the Land Use Act will easily win the first prize. For in my little experience of twenty years of continuous research, I cannot think of any Statute which has produced so much ambiguities, contradictions, absurdities, invalidities and confusions as this Act has done. The judges who have to give meaning to its provisions therefore deserve my sympathy. The impossibility of the statute has led to many of them not bothering to interprete its provisions. Some judges at best state its section 1 and seek shelter in its preamble and what they conceive as its general intendment. Others have admitted publicly that the Act defies their comprehension. The result is that ten years after commencement, the provisions of the Act remain largely uninterpreted.

This remark was made a decade after the commencement of the operation of the Act, and almost five decades after the Act came alive, all the assertions remain relevant and valid. That the provisions of the Act were poorly drafted and largely inelegant is no more news to any user of the Act. Apart from the contradictions and complexities in the Act, so many of the provisions are unintelligible and impossible to operate. No wonder, therefore, that the Act is more honoured in its breach than obedience. The Act has equally succeeded in being the harbinger of fraud, as sharp practices are encouraged and promoted by it. A good example was, and probably still is, the manufacture of backdated documents to seek and justify entitlement to a right of occupancy under the Act, particularly in an application for a certificate of occupancy. So, in terms of comprehension and implementation of the provisions of the Act, it is certainly a disappointment to all and sundry. The courts, as we know, struggled and are still struggling to interpret the provisions of the Act, and just as the late Professor put it above, most of the judges adopted what is best described as pedestrian interpretation to its provisions, thereby engendering its unworkability.

As per the impact of the Act on the people, there is no better way to capture this than alluding to the illuminating words of the great jurist, Bola Ajibola, SAN, KBE, when he opined as follows:

> There can be no doubt that the Land Use Act was a revolutionary piece of legislation at the time of its promulgation. It was a revolutionary enactment because it introduced some radical changes into our land tenure system. It is socialist in orientation and philosophy, reflecting the concept of a just and egalitarian society. However, because of the intense nature of the radical changes which it brought with it and because many did not expect them at the time they came, the law proved to be a subject of spirited controversy which continues up to the present day.[16]

In a similar vein is the statement of the then Governor of Lagos State, Colonel Raji Rasaki[17] wherein he opined thus,

> …the Land use Act, had since its enactment, generated a lot of acrimony; as well as criticisms and obvious violation, even by our traditional fathers and eminent persons within the legal profession. Whilst many of our Obas and traditional chiefs still see the Act as infringing on their right as the 'custodians and managers' of land within their various domains, others, particularly among the learned members of the Bar and Bench, see the Act as an infringement on the fundamental human rights of the citizens to own land.

[16] Keynote Address Delivered by Hon. Prince Bola Ajibola, SAN, KBE, The Land Use Act: Administration and Policy Implication, ed. Adigun, Department of Private and Property Law, 1991, page 4.

[17] Address by the Delivered by the Military Governor of Lagos State, Colonel Raji Alagbe Rasaki, fss, psc on the occasion on the Land Use Act organized by the Faculty of Law, University of Lagos on Monday, 9th April, 1990 published in Administration and Policy Implication, ed. Adigun, Department of Private and Property Law, 1991, page 7 - 9.

All the observations of the two commentators above are still largely valid today. This explains and further justifies our gathering today for this excursion into the efficacy or otherwise of the Act.

In the Northern part of the country, the introduction of the Act was not so much of a shocker. As observed earlier, the Land Tenure Law of 1962, which was the forerunner of the present Act, had been in operation in that region. The people had been used to the statutory regulation of their land rights by the government. Unlike in the Southern part of the country, the government of the Northern region had historically and virtually, at all points in time, been in charge of all lands in the region. In the Southern region, however, the converse had always been the case, to the effect that the community, family, and, sparingly, individuals, controlled the ownership and occupation of lands. The coming of the Act, therefore, was a shocker to them and a source of confusion. Not only were the people used to the customary tenurial system, apportionment of land rights had always been a reflection and dictate of the various customs and cultures of the inhabitants. To the people of the south, therefore, a revolution had occurred which had displaced them and denied them of their entitlements. For instance, people in that region were used largely to corporate ownership of land rather than individual ownership.[18] By the Act, ownership of land became vested in the government. Certainly, this was news to them. Thus, the impact of the Act was and still is more felt in the southern part of the country than in the northern part. I shall dwell more on the implications of this in the course of our engagement.

Now, to do justice to the assessment of the efficacy of the Act, I shall commence by adopting the parameters set by Prince Bola Ajibola, SAN, KBE, in the Keynote address earlier referred to. Therein, he raised the

[18] Amodu Tijani v. Secretary of Southern Nigeria [1921] A. C. 339.

following criteria as determinants of the efficacy or otherwise of the Act. They are:

(a) how far has the Act ensured the availability of land at low cost to Nigerians?;

(b) how far has it curbed the incident of land litigation?;

(c) how much contribution has it made to the progress of public sector housing programmes at both the federal and state levels?;

(d) has the Act made any contribution to planning and environmental protection?

(e) how far has the Act helped to preserve third party rights in land?[19]

In addition to the foregoing, I add my other criteria of assessment which can never be exhaustive. They are:

1. How has the Act succeeded in curbing land speculation?
2. How has the Act succeeded in enhancing industrialization?
3. To what extent has the Act enhanced security of title in the country?

In answer to the first poser, the obvious truth is that the Act has failed in providing land to Nigerians at affordable rates. If anything, the Act has succeeded in simply pushing up the prices of land. I shall demonstrate this assertion below. In the first instance, it must be recalled that the effect of the Act on the erstwhile owners of land, particularly in the southern part of the country, is to strip them of the ownership of land . Section 1 of the Act provides that:

> Subject 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

[19] Keynote Address Delivered by Hon. Prince Bola Ajibola, SAN, KBE, The Land Use Act: Administration and Policy Implication, ed. Adigun, Department of Private and Property Law, 1991, page 5.

administered for use and common benefits of all Nigerians in accordance with the provisions of this Act.

The vestment of land in the Governor by the Act was recently pronounced upon by the Supreme Court in the case of *Ubani-Ukoma v. Seven-Up Bottling Co. Plc.*[20] By the above, the Act set out to wrestle ownership of land from various communities, families and individuals, and vesting same in the Governor of the State in the interest of all Nigerians. I do not intend to rehash the arguments around the nationalization or expropriation of all land in the country. It would be idle at this stage as the controversy is perennial, depending on the perspective of the commentator, but suffice to simply acknowledge the fact that the radical title to all lands is now vested in the Governor of each State. What is left for the erstwhile owners is the possessory rights, now referred to as rights of occupancy, the evidence of which is the certificate of occupancy. It is noteworthy, however, that the lands in possession of the federal government and its agencies are exempted from the ambit of the above provision.[21] This implies that such lands are not to be controlled by the Governor but by the President or his designated official. Thus, as interpreted by the Courts and as the law stands, the Act now merely confers on entities and individuals' rights of occupancy. This, on its own, is a source of aggression. The ordinary import of the above is that all lands in the States are in the custody of the Governors, whom Nigerians will now approach to get allocation. Is this really the position in practice as regards assurance of title and accessibility to land? I do not think so. The basis of my conclusion lies in the following premises.

Firstly, acquisition of lands in the States by Nigerians through the Government still appears to be a herculean task. Generally speaking, the Government itself does not appear to be in actual custody of so

[20] [2023] 2 NWLR (Pt. 1867) 117 @ 167 paras A – C.

[21] See Section 49 of the Land Use Act.

much land as to be able to provide for interested Nigerians. Even the little land that is available for disposal to the public by the Government is afflicted by several constraints. Apart from the reality that the allocation process has become the subject of patronage, it is substantially plagued by corruption. Right from the obtaining of application forms, through the processing stages, to the final allocation, compromise reigns all the way, otherwise, such application forms would not leave any of the tables in the government offices, much less progress towards allocation.

Assuming, without conceding, that the process is devoid of corruption, the volume of other documents and payments that are required to be submitted alongside the application does not only attract high expenditures but is simply frustrating. By the time a potential allottee concludes the various stages of allocation, the cost so associated is astronomical, and would push the land beyond the availability of the common man or average Nigerian.

Worse off is the crisis generated by the location of land and the competence to issue certificate of occupancy. Since the Act empowers the Governor to declare any part of the State as urban land, some governors, for instance, in Lagos State, in breach of the provision of Section 3 of the Act, have declared the entire State as urban land. The implication of this is that the local governments lack the capacity to grant and issue certificates of occupancy. It will be recalled that the only land in respect of which the local government can grant the right of occupancy and issue certificate on under the Act is land that is in the non-urban areas. Nevertheless, some local governments continue to exercise the power even where such designation of all lands in the State as urban lands has taken place, thereby endangering innocent Nigerian purchasers. This, for instance, is common in the Federal Capital Territory where the municipal councils still grant rights of occupancy

over lands already declared to be in the urban areas. This is a further evil bedevilling management of lands under the Act.

In addition to the above is the lacuna on the face of the certificate of occupancy as to the space to register caution and caveats. This conscripts the ability to do any meaningful search as well as indicate encumbrance on any title.

Another side of our concern is the cost of transfer. Although Sections 34 and 36 of the Act recognize deemed grants that do not require any actual grant by the Governor, securing development approval, however, mandates the developer to first and foremost register his interest with the Government. To do this, another road block is strewn on the way of the potential developer. He now incurs more expenses to develop his property beyond what ordinarily he would have incurred prior to the Act. This is a further encumbrance on the deemed grantee that now makes his land more expensive. Like I said, each time I allude to fees payable for the processing of rights of occupancy, inclusive of registration and other transfers, always have in mind inevitable unreceipted payments. At each point of interaction in the process with human beings, something must be parted with. This is the reality of the situation.

Furthermore, Sections 21 and 22 also prescribe securing of consent to transfers. This is another vessel of exploitation that has compounded the problem of the average Nigerian. While the intendment of the Act is to adopt the consent requirement as a means of control and planning, thereby not mandating the payment of fees in that regard, successive governments at all levels in the country have construed same as a means of revenue generation. Not only are prohibitive fees officially demanded for consent, the government, sometimes, devises a different contract for the parties. How this is done is to substitute the contractual value of the property with a government valuation. The

government often forgets that the consideration in a contract need not be adequate but merely sufficient.

This is simply exploitative. There is no legislative or legal platform upon which this rests. What the government thus forgets is that the value of lands is pushed up against the average Nigerian for which the government is meant to be a trustee. This is an abuse and breach of trust simpliciter. Again, several other surcharges are added to the cost including the cost of infrastructure, as if the potential developer is not a Nigerian and a tax payer. What really is the essence of government if it cannot provide infrastructure for its citizens? I wonder! These are just a few of the instances in which the government has succeeded in pushing the value of lands beyond the reach of an average Nigerian in contradiction of the tenet of the Act, as denoted by the preamble.

Now the worst story is that where, eventually, you succeed in securing government allocation of land, you are still not free from the demands of traditional land owners, often referred to as the *omo onile*. You would then have to proceed to 'settle' them if you are desirous of using that land. Any cry to the government is a waste of time as they are never available to you. In fact, the advice mostly offered by them is for you to go and negotiate with the said original land owners who probably had sold the land to someone else from whom you have purchased and in respect of which purchase you are merely perfecting your title by obtaining governor's consent or certificate of occupancy, as the case may be. This attitude has emboldened the *omo onile* so much that, even government itself is now finding it difficult to access lands for public development programs without settling with the *omo onile*. Again, by the time the average Nigerian adds this to the cost of allocation from the government, the ultimate cost becomes excruciating and much higher than what ordinarily he would have incurred under the customary tenure. Without the incursion of the Act, the only payable cost would have been that to the *omo onile*, thereby

making land affordable to an average Nigerian. You can now appreciate the case of "double jeopardy" that Nigerians face in the process of acquisition of land.

The flipside of the coin, arising from the above, is the fact that virtually all lands in the territory of each State are now seemingly controlled by the *omo onile*. They have continued to sell lands, regardless of the status of same, to innocent Nigerians. Guilty most in this regard are some of the Obas and Baales who have no alternative contact address before assumption of their kingship or *baaleship*. The situation is degenerating so badly that some of these tainted Obas have infiltrated the government through their influence to insist that all genuine land transactions conducted in their domains must not see the light of the day without recourse to them for additional exploitation. This is going on in the Center of Excellence. I am sure that we need no court to declare this act as illegal as it is not supported by any law. Worse still, some of the Obas and Baales now have their seals through which they lock innocent developers' sites with impunity. They have started running a parallel government like the Central Bank of Nigeria in recent times. I have warned the State government against this and already likened the emerging scenario to the case of Boko Haram insurgency in the North Eastern part of Nigeria. This criminal indulgence, being given to a particular king, will soon spread across the State and the entire nation, and if not promptly nipped in the bud, will develop into another monster. This is already traumatizing innocent developers in the vicinity of the concerned Obas. A stitch in time, it is said, saves nine, if not more.

The summation of my story is that the *omo onile* continue to exercise the right of ownership over lands till date, even when such lands are under acquisition by the government and the purpose of acquisition is not spent. As said above, it will interest you to know that even governments, for development purposes, approach the *omo onile* for

the use of land and most times, even pay them compensation. In light of the above, where land, purportedly in the custody of the State, is to be acquired, human interaction has not made acquisition easy. Beyond the imputed corruption, the process is cumbersome.

This summarily depicts the reality that the Act is terribly dysfunctional. In several outlets, lands for sale are daily advertised. Thus, in terms of access to land, how many Nigerians have access to land today? It is certainly infinitesimal, compared to the acquisitions from the so-called *omo onile*. It is easier to get land through the *omo onile* than through the government in all ramifications. How many Nigerians today can afford to buy government land? A negligible number, certainly. This is obviously antithetical to the interest of Nigerians that the Act was introduced to protect. It negates the very essence of the Act as captured in the preamble.

Let me now derail a bit to address the structure suggested by the Act for the distribution of lands. By Section 2(2) of the Act quoted above, there ought to be a Land Use and Allocation Committee in each State which is meant to administer the allocation of lands. Apart from the fact that this has not been done in all the States, where it is established, the Committee is used as a tool or instrument of political patronage rather than staffing it with men of honour and credibility, or even specialists and knowledgeable people. The Governors put in the Committee their cronies, mostly charlatans who know very little, if anything, about land management. In some States, the Committee is a one-man committee populated by a single person designated in different nomenclatures; Sole Administrator, Executive Secretary, Director General and all sorts are terms used to describe these monarchs in government offices, purely against the dictates of the Act. This Committee presumably ought to moderate the prices of lands in a manner that is affordable to an average Nigerian. However, due to their wrongful composition, improprieties have become the order of the day

in the hands of the committees. Therefore, allocations have largely ceased to be objective but are based on "connections", and the people who are meant to be the beneficiaries are directly and indirectly excluded from the ambit through exorbitant costs of land acquisition. What a shame!

Now the second question is, how far has the Act curbed the incident of land litigation? Obaseki, JSC (of blessed memory), decades ago, answered this question thus:

> Land may now be easy for the Government to acquire, but for the average Nigerian or common man, it is almost a lost hope or objective. The claim for title to land has not diminished. All that has happened in the southern states is that the claims have shifted from title or claims for declaration of title to claims for entitlement to rights of occupancy. The courts are not less busy than before in trying to sort out the competing claims. There is dire need for reforms in the law of property in Nigeria. A total overhaul and re-examination is necessary.[22]

There is no doubt that this is what has happened and is still happening. Beyond what My Lord succinctly captured above, the situation is actually worse than as depicted. Prior to the Act, land disputes were basically on the declaration of title, but since its enactment, by virtue of Sections 39 and 41 of the Act, claims to entitlement to right of occupancy have joined. I have come across so many cases in which the earlier battle of declaration of title has been settled, just for that of entitlement to the right of occupancy to commence. Additional points of claim or causes of action have developed, courtesy of the Act. A good example is the consent issue as fought in the case of *Savannah*

[22] Quoted in Omotola, Inaugural Lecture, 1988, page 27 – 28.

*Bank v Ajilo*[23] *and Calabar Central Cooperative Thrift & Credit Society Ltd & 2 Ors. v. Ekpo.*[24]

Anarchy in the country has even created more litigation than ever before. So many cases of land dispute now crop up due to impunity. You own a land, somebody invades it with thugs and arms, even with the aid of law enforcement agencies, and continues to erect constructions on it, relying not only on his might but the sluggish administration of justice system. Even government, at times, with or without compromise, endorses the act. These impostors/trespassers never possess development permit and yet continue to build. This has further compounded the already beleaguered civil justice system, inundated with several land cases. In the course of preparing this script, I attempted to lay my hands on the statistics on land litigation in the Lagos State High Court but was unable to do so.

The third issue concerns accessibility of government to land for the purpose of public housing. During the early life of the Act, some strides were made in this regard by the state governments, although the federal government was not pleased with the mode of access it was granted. This is because for every parcel of land required by the federal government for public purpose, it must go through the state governments for the acquisition and allocation of same. This, however, was at a point in time politicized to the extent that the federal government found it difficult to access such lands for public purpose. I am not too sure that so much positive progress has been made in this regard. As recently as last year, I know the desperation with which the Federal Housing Authority has been struggling to get lands for twenty thousand housing units in Lagos State and yet no progress has been made. As per the state governments, it is equally not yet *uhuru* as they

[23] [1989] 1 NWLR (Pt. 97) 305.

[24] [2008] 6 NWLR (Pt.1083) 362 (2008) 2 SCNJ. 307 and (2008) 1- 2 S.C 229.

still contend daily with the *omo onile*. The net effect of this is that there is also not so much cheering news in this regard.

*Land Use Act, Physical Planning & Environmental Protection*

Now, I address the impact that the Act has had on physical planning and environmental protection. To start with, we must bifurcate the question of land rights and use. The Act largely addresses land rights while abdicating the issue of planning. It pretends that planning forms part of the rationale for the introduction of the Act.[25] To this end, the Act purports to be national in outlook. The reality of the day, however, is that the apex Court has declared the power to regulate physical planning in favour of the States. The net effect of this is that each State has exclusive power over physical planning as opposed to the Federal Government. Thus, what regulates physical planning in all the States is the residual laws enacted by their various Houses of Assembly. Hence, it cannot be said that the Act is contributing anything worthwhile to the physical planning of the country.

Furthermore, to date, there still exists the dichotomy between federal and state lands. Everything as it concerns federal allottees of land is "double double jeopardy". They are unable to develop such lands until they perfect their title with the States after undergoing same with the Federal Government. In Lagos State, such allottees must go through what is called the regularization process.

However, since the issue of the environment has been declared to be on the concurrent legislative list of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)[26], both the federal government and the states have been playing their roles. Again, it cannot be said

[25] See Smith I. O., Power to Make Town Planning Laws in a Federation: The Nigerian Experience (2004) Vol. 24 JPPL pg. 23.

[26] Attorney General of Lagos v. Attorney General of the Federation [2003] 12 NWLR (Pt. 833) 1 – 253

that much has been achieved under this as the tension between federal and state lands is still alive. The dichotomy is, therefore, negatively impacting the sanitization of the environment. So many federal projects or properties are abandoned today due to State Governments declining to grant developmental permits. A good example is the former Federal Secretariat in Ikoyi. Permit me not to bore you with the story. I am sure we all continue to 'admire' the Police Barracks at Falomo, the Correctional Services Barracks at Awolowo Road, Ikoyi, as well as the facility located in the vicinity. Conversely, so many environmental sanitation exercises that the State could have undertaken in the federal spheres are constantly hampered by this dichotomy. Apapa, Tin Can island are other apt examples. What else can I say?

*Land Use Act and Third Party Rights*

The next parameter is to determine how far the Act has helped to protect third party rights. What has happened to the mortgagees and other secured and unsecured creditors, customary tenants and overlords, lessors/lessees etc? In my humble view, more confusion than ever before has been created in this area. Mortgagees suddenly became endangered, particularly with respect to the consent provision in the Act. Some mortgagees/creditors even got confused as regards which document to accept as collateral: deed of conveyance or certificate of occupancy? What about the status of customary tenants vis-a-vis their overlords? All these were subjects of controversy at different times and yet to be free of same. Courts continue to render conflicting judgments on them. Consequently, it is safe to conclude that the Act has not come to enhance this area but submerged it in confusion. There is so much anarchy, which appears to be the sole identifiable contribution of the Act in this regard.

Beyond these enumerated areas to benchmark the success or otherwise of the Act, I believe it is worthwhile to also evaluate the capacity of the Act to address and tame land speculation in our society today. From

my experience and practice, nothing has changed again in this regard. Land speculators are still carrying on their trade in the same manner they have always done. The worst aspect is that even under private ownership scheme, agricultural scheme and others of their ilk, land speculation, courtesy of the government, is happening on a higher scale. Individuals are equally not exempted. By Section 34(5) and (6) of the Act, individuals are meant to have not more than half an hectare but now parade title to several hectarages. This rule is more honoured in breach than obedience and people still own lands in excess of the limit permissible by the Act. There is no boundary as to what is obtainable. We have individuals owning large expanses of land that could constitute a whole local government! Land speculation, one of the challenges which the Act was meant to curb, remains a thriving business. Again, the Act has failed in this regard.

In addition to this is the problem of land grabbing. The system has been a victim of land grabbing, a menace which began in Lagos but has spread to other parts of the country. The inability of the government to rein in the practitioners of this evil has created a thriving industry where the use of thugs to hijack land from real owners has been spreading like wild fires during harmattan. Since politicians have created the culture of using thugs for hijacking power during elections and intimidating political opponents, thugs, who have become redundant outside election seasons, like brigands of the olden days, would resort to violent dispossession of people of their valuables in order to survive. Land grabbing has become an area of utilized operation for them, of which the government is still struggling to address. The introduction of the Anti-Land Grabbing Law in Lagos State, which has not been adopted by other States, has not stemmed the tide. The Land Use Act definitely did not contemplate this and hence has no provision to address it.

*Land Use Act and Industrialisation*

Very importantly, how far has the Act improved industrialization in the country? It will be recalled that a part of the mischief the Act sought to correct is the difficulty in accessing lands for industrialization. This objective has equally fallen flat on its face given the frustrations around accessing lands for this purpose. Most potential industrialists still find it difficult to acquire lands for industrialization. This should not be news to a Nigerian when he recognizes the fact that even the government, in whose custody the lands are legally placed, is challenged in accessing lands for public purposes. Where, as painted above, such potential industrialists acquire lands through the government, they would still have to approach the *omo onile* to negotiate access prior to exploiting the lands. This exacerbates the situation rather than alleviating it. This is the precarious situation most potential investors and industrialists find themselves. Furthermore, most industrialists need to advance their dream and actualize same through loan facilities. This is not only frustrated by the daunting challenges they confront in the processing of the certificate of occupancy of the lands to be used as collateral but also the hiccups brought to bear on the access to loans through the strenuous and exorbitant process of obtaining consent to such loan transactions. This is coupled with the calamitous delay experienced in the process.

Prior to the Act, accessing land for industrialization was a herculean task. Today, the story is not different as opined above. It is still challenging to access land for industrialization. Hence, as far as this is concerned under the Act, it is still a mirage. Adjunct to this is the perfection of mortgage and other security documents in the light of the consent provision. Obtaining consent to such transactions is not only cumbersome, laden with multiple demands, but the cost is astronomical, although there is no legislative basis for such charges. All manner of documents (including possibly parents' death certificates or, where they are still alive, birth certificates) are demanded by the banks in order to secure the consent of the Governor. This has

frustrated a lot of investments in the country. I recall my discussion with the last Chief Executive Officer of the Bank of Industry, wherein I was told that more than 80 percent of the approved facilities for industrialization are held up due to consent bottlenecks. How does a country progress in the face of this? This again negates the intendment of the Act *ab initio*. Looking at the need for ease of obtaining consent, this appears to be the most horrible Frankenstein monster. Obtaining consent to a transaction is like attempting to pass a camel through the eye of a needle. This indubitably is impacting on industrialization of the economy.

I must also not forget the issue of rendering land immobile. In the operation of the Act, governments have created significant dead capital as most of the lands remain untitled, particularly under the transitional provisions of the Act. This stems from the realization that most of the lands in the States are still under deemed grants with no direct evidence of title. Hence, they cannot serve as collateral to any loan. This is another clog in the wheel of progress of industrialization. How then do you improve trade or investments in the circumstances? This is a further dent on the Act. It must be noted that 45 years after, the transitional provisions are still in transit. The transitional provisions envisage the migration of all titles in land into a certificate of occupancy within a short space of time. Regrettably, it has now become a permanent feature of the Act.

*Absence of Security of Title*

Finally in our major assessment of the impact of the Act is the issue of security of title. In this respect, in assessing the question of security of title to land in the country and as part of the objectives of the Act, can it be said that progress is being made and gaining traction? Again, the Act has recorded a colossal failure in this regard as cases of multiple issuances of certificates of occupancy over the same land abound. In addition, we have, in existence, several cases of cloned

certificates of occupancy. The worst circumstance is that most of these multiple certificates are registered in the lands registries of the States.

Having said this, however, I must quickly register the point that *ab initio*, the Act does not pretend to aim at guaranteeing the certainty of title in its provisions. In Section 48, it relies on the extant Registration Laws of the States for the purpose of securing the titles under the scheme.[27] The misfortune, however, is that these Laws on registration, made pursuant to the provisions, equally fail to make titles issued under the Act to be indefeasible. Till date, apart from the unreliability of the titles conferred under the Act which could be challenged and set aside by the appropriate courts, the Registration Laws do not cure any defects in the titles, as represented by the issued certificates of occupancy. The attempt in Section 16 of the Land Instrument Registration Law of Lagos State[28] to make any document relating to land that is not registered not to be admissible in evidence has proved abortive in view of the decision of the Supreme Court in *Benjamen v. Kalio*[29] and *Anagbado v. Faruk*[30] which held that power to legislate on evidence is in the exclusive legislative list of the Constitution and hence all State laws regulating evidence are unconstitutional. Hence, the provision of Section 16 of the repealed Land Instrument Registration Law of Lagos State and which provision is contained in similar laws of various States, have been declared to be unconstitutional. It is suggested that an amendment to the Land Use Act containing such provision like the Section of the Land Instrument Registration Law shall be necessary.

[27] See for instance the Land Instrument Registration Law of Lagos State, Cap. 111, Laws of Lagos State, 1994.

[28] Ibid. The said Law is what is operative in many other States of the Federation.

[29] [2018] 15 NWLR (Pt. 1641) 38.

[30] [2019] 1 NWLR (Pt. 1653) 292.

I thought Lagos State was being a little bit more proactive in this regard. This is because the Land Instrument Registration Law of Lagos State was considered to have become spent by the appropriate authority in compiling the Laws of Lagos State, 2015 in the Table of Laws of Considered by the Law Reform Commission.[31] This power can be exercised pursuant to Section 315 of the Constitution by which the appropriate authority can modify any Law not consistent with the Constitution in order to bring it into conformity with the Constitution. Unfortunately, the same Section 16 of the former Land Instrument Registration Law has been retained in Section 30 of the Lagos State Lands Registration Law which declared that *"No registrable instrument shall be pleaded or given in evidence in any court as affecting land in the State unless it has been duly registered."* While Section 122 of the Lagos State Lands Registration Law of 2015 expressly repealed the Land Instrument Registration Law and a host of other Laws, the retention of the provision of the former Section 16 through the current Section 30 is inconsistent with the Constitution and hence null.

Worst of all, attempts at securing the record in some State Registries through technology have so far proved futile. Today, documents are inserted and removed at will by State officials. You can obtain a certified true copy of a title document today and a few days after, the document would be declared non-existent in the record of the Registry as someone, somewhere must have triggered tampering with it or causing it to disappear from State records. No prospective purchaser of land in Lagos State can safely rely on the land registry's record. This is simply unfortunate. More worrisome is the inability to locate title documents at times. To this extent, therefore, the Act cannot be said to be impactful in the attempt to secure the pre-existing interests and other interests purportedly existing pursuant to it. As rightly captured by my teacher, Jelili Omotola,

[31] See Item 207, p. xvii, Vol. 1, The Laws of Lagos State of Nigeria, 2015.

> "What has happened in the ten years? 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 rights of occupancy have been abandoned. In the interim, a new Governor may come and revoke the grant. The cost of obtaining a plot of land has risen. Although government now takes land at will, the abuse associated with it is agonizing."[32]

This is the gory summation of what has happened to us by virtue of the introduction of the Act.

*Compulsory Acquisition of Land and Compensation Regime*

In further examination of the impacts of the Act, I wish to note the confusion created on the issue of compensation for compulsorily acquired land by the government. Under the old tenurial system, compensation was real as in the actual sense of the word. However, under the provision of section 29 of the Act, it is now limited to unexhausted improvements on the land being acquired compulsorily by the government. The import of this is that where there is no improvement at all on the land in question, there will be no compensation to be paid to the owners. This certainly is antithetical to the objective of the Act. The Act is actually inflicting more pain on Nigerians than relieving them of any alleged burden they were subjected to under the old tenurial system. Even where this limited compensation is payable, it takes years, if not decades, before it is eventually paid. The provision of alternative land as provided for under Section 33 of the Act is hardly employed. The implementation of this would have met the objective of the Act in providing lands to Nigerians.

[32] J A Omotola, Law and Land Rights: Whither Nigeria? An Inaugural Lecture delivered at the University of Lagos on Wednesday, June 29, 1988.

*Miscellany*

The final segment of my address today relates to some other intricate areas of the Act that the honouree, in his work,[33] has passionately treated. It will be a great disservice to scholarship and the audience if I do not consider some of them. I will consciously refrain from supplying details, as the bit that I will be discussing are just teasers. The implication of what I am saying is that if you are interested in educating yourselves in the details, feel free to order the book at the discounted rate that it is currently being sold, as I know that the knowledge therein cannot be accessed elsewhere. I am privileged to say that the book contains privileged information that was exclusive to the honoree until he chose to communicate such information to the whole world through the publication. Thus, I proceed as follows:

First, is the Land Use Act an existing law? On this issue, the honouree argued forcefully on the strength of the principle established in the case of *Fawehinmi v Babangida*[34], that although the Act is an existing law by virtue of section 274(5) of the 1979 Constitution (now Section 315(5) of the Constitution, 1999 (as amended)) its applicability is limited in terms of operation to the Federal Capital Territory since the federal legislature lacked the power to enact law on land matters which is a residual matter. He concluded that by extension, the National Assembly cannot amend the Land Use Act in its present form, nor can the Federal High Court entertain any land dispute over any federal land as it affects federal lands in the States. The latter further reinforces the earlier assertion. This is buttressed by the fact that only the State High Court can entertain matters pertaining to the declaration of title to land, regardless of the status or ownership of the land in issue.

[33] Femi Okunnu, Contemporary State Land Matters in Nigeria: The Case of Lagos State, Third Edition, Ecowatch Publications Limited, 2014.

[34] [2003] 3 NWLR (Pt. 808) p. 604.

The honoree further contends that only the State government can issue a certificate of occupancy once the land is outside Abuja. Strangely, however, the Lagos State government, for instance, has frustrated applicants who, on their own volition, come for direct issuance of the certificate of occupancy by the State, having acquired an allotment of land from the federal government. Undoubtedly, this approach betrays all the struggles of the founding fathers of Lagos, particularly the honouree, in this regard. One would have thought that once an allottee of the federal government applies to the State government for the issuance of a certificate of occupancy, such applicant would be gladly welcomed by the State government. Rather than doing this, the State government subjects the applicant to "double jeopardy" by requesting him to apply first to the federal government for the issuance of a federal certificate of occupancy before applying to the state government in an exercise termed as "regularization". In so far as land is vested in the State Governor, no federal certificate of occupancy is valid or necessary in respect of such land. Where the land is no longer being used for overriding public interest, the land reverts to the State Governor who has authority to issue a certificate of occupancy to anyone who is rightfully entitled. Thus, the federal certificate of occupancy cannot be valid outside the Federal Capital Territory.

As per the establishment of Land Registries outside the Federal Capital Territory, the honoree's view is that the National Assembly cannot modify the Act to accommodate the establishment of such registries outside Abuja as the Act, according to the decision in *Nkwocha v. Governor of Anambra State & Ors.*[35], is not part of the Constitution but only protected by the Constitution. Consequently, any federal land registry outside Abuja is operating illegally. Section 4 of the Act does not provide any legal platform to the President to set up such registries, as neither the Land Tenure Laws in the north nor the State

[35] Nkwocha v. Governor of Anambra State (1984) LEPLR-2052(SC).

Land Laws in the south are applicable to the federal government so as to support its quest for the establishment of Land Registries outside the Federal Capital Territory. The point being made is that there is no enabling law that enables the federal government to carry out the establishment of land registries outside the Federal Capital Territory. The offshoot of this is that the federal land registry in Abuja cannot register, legally, any land outside the territory of the federal capital. As such, the existence of the registries outside Abuja is unconstitutional and unlawful. Throughout the length and breadth of the Act, nowhere is the establishment of land registries generally provided for much less of federal lands registries. As remarked earlier, the section cannot even avail the federal government the window to utilize either the State Land Laws or the Land Tenure Laws for the establishment of a land registry.

Beyond that, the constitutional duties of the National Council of States do not extend to such matters as the establishment of land registries. Recall the position of the law on the inconsistency of any federal enactment with the Constitution which renders such enactment a nullity. Land registries are created by the various States on the strength of the relevant State Laws, specifically Registration Laws of the various States. Hence, the federal government cannot take advantage of this legally.

Permit me to further sum up all the above in the words of my friend, Nsongurua Udombana,[36] by which he concluded thus:

> …The existing land use policy impedes development, leads to artificial scarcity and escalates land prices. The process and price of obtaining a certificate of occupancy as well as Governor's consent is so onerous that many Nigerians have simply given up.

[36] "Weighed in the Balances and Found Wanting: Nigeria's Land Use Act and Human Rights", published in the Land Use Act, Twenty-five Years After, ed by I. O. Smith, Department of Private and Property Law, University of Lagos, Nigeria, page 87.

The result is that they are unable to obtain lands for socio-economic development. The discourse also shows how many Governors have cut the wood against the grain; they have used the LUA for the purposes it was not intended to serve. Rather than being administered "for the benefit of all Nigerians", the LUA has become an instrument of patronage.

## LESSONS LEARNT AND CONCLUSIONS

Can we really say that we have learnt any lesson from the operation of the Act so far? I very much doubt it as we continue to carry on as if all was well. Be that as it may, I will, nevertheless, briefly detail out some lessons that ought to have been learnt. To this end,

1. The poor and inelegant drafting of the Act is worthy of note. If the opportunity presents itself in the future, it might well be best to get the most qualified draftsmen to handle the drafting of a legislation of this nature. This has made the Act a product of the confusing tongue of the Delphic oracle.
2. There is a need to avoid the issuance and grant of two types of certificates of occupancy, one by the Federal and the other by the State government. States alone should issue certificates of occupancy, regardless of which authority holds the land. Abuja should also do same as a State with respect to the land in the FCT.
3. Multiplication of land registries should also be eschewed. Only States should operate land registries.
4. The Rules of engagement by way of operational rules should be left entirely in the hands of the States. Membership of the Land Use and Allocation Committees should be specified in the relevant laws and made to have statutory tenure upon clearance by the House of Assembly. This will checkmate the absolute and excessive powers of the Governors.
5. The dichotomy between lands in possession of the state and local governments should be eliminated while a single authority deals

with all the lands in the State so as to avoid the reigning confusions in this regard.

6. It is urgent that the various obstacles strewn on the way of processing right and certificate of occupancy be removed. If the objectives of making affordable land easily accessible to Nigerians is to be achieved, then there is a need to take effective charge of the available land and also ensure that the certificates issued in respect of such land are as indefeasible as possible.
7. As an adjunct to the above, mobility of land is crucial to economic development, as such, titling all lands and unlocking the dead assets is imperative. The process of obtaining rights and certificates of occupancy must be made simple and cost effective. Towards achieving rapid industrialization of the nation, the consent provision must either be totally jettisoned or made automatic upon meeting certain conditions, with the rider that only administrative charges be payable.
8. It has been suggested also that only parcels of land beyond ten hectares be subjected to the consent provision. Excision of land must be stopped as a matter of urgency as this is the source of the confusion around the ownership of land in the states. Once a portion is granted by way of excision, the license is impliedly given to *omo onile* to encroach on all available lands around the granted area. If truly we desire State management of lands, then let all and sundry apply directly to the State.
9. Any acquired land for a purpose that is diverted in any form must be revoked. The transitional provisions of the Act need to be migrated immediately. The intention is already fulfilled and by now, Nigerians are used to the new order. Instructively, the Land Use Act must cease to apply to states in view of the decision in *Fawehinmi v Babangida*. The States must fashion out their land use laws.

I have no originality in this thought but just sharing and endorsing the reasoning of the honoree. This call is reinforced by the conviction that at all times, the culture and customs of the people matters in the management of land. The truth is that the regions do not share any similarity in this respect, and that explains the substantial success of the Act in the Northern part of the country as opposed to, at best, a marginal success in the southern part of the country.

With the lessons learnt above, one would have thought that the agitation for the overhaul of the Act would have been deafening but alas! that is far from it. As is characteristic of us, those in charge who ought to ordinarily be the crusaders of change seem to enjoy the present confusion, and rather than advocate modification, amendment or repeal of the Act, they are indifferent at the barest minimum. In Omotola's words[37],

> The point which I am making is that it is totalitarian to confer on governors alone the power to decide who shall utilize our land. It is much better to have this power shared among the Obas and chiefs, or indeed shared by several of us as it was before the Act. Those who at the moment enjoy this dominion over land and are consequently exercising imperium over all of us are quite happy with the law since it permits them to keep what they have and acquire more at their will.

By way of further submission and conclusion, let me briefly comment on some of the points made by my late mentor, in his Malgam Formula[38]. As Part of the ten commandments suggested by him, the setting up of National Lands Commission with offices in states and local government occupies a central position. I disagree with this proposition on the ground of the factual basis that the country is a federation and cannot

[37] J A Omotola, Law and Land Rights: Whither Nigeria? An Inaugural Lecture delivered at the University of Lagos on Wednesday, June 29, 1988 page 26.

[38] Ibid at pages 33 – 35.

afford such centralization of the land management system, which touches directly on the culture and customs of the people. We cannot in the name of uniformity sacrifice this fundamental tenet. I, however, share his thought on the national base map from which the States can tap. I agree that the amendment option, where it is adopted, may be exigent to compel land-owning families to register the names of their representatives in the Land Registry in the same way as companies do in the company registry. I also agree that ground rent should not be charged for lands allocated to Nigerians. It engenders a circle of poverty. Nigerians should not be required to pay rent for occupying their fatherland. That was a colonial idea which should be rejected and I so concur with him. As far as he was concerned, It connotes servitude and makes land too expensive for the common man, contrary to the objective of the Act. In all, though the intentions for introducing the Act were genuine, the manner of legislation and implementation have been warped and flawed. Hence, rather than solving the challenges associated with the previous tenure, it has largely compounded the already bad situation through the operators. I submit!