

Critical Appraisal of Revocation Provisions Relating to Rights of Occupancy under the Land Use Act 1978 in Nigeria

Dr. E Q . Okolie*

Abstract

Frankly speaking, every power has legal limit howsoever wide the language of the empowering Act. The power granted by Section 28¹ of the Land Use Act to the Governor to revoke the proprietary interest in land is not without limitation, circumscription but they are certain procedural guides, which must be observed. In the interpretation of the Land Use Act, particularly as it affects the revocation of interests of private citizens, the courts have given a restrictive interpretation to the relevant provisions of the Act. This paper examines the statutory provisions relating to the power of Governor to revoke the interest in land for public purpose and the altitude of the courts to ensure compliance.

Introduction

The meaning of the ‘right of occupancy’ is not strictly provided for under the land use Act. It merely defines a ‘customary right of occupancy’ in terms of:

...The right of a person or community lawfully using or occupying land in accordance with customary law and including a customary right of occupancy granted by a government under the Act.²

Thus many jurists attempt to define a ‘Statutory Right of Occupancy’ as ‘a right of

- (a) The right of occupancy is revocable under sections 5 and 28 of the Act in very wide and uncertain conditions.
- (b) Revocation is unknown to household estate
- (c) Even forfeiture of a lease unlike revocation is not automatic or self³.

A lessee enjoys exclusive possession of the estate described in the lease but the holder of a right of occupancy does not enjoy exclusive possession against Governor under sections 2 and 14 of the Act. For example,

A right of occupancy is not alienable unless with the consent and approval of the government. But a lease is alienable without the consent of the lessor. Alienation of a lease without the lessor's consent cannot by itself invalidate an assignment or sublease as against the grantee, for the tenant has an estate, which is always, an alienable property, It will merely amount to a breach of contract, which if reinforced by a forfeiture clause may result in the determination of the lease by an action in court The above outline gives a picture of the general nature of the right of occupancy introduced under the Act.

*Dr. E. Q. Okolie, Senior Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbaram, Anambra State.

¹ Cap LS. Vol. 5. Laws of the Federation of Nigeria, 2004

² Section 5 of the Land Use Act. Cap LS. Vol. 8, Laws of the Federation of Nigeria, 2004, see also Dorothy, Revocation of Rights under the property Law and Criminology 75-105.

³ Nelson Dorothy ‘Revocation of Rights under the property law in Nigeria’ (2015) 5 African Journal of law and criminology 75-105.

It is noteworthy that the Land Use Act creates two types of right of occupancy: customary and statutory; and both may be either actually granted by the Governor or deemed to have been granted by him. The Act provides that a granted statutory right shall be for a definite term.⁴ The Act also requires that those who receive a granted statutory right should pay rent for the land,⁵ but there is no such payment required for a granted customary right,⁶ a deemed statutory right or deemed customary right. In every case, the grantee has exclusive rights to the land and the subject of the statutory right of occupancy against all persons other than the Governor.⁷ These provisions give right of occupancy much resemblance with a lease. Indeed, in *Majiyagbe v. Attorney General*,⁸ the court held that a right of occupancy under the Land Tenure Law of the then Northern Nigeria was in substance a lease. However, right of occupancy only bears resemblance but is not the same thing as a lease in view of the reasons given above.

Proprietary Interest and Revocation

The right of an individual to own, access and enjoy property is an inviolable one and constitutionally guaranteed. Proprietary interest is expressly protected against governmental infringement under the two provisions of the constitution; the right to property and the payment of prompt compensation.⁹

The classical doctrinal and philosophical foundation of proprietary right is the right of a landowner to enjoy and use his property absolutely to the exclusion of others. He enjoys a certain liberty to do as he wills with certain things, which he "owns", and a certain flow of benefits (utility, welfare or good). The practical boundaries of his liberty and the practical relationship between it and benefits derived are in part determined by the existing social order, *Stricture jure*, "property confers exclusive benefits and utility on the owner." In such a case, one expects the direct users to be able to organize, calculate and bid for the opportunity to enjoy those benefits. Government intervention and reallocation of land for socially desirable purposes such as housing, health and conservation purposes are therefore justifiable and impeccable. The purpose of governmental intervention is not only to permit a redistribution of land to achieve the most socially beneficial use, but also to put competing resource users in a position of equality, when each of them, seeks to make use of land. Thus, if the government wants to convert a private house into a post office or construct telecommunication facilities,¹⁰ or run a new highway through a farm, or build a dam which will flood nearby land, or convert private land to school¹¹ or shopping complexes it may acquire such land by revoking the existing interest on the land and compulsorily acquire such land for overall public interest; subject however, to the payment of compensation to the owner of the acquired land. In such cases, courts uniformly hold that property has been taken by the government thus bringing into operation the constitutional mandate that private property may not be taken for public use without "prompt compensation".

⁴Sections 8

⁵Sections 5(I)(c)

⁶Section 8 and 10 (b)

⁷ Section 14

⁸(1957) N.R.L.R.158

⁹ Section 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) see also <http://www.ghanamma.com/2013/02/12/where-there-is-norevocation-of-title-document-can-guarantor-ollot-same-land-to-another-person/?cv=1>

¹⁰ *Ogunbiyiv NITEL*(1993) 7 NWLR 43

¹¹ *A.G. Lagos State v. Sowande* (1993) 8 NWLR 589

Since the enactment of the Land Use Act, proprietary rights have not received considerably less constitutional protection than have personal liberty rights, such as freedom of speech and free exercise of religion, which receive preferential treatment through strict judicial scrutiny of restrictive governmental action. When regulations of- property are challenged under the constitution, courts generally defer to legislatures, finding such compulsory expropriation of land as proper except where it could be established that such revocation power was injudiciously exercised. The question therefore, is whether the exercise of the revocation power of Governor, under the Land Use Act falls within the land redistribution and transformation theory whereby proprietary interest in land is redistributed to meet the socially beneficial purpose of the society? Prima facie, given the objective of the Land use Act as stated in the preamble to the Act, one may hasten to conclude that the Act serves this purpose. However, this has not been the position as private interests are being divested for other purposes other than the statutory permissible purpose. Constitutionally, private property can be acquired compulsorily provided "prompt compensation" is paid and the right to access to court to challenge the quantum of compensation payable is not denied.¹² The constitution does not define those circumstances when land may be compulsorily acquired but the statutory framework for the revocation of proprietary right in land is well articulated in the Land Use Act.¹³ The Act provides for the revocation of existing proprietary interest in land for "overriding public interest" and for "public purpose". Such revocation must also comply with the statutory procedure for revocation.¹⁴ The Act further classifies overriding public purpose depending on the nature of interest held by the landowner. Where the interest is covered by a statutory right of occupancy, overriding purposes include the requirement of land by any of the tiers of government for public purpose, requirement for mining or oil pipeline and where the grantor alienates the land without consent of the Governor.¹⁵

He may also revoke a statutory right of occupancy on the ground of a breach of any of the provisions implied in a certificate of occupancy or any term contained in the certificate or any special contract made under section 8 of the Act. The Land Use Act provides for two modes of revoking a right of occupancy. The express mode is set out in section 28 and the implied mode is set out in section 5(2) of the Act. The latter provision states that upon, the grant of a statutory right of occupancy under the hand of the Governor in Section 5(1), all existing rights to the use and occupation of the land shall be extinguished.

There have been calls for the repeal of section 5(1) of the Act as it is contrary to the Supreme Court's decision holding that the Act has not and a Governor cannot, abolish existing titles and rights to possession of land without a religious compliance with the revocation provisions of the Act. It was surprising the same Supreme Court in *Dapus v. Kolo*¹⁶ stock to a literal interpretation of Section 5(1) of the Act. In that case, Jos Local Government Council granted a statutory right of occupancy over a parcel of land to the appellant. Subsequently the Governor granted a statutory right of occupancy over the land, which adjoins the land subject of the earlier grant. There was overlap in the land given to both parties and the parties were unable to establish the

¹² Section 44(1) of the 1999 Constitution of Federal Republic of Nigeria (as amended)

¹³ Item 60 of the Exclusive Legislative List

¹⁴ Section 28(6) of the Land Use Act.

¹⁵ Section 28 of the Land Use Act

¹⁶(1993) 9 NWLR (Pt 317) 24. The Supreme Court followed its earlier decisions in *Tilanye v Olupo* (1991) 7 NWLR (Pt 205) 519; *Saude v. Abdullahi* (1989(4 NWLR (Pt 116) 387.

identity of the land stated in their respective certificates of occupancy. Their claims and counter claims were thus dismissed. All the same, the Supreme Court, *Obiter*, stated that section 5(1) of the Act, was plain and should be so construed. Ogundare, J S C emphatically stated as follows: A grant of a statutory right of occupancy extinguishes all rights existing on the land at the time of the grant. The subsection is clear and unambiguous. In my respectful view, that is the only reasonable interpretation that can be given to it.¹⁷ Similarly, in *Lang v. Mohammed*,¹⁸ it was evident that the respondent was the customary owner of the disputed land. The Governor granted a statutory right of occupancy over the said land to the respondent. The appellant claimed damages for trespass and nullification of the respondent's right of occupancy. The trial judge refused to grant the claims, but awarded him N10, 000.00 (Ten thousand Naira) as compensation for the land. The court of Appeal upheld the decision; it held that section 5(2) has the potency of a statutory revocation, of all existing rights on any land over which a governor grants a right of occupancy.

Section 28(6) of the Act provides that revocation shall be signified under the hand of a public officer duly authorized in that behalf by the Governor.¹⁹ The Officer who signs a revocation notice must show that the governor duly authorized him to do so. It cannot be presumed that the commissioner in charge of land matters, for example is the authorized officer. Nor is there a place for ratification after an unauthorized revocation. In *Mqjiyagbev. A.G.*²⁰ a case decided under a provision similar in verbiage in the Land Tenure Law, the governor endorsed "revocation approved" on a note that was filed away in his office. Subsequently, an officer who could not prove his authority wrote to the right holder that his right of occupancy had been revoked. The revocation was annulled. Bairemian, SPJ said, reliance could not be placed on the endorsement made by the Governor since that did not constitute notice.

However, it may be that a revocation effected by a Governor himself is valid. There is nothing in the Act that excludes the Common Law rule that a person can do that which he can authorize his servant to do. *Qui per alium facit per seipsum facere videtur* (he who does an action through another is deemed in law to do it himself).²¹ Indeed in *Arc v. Adisa*,²² the Supreme Court held that statutory delegation of governor's authority to his officials does not deprive him of the exercise of such power.

Revocation for Overriding Public Interest

Revocation or acquisition of interest in land is not novel. It dates back to the colonial era under the State Land Law, Public Lands Acquisition Act and Land Tenure Law. In all these statutes, the phrase used to justify revocation is public purpose or interest. The Land Use Act introduces for the first time the word "overriding" to qualify 'public interest' in section 28. If the presumption that no word in a statute is a tautology which is applied, a person whose right of

¹⁷Ibid at p. 279.

¹⁸ (2000) 3 NWLR (Pt.) 700 389

¹⁹Section 6(3) (5) empowers a local government to revoke a customary right of occupancy for public purposes. The provision has not been subject of much litigation. What is said in this work with regard to section 28 substantially covers revocation under section 6.

²⁰ (1957) NRNL 158

²¹Okeowo v. Migliore (1979) 12 NSLC 210

²² (1967) NMLR 304, 309

occupancy is about to be revoked can challenge the procedure on the ground that the purpose for which he put his land is more important to the public than the purpose for which the governor attempts to revoke it. For instance, where a governor attempts to revoke a right of occupancy over which a person forms for the purpose of building a recreational centre, the right holder can argue that production of food overrides recreation. Suppose a farmers land is to be acquired for agricultural development, a heavy onus would be on a governor to prove that there is something overriding in that purpose.

What constitutes public interest and public purpose are listed in Sections 28 and 51 of the Act. In defining, public interest, Section 51 uses the word "includes". The question now is, is the governor at liberty to revoke for other purposes not expressly listed in the Act on the ground that the object is public all the "same? In *Olatunji v. Military Governor, Oyo State*,²³ Salami, JCA opined, Obiter, that other public purposes not stated under section 51 must take their coloration or meaning from the public purposes stated therein; they must be similar to those stated in the section.

On the other band, in *Oshov. Lagos State Devt and Corp.* Obaseki, JSC says other purposes not specified as public purpose in the Act cannot be lawful purpose. We believe that Section 28 and 51 are expropriatory and must therefore be given a very restrictive construction.²⁴ It is difficult to envisage a public purpose that will not come within the very broad listing in section 51.

The courts have held that a right of occupancy cannot be revoked for the purpose of granting the land to a private individual or corporate body.²⁵ Where it is granted to a corporate body, it must be shown that government holds shares, stocks or debentures in it.²⁶ A revocation that does not accord with this provision is invalid *abinitio*, A revocation that is in accord with the Act but which is subsequently altered for private use can be nullified.²⁷

In *Administrator/Executor of Estate, of Abachav. Ekespiff*,²⁸ the respondent was granted a lease under the state land law in 1975 for a term of 99 years. In 1986 the Governor granted a statutory right of occupancy over the same parcel of land to General Abacha, then Chief of Defense Staff.²⁹ This was followed with a certificate of occupancy in 1987. The General died in 1998 and later that year the respondent sought a declaration of his right to the land on the ground that his right of occupancy was unlawfully revoked. The Court of Appeal granted the declaration. Suppose the initial owner notices that his property which was acquired for a sped Fie public purpose is converted for another public purpose, for a private end, or it is abandoned, does he offend the law if he re-enters possession or alienates the land to a third party? There is authority for the proposition, that upon an acquisition of land, the original owner retains a reversion which automatically revives on the abandonment of the original purpose.³⁰ It is the law that the reversion to the original owner of land acquired for a public purpose and which public purpose

²³(1995) 5 NWLR (pt 397) 586, 606.

²⁴*Bello v. The Diocesan Swod of Lagos* (1973) 3 SC 131

²⁵*Kyari v. Alha* (2001) 11 NWLR (pt. 724) 412 SC

²⁶ Section 51 (1)(b) of the Act

²⁷*Ukwa v. Awka Local Council* (1966) NMLR SC 20

²⁸ (2003) 1 NWLR

²⁹ General Abacha became the Head of State in 1993 and died in Office on June 8, 1998

³⁰*Ajoo v. Sikeadministrato, Ibadan city Council* (1971) NMLR 74, 75 per AdenekanAdemola J.

fails to take place by the operation of law. In other words, once the object of such acquisition fails, no conveyance or any other assurances is needed to vest the formerly acquired land in the original owner.³¹

The law recognizes this form of self-help so long as it does not involve a breach of the peace. That way, the onus shifts on the government department for whose benefit the right was revoked to convince the court that the land is still being used for the exact purpose for which it was revoked. Furthermore, the law allows a certificate of occupancy to be revoked where the allocation was made in error or as a result of a mistake on the part of the committee.³²

Judicial Construction of Revocation Power

First and foremost, an Act that seeks to deprive an individual of his property should be strictly construed against the acquiring authority.³³ Second, the right to expropriate private interest necessarily implicates the right of the person to be expropriated. Consequently, the person being denied of his property has the right to know that his property is being taken over by the government. Applying the age-long principle of Audi alteram partem, such individual should be adequately informed of the government's decision to acquire his property. As explained by Onalaja J.C.A in *Nigeria Engineering Works Limited v. Denap Limited & A nor*,³⁴ prudence and law demand that a Governor revoking a right of occupancy for public purpose should accord all those aggrieved by the revocation fair hearing as provided by Section 33(1) of the 1979 constitution³⁵ if the revocation is for breaches of terms of the certificate of occupancy. There is no ground for withholding information as to the public purpose for which the land is acquired from the holder of the right of occupancy and the public if there is no secrecy above public purpose. Thirdly, a deprived party needs to know other alternative arrangement put in place if he were to lose his present land. The case of *Osho v. Foreign Finance & Orsgave*³⁶ the Supreme Court the opportunity to make judicial pronouncements on the correct interpretation of section 28 even though the lower courts had earlier made some remarkable pronouncement on this matter.³⁷ In this case, the Plaintiff/Respondent instituted an action against the 1st, 2nd and 3rd Defendant/Appellant claiming special and general damages for the destruction of plaintiffs property and goods and for trespass to land. The Plaintiffs claimed that it was granted a lease of State's land by the 1st defendant in 1971 for a period of 90 years and was in possession and made some development on the land. However, in 1980, the 1st, 2nd and 3rd Defendants broke into the land and demolished the structures built on the land and thereafter the 1st Defendant granted the land to the 3rd Defendant. The Defendants' defence was that the plaintiffs interest in the land had been forfeited by the Lagos State Government on the ground that the Plaintiff had committed breaches of the terms of the grant to him to wit, failure to pay rents which had fallen due in

³¹*Oloto v. Williams* (1943) 17 NLR 27; *Akani v. Oluchukwu in Council* (1957) WNLR 98, *Olatunji v. Military Governor, Oyo State*, *Supra*

³²*Sacha v. Kwanle L.G.C.* (1990) 5 NWLR (pt. 152) 548, 558.

³³*Peemock Investment Ltd v. Hotel Presidential* (1983) 4 NCLR 122 at 168, see also <http://www.ghanamma.com/2013/02/12/where-there-is-no-revocation-of-title-document-can-guarantor-ollot-same-land-to-another-person/?cv=1>

³⁴ (1997) 10 N.W.L.R. 482

³⁵ The Section is equivalent to Section 36(1) of the 1999 Constitution of the FRN

³⁶ (1992) 1 N.S.C.C. 521

³⁷ *Lawson v. Ajibulu* (1995) 5 NWLR 587, *Obikoya v. Governor of Lagos State* (1987) NWLR (pt. 50) 385; *LSDPC v. Foreign Finance Corp* (1987) NWLR (pt. 50) 413

arrears and failure to develop the land. In the alternative, the defendants pleaded that the plaintiffs interest in the land had been determined by the revocation of its right of occupancy over the land by the Governor of Lagos State under the provision of the Land Use Act, 1978, From the decision of the court in the case, several legal principles for the determination of the validity of revocation of interest could be established as follows:

i. Revocation to Be Within the Statutory Permissible Purpose of the Act

The court reiterated and applied the age - long statutory construction principle that allows the court to construe fortissimo contra proferentes against the acquiring authority, any provision of the law that gives the acquiring authority extra-ordinary powers of compulsory acquisition of the properties of citizens.³⁸ By this rule, the court insisted that the revocation of interest in land must be within the statutorily permissible purpose of the Act. Although the court did not redefine nor expand the scope of public purpose, it gives a restrictive interpretation to this terminology. It becomes a question of law and not fact whether an acquisition is for public interest. Any revocation outside the statutory "overriding public interest" or "public purpose" is illegal and unlawful. As stated, by Obaseki J. S. C, other purposes not specified as public purposes in the section cannot be lawful purpose under the Act. To revoke a statutory right of occupancy for public purposes, the letter and spirit of the laws must be adhered to. Since revocation of a grant deprives the holder of his proprietary right, the terms must strictly comply with the strict construction of the provision made.³⁹ The Supreme" Court in *Awaogbo v. Eze*⁴⁰ further demonstrated its firmness on strict adherence to the statutorily defined power to curtail any excessive exercise of revocation by the Local Government. In this case, the Plaintiff claimed against the Defendant jointly and severally general damage for trespass and injunction restraining the Defendants or their servants from entering into or committing any further acts of trespass to the said plot of land. It was the plaintiff's case that the disputed land was granted to him under native law and custom for purpose of exploitation and cultivation. He alleged that after the civil war, the defendant hatched a plot to dispossess him of the land. After the Land Use, the community conspired with the Local Government to divest the Plaintiff of his land and reallocate the land jointly to the community and the Local Government. The Ikwo Local Government in July 1979 issued a Public Notice No. 20 of 1979 prohibiting the plaintiff and the entire community from further entry into the land. The Local Government thereafter proceeded to issue temporary occupation license to prospective farmers wishing to cultivate on the land on payment of N1.25 per hectare as rental to the Council. Thereafter, the Defendants acting in concert forcibly entered and took over control and management of the land belonging to the Plaintiff. The Supreme Court deprecated the intervention of the Local Government and held that the procedure for the revocation offends the provisions of Section 28(3) and 6(3) of the Act.

ii. Revocation Must Comply With the Statutory Procedure

Another principle is that the revocation of interest must comply with the statutory procedure for revocation and service of revocation notice. The Governor must duly sign the revocation notice or any public officer duly authorized in that behalf by him. In addition, the notice of revocation must be properly served on the landowner. In order to constitute "proper service", the courts generally insist on personal service except in appropriate cases where personal services are

³⁸ See re Bowman, South Shields (Thomos)

³⁹ Ibid, at p. 543

⁴⁰ (1995) 1 NWLR 393

impossible or impracticable, substituted services may be accepted. Thus in *Oshov. Foreign Finance*⁴¹ the Supreme Court held that the notice of revocation not having been duly served on the Plaintiff was invalid. In a latter case of *NITEL v. Ogunbiyi*,⁴² decided by the Court of Appeal, the Court nullified a revocation notice that was not personally served on the property owner at the Address known to the Government, The facts of the case were fairly straightforward. By a notice issued by the Kwara State Government, it purportedly acquired the Respondent's large tract of land adjacent to the General Post Office for the purpose of construction of telephone exchange building for the Appellant, The respondent had four structures on the said land and was at all material times resident in Lagos, a fact that the Appellant conceded. The notice of compulsory acquisition was not served on the Respondent in Lagos where he resided but pasted on the building. The respondent thereupon instituted an action challenging the validity of the said acquisition and averred that since the service of the notice was not personal, the revocation was invalid and acquisition illegal. The court of Appeal upheld the respondent's claim that the right was not properly revoked as laid down in Section 28(6), The Court of Appeal per Achike J.C.A., held that the requirement of Section 28(6) is that a notice of revocation of a right of occupancy must be served personally on the holder and any such notice purporting to revoke the right of occupancy by any officer or duly authorized by the Governor is ineffectual if it fails to comply with this requirement.

iii. Notice of Revocation

The court will also read into the Act the requirement that a notice of revocation must specify the reason for revoking a person's right of occupancy notwithstanding that the Act does not expressly state that the specific ground must be stated in the notice. Thus in *Osho v. Foreign Corporation*,⁴³ the Supreme Court ruled that the notice of revocation must spell out the public purpose in the notice.⁴⁴ In *Nigeria Engineering Works Ltd K Denap Ltd*⁴⁵ the ground for revocation relied on by government was a right holder's failure to develop the property within two years as set out in the certificate of occupancy which in breach of Section 28(5). Even at that, the revocation was annulled for government's failure to state the purpose of revocation, Counsel's contention that the right holder is deemed to know the purpose was rejected. However, these cases were decided under Section 33 of the 1979 Constitution; they are even more potent now that Section 43 of the 1999 Constitution recognizes the right to every Nigerian citizen to acquire and own land anywhere in the country and to enjoy same subject to the provisions of the land use Act which is a federal enactment.

The notice must contain the actual ground for revocation. Government is not at liberty to state one reason and revoke for another. In *M/SO. Ilemobofa Co Ltd v. Governor of Kaduna State*⁴⁶, the reason stated in the revocation notice was the Appellant's failure to obtain consent to a sublease under Section 28(3) (d).⁴⁷ On its inability to establish that ground, it sought to validate

⁴¹ Supra note 2.

⁴² (1992) 7 NWLR (pt 255) 543; *Nigeria Engineering Works Limited v. Demp Limited &Anor* (1997) 10 NWLR 482

⁴³ (1987) NWLR (pt. 50) 481

⁴⁴ *Ereku v. Military Gov. Mint-Western State* (1972) All N.L.R. 695 at 701: AG, Lagos sun Jc (1992) 8 NWLRR 589

⁴⁵ (1997) 10 NWLR (pt 525) 481

⁴⁶ (2000) 7 NWLR (pt. 525) 633

⁴⁷ This section states that a right of occupancy may be revoked where the right holder aliatier without

the revocation on the ground that the Appellant failed to pay ground rent as required under the certificate of occupancy. The Court of Appeal held the revocation invalid. Salami, J. C. A's reason being that counsel for government cannot introduce a ground for revocation at the trial where he does not have the authority to revoke the right. It may be that a surer ground is that the object of the notice is to enable the right holder prepare his defence and it would be contrary to the principle of fair hearing for government to spring a surprise on him by introducing a fresh ground at the trial.

iv. Mode of Serving the Notice

Even though the provisions of Section 44 of the Act appears exhaustive and explicit on the mode of serving notice, construction and application of the provisions have occupied our courts. The section provides for service to be personal, or notice may be left at the right holder's usual or last known place of abode, or by registered post, or if it is not practicable after reasonable inquiry to ascertain the right holder's name or address, to deliver it to any person on the premises or posting it to some conspicuous part of the premises to be revoked. A sensible reading of the section would suggest that the list in the section is in the order of priority. Leaving the notice at the right holder's usual abode should be resorted to only after effort has been made to effect personal service; service by registered post would arise only after effort has been made to ascertain the right holder's usual abode and so forth.⁴⁸

It has been held that notices served in modes not recognized by the Act are additional not as compliance with the statutory requirement. In *Nigeria Engineering Works Ltd v. Denap Ltd*,⁴⁹ notice of revocation published in Observer daily newspaper was held ineffectual. In *Jegedc v. Citicon Nigeria Ltd*⁵⁰, revocation published in an official gazette was held not to comply with the Act. The Court of Appeal held that publication of acquisition information in a gazette is only a government's way of bringing its activities to the attention of the public. It is not a substitute for the necessity to serve holders or occupiers personally as required under the Act. This decision is welcome because in *Ononujii v. AG. Anambra State*⁵¹ counsel for the respondent urged that a gazette notice is adequate as it serves as notice to the world at large and the Court of Appeal failed to comment on the argument.

It is submitted that the argument is not persuasive; it is fit tile because what is at stake is the most prized property in the economy. It should not be deprived owners by subterfuge. How many men on the street know of gazette? Even among the learned, how many have access to gazettes? In Ononuju's case, the officer who served the notice said the occupiers of the property sought to be revoked refused to sign the notices.⁵² He was thus forced to post the notices on abandoned houses, wooden fences and on some trees, some the notices were sent to churches for public

obtaining the requisite constant *Agbaje v. Bankole* (1971) 1 All NLR 275.

⁴⁸ *NITEL v. Oguniyi*, *Supra*

⁴⁹ (1997) 10 NWLR (pt 525) 481

⁵⁰ (2001) 4 NWLR (pt. 702) 112

⁵¹ *1998) 11 NWLR (pt. 573) 304

⁵² A server of notice need not prove that the addressee accepted it. Where the addressee refuses to accept a notice after he has been told the contents, the server may drop it at his feet, table or pass it on the addressee's wall: *Matins v. Komolafe* (1961) LLR 14, per De Lostang, CJ.

announcement. The issue turned on whether this sufficed. The majority of the Court of Appeal held this adequate service.

Conclusion and Recommendations

Admittedly, no other piece of legislation, in the history of this country has generated as much controversy and contentious litigation as the Land Use Act. The reasons for the unprecedented controversy generated by the Act are however, not far-fetched. Hence, it was the first legislative effort to harmonize the land tenure system in Nigeria.⁵³ It was argued that the only comprehensive legislation regulating the acquisition, disposition and extinguishment of rights in land throughout Nigeria⁵⁴. Therefore, being "a statute of unique importance and impact" and property legislation for that matter,⁵⁵ it is not surprising that the Act has generated so much controversy. However, it is not so much the novelty of the Act as its infelicitous and inarticulate wording that has been responsible for the monumental controversy and confusion generated by the Act. In this work, the bad drafting of the Act has since been widely acknowledged. In the celebrated case of *Savannah Bank of Nigeria Ltd. v. Ajilo*⁵⁶, Obascki, J.S.C. remarked, "This case has once more highlighted the unnecessary difficulties created by lack of precision and in inelegant drafting of statutes. The Land Use Act as a major legislation affecting the fortunes of every Nigerian leaves a lot to be desired in its drafting".

The practice whereby the Governor, when issuing a certificate of occupancy to the holder of a deemed right of occupancy whose existing interest prior to the Act was of a permanent character, curtails such interest to a fixed term of years should stop. There is no provision in the Act enabling the Governor to do so. Such unjustified deprivation or curtailment of vested rights in property without payment of compensation is not only unconstitutional but against the spirit and letters of the Act. One of the most contentious aspects of the revocation power and which has been widely abused by the Governor and public officers is where there is failure of purpose. The most recent example was the Osborne Land in Lagos which was acquired for erection of electricity grid and power station but was later shared by the officials to construct private houses.⁵⁷

The nature of trust created by the Act also generated valuable comments. Thus, under the conventional law of trust, where there is a failure of trust, the trust property reverts to the estate of the settler or testator. That notwithstanding, the nature of trust created under the Act is anomalous and the question of reversion becomes confusing. But the issue of failure of purpose received judicial construction in *Olatunji v. Military Governor of Oyo State*⁵⁸ and *Ajibulu v.*

⁵³Akwocha v. Governor of Anambra State (1984) 6 SC 362

⁵⁴ Prior to the Act, a Similar Statute, the Land Tenure law. Cap 59 Laws of Northern Nigeria 1963 had been in force in the Northern Part of Nigeria

⁵⁵ Indeed, most of the conflicts between individuals and between nations of states are triggered by disputes over land or interest in land. See also Nelson Dorothy 'Revocation of Rights under the property law in Nigeria' (2015) 5 African Journal of law and criminology 75-105.

⁵⁶ (1989) 1 NWLR (pt. 97) 305 at 324

⁵⁷ See the Federal Government White Paper on Federal Land and Buildings in Nigeria Otherwise called Brig. Oluwoke Rotimi's Report Submitted to the president. The Report indirect many public functionaries and such land must be returned to the government.

⁵⁸ (1995) 5 NWLR 587

Lawson.⁵⁹ The facts of these cases are similar. In these cases, the Governor exercised his power of revocation under Section 28 of the Act to acquire the land privately owned by Plaintiffs ostensibly for public purpose but later reallocated the land to private individuals who converted the land for other purposes outside the public purposes. The Court of Appeal in both cases rightly came to the conclusion that a property ostensibly acquired for public purpose but later directly or indirectly diverted to serve private needs does not amount to valid acquisition. The acquiring authority cannot rob Peter to pay Paul by divesting one citizen of his interest in a property and vesting same in another.

It is contended that where there is a failure of ‘public purpose’ within the meaning of the Act, it is recommended that the land in question must revert to the original owner. It is also recommended that the provisions of Section 28 of land use Act should be modified by way of legislative intervention to permit individuals to challenge injudicious revocation of interest in land which in effect demands that the Governor should be compelled to return expropriated land to the original owner where there is failure of public purpose intended.

⁵⁹ (1991) 6 NWLR (pt. 195) 44