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LEGAL, ADMINISTRATIVE AND SOCIO-ECONOMIC CHALLENGES IN REGULATION OF LAND USE RIGHT IN NIGERIA

*Ohiosumuan Kelly Esechie

**Anya Kingsley Anya

*[LLM, B.L]-Law Lecturer, Faculty of Law Benson Idahosa University Benin City. The author could be contacted at <keesechie@biu.edu.ng> <<https://orcid.org/0009-0001-6668-6995>>

**[PhD, B.L] Professor of Law and Head, Jurisprudence, Public & International Law Igbinedion University College of Law Okada <anya.kingsley@iuokada.edu.ng> <<https://orcid.org/0009-0004-5549-1852>>

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Abstract

It is an axiomatic fact that the ever increasing population in urban areas in Nigeria has negatively impacted on land space and invariably, land use rights. Increase by way of population growth and routine migration to urban areas has continued to exert population pressure, and impacts negatively on socio-economic growth involving transfer of land use rights. Land use right has a sharp increase tendency in Nigerian cities, affecting the methods of land use rights as well as the management and regulation of land, which has always been at the core of national development, urban planning, real estate development, and environmental management. Against this backdrop, the authors argued the need for the regulation of the transfer of land use right in order to harvest the concomitant economic developments. The paper maintained that government has paid great attention to management and regulation of land through series of legislations and regulations, right from colonial times with the aim of achieving maximum use and regulation of land space through granting access to use of land, which for instance, promoted initiatives aimed at increased transparency, a clear legal framework and competent institutions to ensure maximum benefit to the people, in the grant of land use right, including the subsisting Land Use Act 1978.

Keywords: land management, land use right, deemed grant, urban planning, socio-economic growth

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1. Introduction

Globalisation, more particularly economic globalisation as well as the ever expanding frontiers of trade and commerce, legal improvements targeted to accommodate the intrinsic but changing nature of human transactions, and coupled with the crystalized heuristic changes both in information and telecommunication regimes, has greatly affected the regulations of land use rights in Nigeria. Transfer of land use rights is essential for urban planning, real estate development, and environmental management. Consequent on this development, there is need for the regulation of the transfer of land use rights in order to harvest further economic development.¹ Increase by way of migration to urban areas has continued to exert population pressure, and impacts negatively on socio-economic growth. Inadequate land space allocation and utilisation in urban areas has a sharp increase tendency in Nigerian cities.

Management and regulation of land use rights is at the core of national development and urban planning. Nigeria has a whooping population of 200 million persons. It is estimated that a large number of persons now lives in urban areas, apparently due to the offer of choice of white collar jobs as well as increasing demand for artisans in servicing the population.

However, due to improper and weak regulation of land use rights, population demography of Nigeria has been suffering in the acquisition of rights to use of land, particularly in select urban areas such as Lagos, Abuja, Onitsha, Enugu, Kano, Kaduna, Jos, Makurdi, Ibadan, Abeokuta, Benin, Warri, Asaba, Aba, Port Harcourt, Calabar, Uyo, Owerri and etcetera. The government has been paying great attention to management and regulation of land through series of legislations and regulations, in fact, right from the colonial times. To achieve maximum use and regulation of land space through granting access to use of land, the government has been enacting legislations and regulations, which for instance, has been promoting directed initiatives aimed at increased transparency, a clear and harmonised legal framework as well as competent institutions to ensuring maximum benefit to the people, in the grant of land use right, including the subsisting Land Use Act 1978.

As a matter of fact, the regulation of transfer of land use right reflected a tripartite system of land tenure in Nigeria; to wit, a dual system in southern Nigeria and a monistic system characterized by state control in northern Nigeria. In southern Nigeria (eastern, western and mid-western Nigeria), land was held either under customary law or under the estate system of

¹ A Taiwo, *The Nigerian Land Law*, Ababa Press Ltd Ibadan (2011) 201

the received English law, for instance a fee simple estate. In some cases however, certain transactions involved both systems.² Significantly, the then British colonial Government colonised the northern part of the country, and in that process, the British administration promulgated the Proclamation Law of 1900 by which all the land in the territory was annexed by the British Government, the report of the Northern Nigeria Lands Committee of 1908 recommended that transfers of title to the use and occupation of land should be prohibited without the prior consent of the governor.

These recommendations were promulgated into law by the Land and Native Rights Proclamation of 1910 which was replaced by the Land and Native Rights Act No. 1 of 1916 (amended in 1918) which was re-enacted by the Land Tenure Law. It provided after declaring, in section 4 of the Land Tenure Law, that all land in northern Nigeria, with a few exceptions, should be considered “native lands.” Section 5 then stated; “All native lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Minister and shall be held and administered for the use and common benefit of the natives, and no title to the occupation and use of any such lands by a non-native shall be valid without the consent of the Minister.” With state control firmly entrenched,³ the Minister was given several powers with respect to the management of land under his control, including the power to grant rights of occupancy to ‘natives and to non-natives.’⁴ Sections 27 and 28 prohibited the transfer of a right of occupancy without the consent of the appropriate authority and the Minister was also given powers to revoke a right of occupancy for a good cause.

Flowing from the above,⁵ the Land Use Act of 1978 is one of the most important legal frameworks governing transfer of land, ownership and management in Nigeria.⁶ The act vests control of all land within a state’s territory in the governor of that state, effectively centralizing the authority to grant land rights. The Act established a single tenure for the whole country, based on the right of occupancy system.

² P. A. O. Oludeye , Nigerian Conveyancing Practice, Drafting and Precedents, Heinemann Educational Books Nigeria Plc, Ibadan, (1994) p. 324.

³ A Taiwo, supra, at p 208

⁴ S. 27 of the Land Use Act, Cap L5 LFN 2004

⁵ The Constitution Drafting Committee (CDC) which was set up to prepare the 1979 constitution strongly recommended for nationalization of all underdeveloped lands in Nigeria to allow the landless have access to land for shelter and sustenance.

⁶ J. A. Omotola, Essays on Land Use Act 1978, University Press (1984), p.vi.

The paper therefore strives to consider the legal and socio-economic dimensions in the use and regulation of land use right in Nigeria. In achieving this, the paper examined the evolution and scope of land use right in Nigeria; incidental framework as well as subsisting challenges.

2. Theoretical background

There are many scientific literatures devoted to the problems associated with transfer of land use rights in Nigeria.

Significantly, dominant literature on this area can only be traced from 1978 to date. One of the authors that contributed much on this area is J. A. Omotola.⁷ He emphasized the need that led to the enactment of the Land Use Act, focusing on the impact of Sections 22 and 26, particularly, concerning the governor's consent and the consequences of failing to comply with the consent requirement. However, he failed to address the potential impact of the court's interpretative misconceptions of the Act, which is the primary objective of this research.

In his book,⁸ James provided a critical analysis of the consent requirement, discussing the challenges faced by both mortgagors and mortgagees, particularly in relation to sale, assignment, and mortgage transactions. However, he made only limited efforts to address the emerging issues related to the consent requirement, a gap that this research seeks to address.

Taiwo, is another recent author that contributed hugely on the aspect of transfer of land use rights in Nigeria.⁹ He successfully analysed issues related to the Land Use Rights, its impact, and the requirement for the governor's consent. Additionally, he made an effort to highlight several recent cases in this area.¹⁰ However, no attempt was made by the author to analyse the inadequacies of the Act, more particularly Sections 22 and 26.

Another author named M. D. Yakubu¹¹ viewed that any transfer of Land Use Rights by assignment, lease, sale and sublease, made without the consent of the governor first had and obtained is invalid. However, this assertion was likely made before the Supreme Court's ruling in the case of *Okuneye v F.B.N. Plc.*¹² The author therefore, did not address the interpretive issues related to the provisions governing the transfer of land use rights.

⁷ Essays on Land Use Act, 1978, Lagos University press (1984), p vi.

⁸ Nigerian Land Use Act: Policy and Principles, University of Ife Press Ile-Ife Nigeria, (1987) 176-189.

⁹ A Taiwo, Nigerian Land Law, Ababa press Ltd 2011.

¹⁰ For example, *Mr. Mojisola Edebiri v. Prince Omotayo Daniel & another* (2009) 8 NWLR (Pt. 1142) 15 at 27, *Edohoeket v Iyan* (2010) 7 NWLR (pt 1192) 43

¹¹ M. D. Yakubu., Land Law in Nigeria, Macmillan Publishers Nigeria, (1985) p. 20.

¹² (1996) 6 NWLR (Pt 457) 749, C.A. In this case, the Supreme Court held that Governor's Consent is not required in case of equitable mortgage.

Olong further argued that the consent requirement for transfer of land use right in Nigeria is rooted in the concept of ownership.¹³ He emphasized that the significance is so profound that it has recently become a central focus of government policy. He also maintained that since transfer of land use right is an inherent right of ownership, an individual can transfer interest in land without needing the consent of anyone. He observed that with the introduction of the Land Use Act, ownership of land has been transferred to the Governor who holds it in trust for all Nigerians. However, the author did not take the time to explore the topic in detail, nor address the conflicting court decisions regarding the interpretation of Sections 21 and 22 of the Land Use Act.

Madaki, succeeded in highlighting some of the cumbersome nature of the grant of consent by the governor.¹⁴ Yet, he did not take time to dwell on the emerging issues related therein which are the issues of recent Supreme Court's conflicting decisions that created problems for lower courts. Aboki, criticised the requirement of governor's consent on transfer of Land Use Right. However, he placed much emphasis on the decision in *Savannah Bank Ltd. v. Ajilo*.¹⁵

However, there is the issue of conflict of interpretation of the requirement of consent provision as provided under sections 21 and 22 of the Land Use Act,¹⁶ premised on the fact that even though there have been interesting developments from the courts since the ruling in *Savannah Bank Ltd v Ajilo*¹⁷ concerning governor's consent, yet some decisions appear to be directly opposite to Ajilo's case.¹⁸ This problem has led to conflicting decisions by the Apex court, and this development has always put the lower courts in dilemma as to which of the decisions of the court to apply in cases relating to transfer of land rights. Section 22 of the land use Act is particularly devastating as¹⁹ it prohibits any person to whom the Governor has granted a statutory right of occupancy from transferring this right dealing with the land against the terms of grant without having first had and obtained the consent of the Governor,

¹³ A D M Olong, *Land Law in Nigeria* (2nd ed.) Malthouse Press Limited, Lagos (2011) 120

¹⁴ A M Madaki, "*The Land Use Act, Years After Its Enactment; A Critical Assessment*"; in S N G Kanam, (ed.) *Contemporary Issues in Nigeria: Legal Essays in Honour of Hon. Justice Usman Faruk Abdullahi*, A Publication of Private Law Department, Faculty of Law, ABU, Zaria University Press (2006) p. 403.

¹⁵ (1989) 1 NWLR (pt. 97) p. 305, where the Supreme Court held that any transaction entered into without Governor's consent is null and void notwithstanding the fact the defendant wanted to benefit from his wrongful conduct.

¹⁶ O. R. Akujobi, "Governor's consent under S. 22 of the Land Use Act; the position since *Savannah Bank v. Ajilo*" *Land Use Act Twenty Five Years after*, Journal of Department of Private and Property Law, Faculty of Law,

University of Lagos, Nigeria (2003) p. 223.

¹⁷ (1989) 1 NWLR (pt. 97) p. 305.

¹⁸ For instance, see *Adedeji v National Bank* (1989) 1 NWLR p. 212 which was decided in the same year with that of *Ajilo's*

¹⁹ See generally s. 22 of the Land Use Act, Cap. L5, Laws of Federation of Nigeria, 2004.

whereas obtaining the consent of the Governor is fraught with administrative bottlenecks, financial burden, delays and even in some cases politicized.

The severest consequence of the requirement for Governor's consent before transfer manifests in the area of mortgages.

Furthermore, there is also issue of non-compliance in that the cumbersome nature of the consent requirement, which makes people to transfer land without complying with the requirement of the law. The consent requirement is too wide, thus making the powers of the governor to be discretionary and cannot be challenged even by the holder himself.

In the context of the Act, there are doubts and legal uncertainties surrounding conveyance of rights and interests such as agreements to sell and powers of attorney. Similarly judicial sales and partition of land are currently carried out under a climate of uncertainty, especially where the relevant court order is not made subject to the governor's consent. However some of these difficulties could be significantly reduced by the application of the principles of trust to the provisions of the Act. An express declaration of trust relating to land gives the beneficiary a beneficial interest that does not offend the consent provisions of the Act. It is a much more sophisticated (and advantageous) instrument than an agreement to sell or a power of attorney.

Thus, in *Nigeria Industrial Development Bank Ltd v Olalomi Industrial Ltd*,²⁰ there was a mortgaged transaction without Governor's consent and the mortgagor wanted to invalidate the transaction on ground of lack of governor's consent. The court in refusing the mortgagor's application held inter alia that, "... It is my view that it will be in the interest of justice to do so rather than allow the mortgagor to eat his cake and still have it back, the court shall resist at all cost the attempt at using it as an engine of fraud or cheating or dishonesty."

However, the decision in *Awojugbagbe Light Industry v Chinukwe*²¹ represents a means to moderate the excesses of the wisdom in Ajilo. One of the main issues in that case was whether the Land use Act forbids some forms of agreement to transfer land rights. The Supreme Court held that the holder of a statutory land use right is certainly not prohibited by S. 22(1) of the Land Use Act 1978 with a written agreement in form of negotiation which may end with a written agreement for presentation to the government for his consent or approval. This is because the Act does not prohibit a written agreement evidencing an intention to transfer land.

²⁰ (2002) 5 NWLR (Pt. 761) 532 at 548

²¹ (1995) 4 NWLR (Pt. 390) p 379

Thus, to hold that a contravention or non-compliance of S. 22 of the Act occurred at a time when the holder of Statutory right executes or seals a deed of mortgage is tantamount to defeating the spirit and intendment of S. 22 of the Act.

The difficult consent provisions of the Land Use Act have generated transfer of land right practices that are fraught with risks, judicially noticed in *Alh. Ayotunde Seriki v Sefi'u Olukorede*,²² where it was held that one cannot have a right of action when he or she comes to a court of justice in an unclean manner. It goes to say that equity will not allow a person to benefit or profit from his own crime, fraud, immorality or illegality as in the case of failure to obtain the Governor's consent to alienate his or her right. Significantly, *Ude v Nwara* remains one of the clearest judicial expositions of the 'nature and impact of a power of attorney affecting land,'²³ a power of attorney merely warrants and authorizes the donee to do certain acts in the stead of the donor and so is not an instrument which confers, transfers, limits, charges or transfer any title to the donee; rather it could be a vehicle whereby these acts could be done by the donee for and in the name of the donor to a third party. Consequently, a power of attorney is not contemplated by sections 22 and 26 of the Act. This omission however puts the donee in a very vulnerable position. For instance, the donor could directly and validly sell the land to a third party during the subsistence of the power of attorney so long as the donee has not exercised the power of sale. A power of attorney is also revoked by the death (or bankruptcy) of the donor unless it was granted to secure a proprietary interest in land (for instance, in pursuit of an equitable mortgage) or to secure the performance of an obligation owed to the donee. Worse still, the donee's powers are personal to him or her and are not transmissible to successors in title.

Also an agreement to sell land has posed a problem in transfer of land use right as vendors most times unconsciously denies the transaction or the purchaser's interest

Fraud is now perpetuated using provisions of the land use act. For instance, *Savannah Bank v Ajilo* is perhaps the most famous (if not infamous) case on the operation of the Act. In that case, a defaulting mortgagor put up a bold argument that his failure to obtain the governor's consent to the mortgage rendered it void so that the mortgagee's power of sale under the mortgage was not exercisable.

²² (1999) 3 NWLR (Pt. 595) p 469 at 480-481

²³ (1993) 2 NWLR (Pt. 276) p 647

3. Research methodology

The dominant research method is focused on analysis of regulatory and statutory Acts. Furthermore, there are qualitative document analysis, and content analysis as well as case laws of the courts in Nigeria. These investigation methods provided reasonable systematic and reliable recording of some aspects of the content of document and qualitatively process the data gathered. Having gathered the above, we are therefore able to establish the characteristics of documentary sources and the features of the entire process: legal, administrative, and socio-economic implications of challenges to land use right in Nigeria as well as the value implication to national development and over-all benefits of the Nigerian citizens, and foreign elements therein. Non-quantitative content analysis records the presence of a text content element-an indicator corresponding to the content category. This approach allows us to identify types of qualitative content models-regardless of the frequency of occurrence of each type. This approach made it possible to implement the content of the analyzed document into a social context and to comprehend it as a manifestation of social life. Before examining the established data, categories of analysis were determined-fundamental concepts and semantic units-available in the text and corresponding to those definitions and their empirical indicators recorded in the research program.

4. Utilization and application of land use right in Nigeria

Land use right however was not defined under the Act, but some authors²⁴and judicial decisions²⁵ have linked it to a lease.

Land use right was defined by Justice I. A. Umezululike,²⁶ as the right to use and occupy land in accordance with the terms and tenure set forth by the state within the provisions of the Act. Land use right is perceived as a right to possess or use a land subject to the stipulations of the Land Use Act. More so, the Land Use Act conferred government with powers and control over land acquisition in Nigeria.²⁷

²⁴ T O Elias, *Nigerian Land Law and Custom* Sweet& Maxwell London, (1971) p. 284; M O Onwuamaegbu, *Nigerian Sweet& Maxwell*, London, (1966) p. 216.

²⁵ *Director of Lands v Sohan*, (1952) 1 T L R 631; *Henvinchsorf v Dodd* (1960) E A R 631.

²⁶ I A Umezululike, *The Land use Act More Than Two Decades After And Problems of Adaptive strategies of Implementation*, Snapp Press Ltd Enugu, (2004) 45.

²⁷ 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

In *Ofodile v Anambra State*²⁸ transfer of land use right was defined as the transfer of the right by the holder to another person or creation of interest in an estate for the benefit of another person. In other words, transfer of land use right can be defined as the power of an owner of property (e.g. land) to voluntarily transfer or dispose of his interest in the property to another. Consent as defined by the Black's Law Dictionary is a concurrence of wills; it is an agreement, approval or permission.²⁹

Governor's consent has its philosophical basis in the concept of ownership of land.³⁰ Ownership is of both legal and social interests hence, the courts utilized the idea in such a way as to give effect to views of changing individuals and social interests.

Transfer of land use right is a voluntary transfer of interest or right of occupancy in the property to another. Thus, generally the easiest identifiable form of transfer of land use right is parting with possession where a new occupier takes over the land as its new owner. Hence, transfer like mortgage, lease, sublease and sub-under-lease are regarded as temporary transfer while transfer such as sale, assignment, gift, are regarded as permanent transfer of land use right.

A. Categories and Transfer of Land Use Right in Nigeria

The Land Use Act provides a framework of national policy in Nigeria and enables the government to control the use of which the land can be put in all parts of the country.

To make the above policy of nationalizing land effective, the land use Act provides for "Land Use Right"³¹ which gives the holder a mere right of possession and not ownership.³²

Hence, two types of occupancies (Land Use Right) are provided for namely; Statutory Right of Occupancy (SRO) and Customary Rights of Occupancy (CRO). However, the Act stipulates that those rights granted to holders can only be transferred when governor's consent is first had and obtained.

Associated land use rights introduced by the Act are, (i) Statutory Land Use Right and (ii) Customary Land Use Right

However, the above two types are classified into four, namely:

- (i) Statutory Land Use Right expressly granted by the Governor.³³

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

²⁸ (2001) 1 NWLR (Pt. 699) p. 164.

²⁹ H C M A Black , Black Law Dictionary (6th ed. St Paul Trina West Publishing Co USA 1990.

³⁰ I O Smith, supra at p 199; See also section.22 of the Land Use Act.

³¹ A Taiwo, supra at p. 208.

³² Ibid, at Pp. 210, 211

³³ Section 5(a) of the Land use Act cap L5 L.F.N 2004; see also *Dabo v Abdullahi* (2005) 2 S C (Pt II) 75.

- (ii) Statutory Land Use Right deemed granted by the Governor.³⁴
- (iii) Customary Land Use Right expressly granted by Local Government.³⁵
- (iv) Customary Land Use Right deemed granted by the Local Government.³⁶

5. Framework on Land Use Right in Nigeria

The legal and institutional framework that regulates the transfer of land use rights includes laws, regulations, standards, customary norms, and administrative procedures. These frameworks aim to: Protect land rights of individuals, Define the rights and responsibilities of institutions, Ensure the rule of law is applied when land rights are extinguished and Adjudicate in cases of conflict.

A. Legal Framework

Generally, the easiest identifiable form of transfer of land is parting with possession where a new occupier takes over the land as its new owner. Hence, transfer like mortgage, lease, sublease and sub under lease are regarded as temporary transfer of the land use right while transfer such as sale, assignment, gift are regarded as permanent transfer of the land use right.³⁷

It is however worth noting that by the provisions of 21 and 22 put together with the effect of Section 26 of the Land Use Act, any transfer of land interest to any person without the consent of the Governor or the Local Government as the case may be is null and void.³⁸

At this stage, there is need to analyse transfer of land under the Nigerian law. This will lead us to briefly examine transfer of land under customary law, transfer of land under other laws, under statutory laws and transfer of land under the Land Use Act.

I. Nigeria Coal Authority Act, Cap N95, Laws of the Federation of Nigeria, 2004

The Nigerian Coal Mining Act³⁹, prescribes for seeking of the consent of minister in charge of a department when dealing with an authority that is transferring its property⁴⁰. It is important to examine the legislation setting it up to see whether consent is a requirement and to apply for it and obtain consent. Hence, the Nigerian Coal Authority Act⁴¹ provides in Section 12(4) that “corporations shall not transfer, demise, mortgage or charge any land vested in the corporation without the prior approval of the minister”.

³⁴ Ibid, Section 34.

³⁵ Ibid, Section 6.

³⁶ Ibid, Section 36.

³⁷ H. Z. Babaji ., Alienation of Right of Occupancy in Developing Economy, supra, p.44.

³⁸ See Section 20 (1) (a) and (b) of the Act.

³⁹ Nigeria Coal Authority Act Cap N95, Laws of the Federation of Nigeria 2004.

⁴⁰ Ibid.

⁴¹ Ibid.

Thus, in the case of *Rockonoh Property Co. Ltd v. NITEL Plc*⁴², the court held that “it must not be accepted, the absence of the necessary ministerial approval or consent is a serious defect which affects the title sought to be conferred by the relevant instrument.

II. Law of Lagos State, Cap L57, 2003

Thus, in Lagos State for example, the Land Development Law⁴³ provides that “the sale of any land which the prescribed authority has directed to be reserved for roads development shall be null and void.”⁴⁴

III. Lagos Town Planning Ordinance 1928 (1988 as Amended)

Town planning laws and regulations may restrict transfer of certain lands where the purpose which they are intended to be used are contrary to the purpose of town planning laws⁴⁵. For instance, certain areas of a state may be designated for commercial purposes and industrial use. For example sale of land for residential purpose is not permissible. Similarly, the need for public utilities and infrastructure may restrict the transfer or alienation of interest in land in Nigeria.⁴⁶

IV. Property and Conveyancing Law 1959

The Property and Conveyancing Law (PCL) of 1959 is a law that governs property law practice in Nigeria. It applies to the following states; Ekiti, Ondo, Oyo, Osun, Ogun, Edo, and Delta.

The PCL’s most important provision is that transfer of land use right cannot be enforced unless there is a written note or memorandum that contains the terms of the sale and is signed. PCL states that,⁴⁷ no action can be taken on a contract for the sale of land unless the agreement or a memorandum is in writing and signed by the party being charged. A memorandum is a piece of evidence that shows a transaction has taken place or will take place, and that a legal title or right will be conferred on the land.

Property law regulates the relationship between people and property and provides a foundation for the acquisition, enjoyment, and disposal of property

⁴² (2011) FWLR (Pt67) p 885 @ 910 (per Uwaifo JSC).

⁴³ Cap L. 57 Law of Lagos State, 2003.

⁴⁴ Ibid Section 6, See also sections 8,9,16 & 21 Urban and Regional Planning Board Law, Cap L52 laws of Lagos State 2003.

⁴⁵ See Lagos Town Planning Ordinance 1928 (1988as amended).

⁴⁶ Ibid.

⁴⁷ Sec 67 property and conveyancing law 1959.

V. Constitution of the Federal Republic of Nigeria (CFRN), 1999 as Amended

The constitution of the FRN 1999 is the grundnorm and all laws in Nigeria derive their validity from the Constitution⁴⁸. The constitution is supreme and binding on all authorities and persons in Nigeria⁴⁹. Any law that is in conflict with the constitution is void to the extent of its inconsistency⁵⁰. According to Akande, all laws take their hierarchy from the constitution and all laws that contradict its provision shall be void.

All the laws on land Administration in Nigeria are therefore subject to the constitution, where ever a law contradicts the constitution, it shall to the extent of its inconsistency be void. The courts have demonstrated the supremacy of the constitution in respect of section 47(2) of the Land Use Act which states that no court has the power to entertain any matter as to the adequacy or otherwise of compensation as being contrary to section 4(8) of the 1999 Constitution that prohibit the National Assembly or the State House of Assembly from enacting any law, which ousts or purports to oust the jurisdiction of the Court or judicial Tribunal established by law.

A major provision of the constitution that deals directly with land matters is section 43 which states the right of every Nigerian to own immovable property in any part of Nigeria. This provision was probably inserted into the constitution to address the problem of the principle of indignity which requires people to identify themselves with an area or community before they will be able to have any benefit from the area. Though the Land Use Act gave the Governors the power to allot land, yet non indigenes find it difficult to get land in some states.

The constitution has further provided that no interest in immovable property shall be taken possession of compulsorily except in a manner prescribed by law. By this provision, the constitution has not ruled out the legality of compulsory acquisition/revocation of land by the government however, it requires that due process must be followed in doing that.

The constitution has further vested the entire property in and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria in the Government of the federation.

Furthermore, section 315(5) (d) of the Constitution, expressly mentioned the Land Use Act as recognized by the Constitution.

⁴⁸ Obilade, *The Nigerian Legal System* (Spectrum Books Limited, 2001) 64.

⁴⁹ Section 1(1) Constitution of the Federal Republic of Nigeria (CFRN), 1999 as Amended.

⁵⁰ Section 1 Constitution of the Federal Republic of Nigeria (CFRN), 1999 as Amended.

This constitutional provisions on land touch directly on land matter, a cursory look at Parts II and IV of the constitution on Fundamental objectives and Directive Principle of state Policy and fundamental Human Rights provisions respectively can be linked to issues of right of land owners for example freedom of movement, freedom of Assembly etc.

Right to land is in recent times identified as part of the second generation rights known as the Economic and Cultural rights. Under the Nigerian constitution they are not justified, it was inserted into the constitution to drive home the need to stress their importance

VI. Land Use Act (LUA) 1978

Land Use Act No. 6 of 1978 was promulgated into law with effect from 29th March, 1978 as the nation's land policy document. Since then, it has remained so in the country till date.

To all intents and purposes, the Act regulates the ownership, transfer, acquisition, administration and management of land within the Federal Republic of Nigeria. Section 1 of the Land Use Act vests all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. Section 5(1) of the Act empowers the Governor of a state to grant statutory land use right to any person for all purposes in respect of land, whether or not in an urban area and issue a certificate of occupancy in evidence of such land use right in accordance with the provisions of Section 9(1) of the Act.

Also, Section 5(2) of the Act provides that "Upon the grant of a statutory right of occupancy under the provisions of sub section (1) of this section, all existing rights to the use and transfer of the land which is the subject of the statutory land use right shall be extinguished".

These provisions show the extent to which the land Use Act 1978 has redefined the framework on land administration in Nigeria

VII. The Company and Allied Matters Act (CAMA) 2020 of Nigeria

Where the land is owned by a company, the resolution of the members or the directors of the company is necessary for the sale of the interests in the land. Furthermore, the newly passed Companies and Allied Matters Act 2020 provides that a major asset transaction must be approved by members of the Company at a general meeting.

A transaction is a major asset transaction where it involves a purchase or sale or other transfer outside the usual course of the company's business of the company's property or other rights the value of which, on the date of the company's decision to complete the transaction, is 50%

or more of the book value of the company's assets based on the company's most recently compiled balance sheet.

A liquidator duly appointed for a company in liquidation, must give consent to any sale.

All named executors or administrators of an estate of a deceased and upon grant of letters of probate by the High Court must give consent for the transfer transaction to be valid.

Generally, where transfer of the interests in land is subject to the consent of the overlord or head lessor with the right of reversion, any transfer of the interests or any portion of same must be with the consent as agreed in the agreement for the property

VIII. Statute of Fraud Act 1677

The Statute of Frauds of 1677 required that the transfer of most land interests be in writing and signed to prevent fraud. This included agreements for the sale of land, declarations of trusts, and assignments of trusts. The statute was intended to prevent fraudulent practices that were often supported by perjury.

The Statute of Frauds is mostly repealed today, but section 4, which is about guarantors, remains in effect. The statute had a significant influence on property law and is still in effect in some form in all Anglo American jurisdictions.

IX. Transfer of Land Use Right under Customary Law in Nigeria

The history of land transfer can be traced back to the customary land tenure system, as it was not common in the past to transfer land. Land was regarded as being held in trust by its current owners for the benefit of future generations⁵¹. This concept of non-transferable was expressed by a Chief from Ijebu Ode, who stated, "I conceive that land belongs to a vast family, of which many are living, and countless members are yet unborn"⁵². Similarly, Elias writes, "There is perhaps no other principle more fundamental to indigenous land tenure systems across Nigeria than the theory of non-transferable". As a result, native law and custom do not recognize the sale of land, and this is widely documented in the literature.⁵³ This principle of indigenous land tenure has been acknowledged judicially in the case of *Lewis v Bankole*,⁵⁴ Osborne C.J. declared; "The idea of transfer of land was undoubtedly foreign to native ideas in the olden days". From the foregoing observations, it is not clear whether what is meant, is that transfer was forbidden by positive rule of customary law or whether it was merely not the

⁵¹ I. O. Smith, *The Land Use Act Twenty Years After* University of Lagos Journal of Private and Property Law University of Lagos Press, Lagos (2003) p 200.

⁵² He said this before the lands committee.

⁵³ Coker Family, *Property among Yorubas* Sweets and Maxwell London (1966) p 40.

⁵⁴ (1904) 1 NWLR p 102

practice in earlier times.⁵⁵ However, it is a well-known fact that under customary law, gift of land to closed relations and friends is common. In addition to that, transfer of land may take the form of loan or borrowing, pledge and recently sale. So even though the above observations cannot be a justification for the origin of transfer in Nigeria, yet the consent principle has been the law and practice in transfer of family land.

B. Institutional Framework on Transfer of Land Use Right

There are governmental institutions empowered to regulate transfer of land use right in Nigeria, and they include the following:

i. State Governors

They have the power to allocate and revoke land rights (Statutory Right of Occupancy). Any transfer of land must be approved by the state governor through a Certificate of Occupancy.

ii. Local Government Land Allocation Committee

Local governments also have committees to manage land matters within their jurisdiction, though subject to state government oversight. They oversee customary land allocations, especially in rural areas.

iii. Federal and State Ministries of Land and Housing

Every state government has a ministry responsible for land administration, policy implementation, urban planning and processing applications for land acquisition and transfer.

iv. Surveyor General's Office

Responsible for land surveys, mapping, and boundary delineation

v. Customary Authorities (Chiefs, Obi's, Oba's, Emirs, and Village Heads)

Play a role in communal land allocation based on traditional practices and while the Land Use Act is the primary legal framework, customary land ownership practices still exist in some regions, though they must generally comply with the Act's provisions.

vi. Courts

Disputes regarding land ownership and transfer are adjudicated by the courts.

6. Challenges to the Transfer of Land Use Right in Nigeria

There are varied challenges identified here. They include legal and institutional challenges.

⁵⁵I O Smith, *The Land Use Act Twenty Years After* Supra at p 200.

A. Legal aspect to the challenge

The Land Use Act, along with other legislation, imposes certain restrictions on the transfer of land. These are outlined as follows:

- (i) Exceptions to the Consent Requirement: Section 22 of the Act stipulates that any transfer of a Land Use Right without first obtaining the Governor's consent is null and void. This serves as the general rule, with specific exceptions outlined in paragraphs (a)-(c) of the same section:
 - (a) The Governor's consent is not needed for the creation of a legal mortgage over a statutory land use right in favour of someone who already holds an equitable mortgage over that same land use right provided the Governor's consent was obtained for the creation of the equitable mortgage. However, this provision creates confusion, as it exempts equitable mortgages from the consent requirement, while Section 51 of the Act defines "mortgage" to include both legal and equitable mortgages. This contradiction often leads to conflicting court ruling⁵⁶.
 - (b) The Governor's consent is also not required for the re-conveyance or release by a mortgagee to a holder or occupier of a statutory land use right that the holder or occupier had previously mortgaged to the mortgagee with the Governor's consent.
- (ii) The Governor of a State cannot grant a statutory land use right to a person under the age of twenty one (21) years.⁵⁷ This provision also has an exception that where a guardian or trustee for a person under the aforementioned age has been duly appointed for such purpose, the Governor may grant or consent to the transfer of land use right to such guardian or trustee on behalf of such person under age.⁵⁸ Moreover, the proviso goes further to stipulate that a person under the age of 21 years upon whom a statutory land use right devolves on the death of the holder shall have the liabilities and obligations under and in respect of his land use right as if he were of full age notwithstanding the fact that no guardian or trustee has been appointed for him.⁵⁹ However, it is our humble view that this restriction maintains an old Common Law position, in that our legal system has since

⁵⁶ As in *Okuneye v FBN PLC* (supra), where the Supreme Court without considering the comprehensive definition of mortgage under section 51 of the Act (which includes equitable mortgage) decided that consent of the Governor is not required in equitable mortgage.

⁵⁷ Section 7 of the Land Use Act.

⁵⁸ *Ibid.*, at Section 7(a).

⁵⁹ *Ibid.*, at Section 7(b).

provided legal capacity to be 18 years. Thus, contractual capacity, capacity to vote is 18 years.⁶⁰

- (iii) A person who is not a Nigerian citizen cannot be granted land use right, nor can land use right be transferred to him, except with the approval of the National Council of States⁶¹. In our humble view that transfer of land use right in Nigeria creates so many problems ranging from problem with governor's consent or local government as the case may, consent of principal members of a family in case of family or communal land and consent of the minister for mining purpose. However, these problems can be minimized if consent provision on the instances is either deleted or amended. This will make land transaction simple and interesting.

B. Institutional challenge

These institutions empowered to regulate transfer of land use right face several drawbacks including the following:

- i. Bureaucratic delays in obtaining land titles and Governor's consent.
- ii. Corruption and inefficiency in land registries.
- iii. Conflicts between statutory and customary land tenure systems, leading to disputes.
- iv. Insecurity of tenure in informal settlements due to lack of documentation.

7. Conclusion

It has been demonstrated that globalisation, more particularly economic globalisation as well as the ever expanding frontiers of trade and commerce, legal improvements aimed at accommodating the intrinsic but changing nature of human transactions, and coupled with the crystalized heuristic changes both in information and telecommunication regimes has greatly affected the regulations of land use rights in Nigeria. It is agreed that transfer of land use right has been an essential desideratum in urban planning, real estate development, and environmental management. The need to harvest the benefits above, has led to increasing development as well as regulation of the transfer of land use right in order to harvest further economic development.⁶²

⁶⁰ Section 1(b), Electoral (Amendment) Act (No.2), 2011.

⁶¹ See Section 46(1) of the Land Use Act.

⁶² A Taiwo, *The Nigerian Land Law*, Ababa Press Ltd Ibadan (2011) 201

Management and regulation of land use right has been at the core of national development and urban planning. Nigeria, continue to retain a huge population of 200 million persons, of which large number of persons have been living in urban areas, apparently due to the offer of choice of white collar jobs as well as increasing demand for artisans in servicing the population.

It is maintained that the improper and weak regulation of land use right, has greatly affected the socio-cultural regime of the society. The government has been paying great attention to management and regulation of land through series of legislations and regulations, in post-independence Nigeria. By no stretch of thinking, these frameworks has operated in achieving maximum use and regulation of land space through granting access to use of land.



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