

# Legal and Regulatory Requirements for the Compulsory Acquisition of Land in Nigeria

April 20, 2016.  
Land Law and Tenancy



Oghenekevwe Odima<sup>1</sup>

---

Every citizen of Nigeria is empowered to acquire and own immovable property anywhere in Nigeria.<sup>2</sup> However, this right to own immovable property like every other right is not absolute but subject to certain qualifications. All land comprised in the territory of each state in Nigeria are vested in the governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians.<sup>3</sup> The right of every Nigerian to own land in any part of the country is therefore subject to the interests of the Governor and it shall be unlawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise without the consent of the Governor first had and obtained.<sup>4</sup> For every transaction creating an interest in land, the consent of the Governor must be first had and obtained.

The Governor may also revoke a right of occupancy for overriding public interest.<sup>5</sup> ***What then can be classified as overriding public interest?*** The answer to this question can be viewed from two perspectives namely, in the case of a *statutory right of occupancy* or a *customary right of occupancy*. Overriding public interest in the case of a statutory right of occupancy means the requirement of the land by the Government of the State or by a Local Government in the State. In either case, for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; the requirement of the land for farming purposes or for the laying of oil pipelines

---

<sup>1</sup> LL.B. (DELSU), BL (Nigeria). Associate at S. P. A. Ajibade & Co., Lagos Office.

<sup>2</sup> S. 43 1999 Constitution of the Federal republic of Nigeria (as amended)

<sup>3</sup> S. 1 Land Use Act 1978 Cap. L5 Laws of the Federation of Nigeria 2004

<sup>4</sup> S. 22 Land Use Act

<sup>5</sup> S. 28

or for any purpose connected therewith.<sup>6</sup> On the other hand, overriding public interest in the case of a customary right of occupancy means the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; the requirement of the land for mining purposes or for the laying of oil pipelines or for any related purpose. The major difference between a statutory right of occupancy and a customary right of occupancy is that the former relates to lands in urban areas while the latter relates to lands in rural areas. Other grounds for compulsory acquisition include the requirement of the land for the extraction of building materials and the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sub-lease, bequest or otherwise of the right of occupancy without the requisite consent or approval.<sup>7</sup> The acquiring authority is required to state one or a combination of the public purposes for which the Land was being acquired in his notice to the holder of a right of occupancy to enable the holder or occupier to challenge the acquisition. In *Olatunji v. Military Governor of Oyo State*<sup>8</sup> the Court of Appeal, per Salami JCA (as he then was) held as follows:

The Appellant can legitimately protest the acquisition if the purpose for which the land was being acquired was not within the confines of definition of public purpose as defined in Section 50 of the Act. The acquiring authority failed to state the public purpose for which the property was acquired. He kept it up his sleeve. In this connection Waddington, J., said in the case of *Chief Commissioner, Eastern province v. Ononye* 17 NLR 142 at 143 thus- “the notice merely states “for public purposes” and I find it difficult to understand why the particular public purpose is not stated. When the matter comes into court it has to be admitted that there is no public purpose involved at all; and the impression is liable to be conveyed, no doubt erroneously, that there was something ulterior in the failure to make the purpose public.

The Court went further to hold that the holder of land compulsorily acquired by government is entitled to know the ground(s) for the government’s acquisition of his interest in the land. The learned justice of the Court of Appeal further explains that:

The appellant is not entitled to speculate or fish for the ground or grounds for acquiring his interest in the property in dispute. The best he would do in the circumstance is to lie patiently in waiting until the acquiring authority

---

<sup>6</sup> S. 28(2) and S. 51

<sup>7</sup> S. 28(3) Land Use Act

<sup>8</sup> (1994) LPELR-14116

manifest[s] its true intention. Before manifestation of the acquiring authority's intention he is helpless not only himself would be helpless the court to which he has constitutional access to would equally be left in complete helplessness.<sup>9</sup>

Also, a land compulsorily acquired for public purpose can be vitiated where it was subsequently diverted to serve private need. If a property is ostensibly acquired for public purpose and it is subsequently discovered that it has directly or indirectly been diverted to serve private needs, the acquisition can be vitiated. The acquiring authority cannot 'rob Peter to pay Paul' by divesting one citizen of his interest in a property only to vest same in another. If the acquiring authority can no longer find a public purpose for the land so acquired the only avenue open to it is to de-acquire it and let the same revert to the person in whom it was already vested.<sup>10</sup>

Aside from overriding public interest, the Governor may revoke a right of occupancy on the ground of a breach of any of the provisions which is contained in a certificate of occupancy; a breach of any term contained in the certificate of occupancy or in any special contract made and a refusal or neglect to accept payment for a certificate which was issued in evidence of a right of occupancy but has been cancelled by the Governor.<sup>11</sup> For an acquisition to be valid certain preliminary steps must be taken.

A notice must be issued by the Governor. The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder. Where such notice whether by or on behalf of the president declares a land to be required by the Government for public purposes the Governor shall revoke the right of occupancy. Upon receipt of the notice, the title of the holder of the right of occupancy shall be extinguished immediately, or on such later date as may be stated in the notice. Failure to serve notice in the manner prescribed by the Land Use Act<sup>12</sup> would be tantamount to a substantial non-compliance which renders the acquisition bad and the acquiring authority cannot be vested with any interest in the land until the subsisting interest is revoked. The reason for this outcome is that there can be no concurrent possession by two parties claiming adversely.<sup>13</sup> Personal Service is also *sine qua non* of revocation of interest in land and cannot be dispensed with because it is after the

---

<sup>9</sup> See *Olatunji v. Military Governor of Oyo State* (Supra) at p. 31, paras. B-G

<sup>10</sup> See *A. O. Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157; *Chief A. O. Lawson v. Chief A. A. Ajibulu* (1991) 6 NWLR (Pt. 195) 44; *Chief Ereku v. The Military Governor, Mid-Western State of Nigeria* (1974) 1 All NLR (Pt. 2) 163, *Ajao & Anor. v. Sole Administrator for Ibadan City Council* (1971) 1 NMLR 74

<sup>11</sup> S. 28(5) Land Use Act

<sup>12</sup> Sections 28 and 44

<sup>13</sup> See *Olatunji v. Military Governor of Oyo State* (Supra) at p.25

service in the manner prescribed in the legislation that the right of holder of the right of occupancy is revoked. The requirement of publication of notice of revocation in the gazette constitutes a notice to the whole world and is not a substitute for the personal service enjoined by the legislation. In *Olatunji v. Military Governor of Oyo State*<sup>14</sup> for instance, the court stated as follows:

A very careful reading of sections 28 and 44 of the Land Use Act would disclose that publication in Gazette and local newspapers are not mode or manner of effecting service under Land Use Act. It does appear to me that omission of publication in the Gazette and newspaper is to further emphasise to acquiring authorities that the legislature has in mind personal service only as it left the acquiring authority with no option. Publication in the Gazette or newspaper is a mere grafting of a manner of serving notice prescribed under section 9(3) of Public Land Acquisition Law on the provisions of section 44 of the Land Use Act. For a notice to be valid it has to be served in accordance with the provisions of the Land Use Act.<sup>15</sup>

In light of the foregoing, for there to be a valid acquisition notice of revocation of the right of occupancy must be served on the holder by personal service. The Act provides for situations where it is impracticable after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, by addressing it to him by the description of "holder" or "occupier" of the premises to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.<sup>16</sup>

Compensation is an integral part of the process of compulsory acquisition of land in Nigeria. Its importance cannot be over emphasized as failure to compensate the occupier renders the acquisition a nullity. The prompt payment of compensation is provided for both statutorily<sup>17</sup> and by judicial pronouncements. Where a right of occupancy has been revoked in compliance with existing law, the occupier or holder is entitled to be paid compensation promptly and the law gives to any person claiming such compensation a right of access to a court or tribunal or body having jurisdiction for the determination of his interest in the property and the amount of compensation payable.

---

<sup>14</sup> (1994) LPELR-14116

<sup>15</sup> Ibid at p. 24-25, paras. D-A

<sup>16</sup> S. 44(e) Land Use Act

<sup>17</sup> See generally S. 44 1999 Constitution of the Federal Republic of Nigeria (as amended) and S. 29 Land Use Act 1978, Cap. L5 Laws of the Federation of Nigeria 2004.

In *National Universities Commission v. Oluwo*,<sup>18</sup> the Court of Appeal held that where land has been compulsorily acquired the person whose land has been so compulsorily acquired is entitled to a reasonable compensation. The right to own property by an individual is well entrenched in the constitution of the Federal Republic of Nigeria and it carries with it, the right to dispose of the said property. The government with all its might cannot acquire the land of an individual without paying adequate compensation to the dispossessed citizen.<sup>19</sup>

Government has a duty to comply with the procedure for acquisition of land. This duty was emphasized by the Supreme Court of Nigeria in *Goldmark (Nig.) Ltd. v. Ibafo Co. Ltd*<sup>20</sup> in the following words:

The court has always emphasized that government has the right to compulsorily acquire property on payment of compensation. There is no argument about such constitutional power. There are statutes which provide for the procedure of acquiring property by the government. Government is expected to comply with those statutes which it has enacted. Where government disobeys its own statute by not complying with the laid down procedure for acquisition of property, it is the duty of the courts to intervene between the government and the private citizen.

Flowing from the above, failure to comply with the legal requirements for revocation of existing rights to land renders a subsequent certificate of occupancy on such land a nullity on the age long principle of *nemo dat quod non habet*.<sup>21</sup> The existence of a certificate of occupancy is merely prima facie evidence of title to land it covers and does not validate a spurious or fraudulent instrument of title or a transfer or grant which in law is patently invalid or ineffective. The mere issuance of a certificate of occupancy does not and cannot confer title in respect of land in a person where no such title either existed or was available to be transferred to anyone.<sup>22</sup> Therefore, for there to be a valid acquisition of land by government, there must be notice of revocation of the existing title followed by payment of the statutorily prescribed compensation.

---

<sup>18</sup> [2001] 3 NWLR (Pt. 699) at p. 90

<sup>19</sup> See *Elf Pet. (Nig.) Ltd. v. Umah* [2007] 1 NWLR (Pt. 1014) at p. 44; *Kukoyi v. Aina* [1999] 10 NWLR (Pt. 624) at p. 633 and *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) at p. 745

<sup>20</sup> [2012] 10 NWLR (Pt. 1308) p.291

<sup>21</sup> "No one gives what he does not have"

<sup>22</sup> *Mulima v. Usman* [2014] 16 NWLR (Pt. 1432) p. 160

---

*For further information on this article and area of law please contact Oghenekevwe Odima at S. P. A. Ajibade & Co. by telephone (+234 1 460 5091), fax (+234 1 4605092) mobile (+234 803.789.1107) or email ([oodima@spajibade.com](mailto:oodima@spajibade.com))*

**[www.spajibade.com](http://www.spajibade.com)**