

An Analysis of the Power of Revocation of Right of Occupancy under the Land Use Act, 1978

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Abstract

Section 28 of the Land Use Act, 1978 has been described as the part of the Act which frightens many land users. Although the section has been entrenched in the Act to make it easy for government to acquire land for public purpose, it is arbitrarily used to revoke right of occupancy. Some of the problems this research deals with are: Is the right holder entitled to be heard before his right of occupancy can be revoked? Does the Local Government have power to revoke customary right of occupancy under the Act? In this paper, the writer critically examined, and with masterly dexterity, the questions identified above. With the aid of judicial authorities, and statutes, the writer thus has shown that a right holder is entitled to be heard before his right can be revoked. More so, the Local Government has no power to revoke right of occupancy for overriding public interest; it can only revoke for public purpose. It is therefore recommended that section 28 of the Act be amended to remove the ambiguities contained therein, and the revoking authorities should always afford the right holder fair hearing before his right of occupancy is revoked.

Keywords: Power of Revocation, Right of Occupancy, Land Use Act.

1. Introduction

Land has been a source of sustenance and wealth from time immemorial. A family or community with large tracts of land was considered very rich. The importance of land, and the market value it suddenly attracted in the early 1970s, made acquisition of land by the government for economic development difficult.¹ Landowners who refused to deal directly with intended buyers prefer to sell through land speculators since that yielded higher profits. Thus, land acquisition by government was perceived to be unjust interference. However, whenever the owners of land which government intended to acquire eventually consented, the price put on such land was exorbitant.² The result was that acquisition of land was difficult, and sometimes impossible for government. There was therefore an urgent need for change in land policies to make them compatible with, and supportive of government, and usher in the desired development as contained in the Land Use Act.³ One of the objectives of the Act is to ease access to land and the acquisition of land by the government where it is required for public purpose.

The history of the power of revocation under the Act can be traced to the colonial days where the report of the Northern Nigeria Lands Committee of 1908 was adopted by the Northern Nigeria colonial government. The report recommended, inter alia that the colonial government should take over control and management of land in Northern Nigeria from the traditional title rulers, and that the government should assume responsibility for making grants for the use and enjoyment of land in Northern Nigeria. These recommendations were promulgated into law by the Land and Native Right Proclamation of 1910. This was replaced by the Land and Native Rights Ordinance No. 1 of 1916

¹ S.M. Orji, 'The Nigerian Land Use Act in Historical Perspective' in, S M G Kanam and A M Madaki (eds), *Contemporary Issues in Nigerian Law: Legal Essays in Honour of Hon. Justice Umaru Faruk Abdullahi* (Department of Private Law Ahmadu Bello University Zaria 2006), 492.

² Ibid 493.

³ L.U.A 1978 cap L5 LFN 2004 (hereinafter referred to as 'the Act')

(amended in 1918) which was re-enacted by the Land Tenure Law of 1962.⁴ The Minister was given power under the Land Tenure Law to revoke a right of occupancy for good cause under the Law.⁵ Section 28 of the Act was therefore modeled on the relevant provisions of Land Tenure Law of 1962 which grant the government the power of revocation.

The challenge of obtaining land for infrastructural development and projects compelled the government into enacting the Act so that acquisition of land for public purpose would be devoid of unprogressive tendencies which hitherto characterized government acquisition of land. Consequently, all lands in the state have been vested on the Governor in trust with individuals having only right of occupancy (customary or statutory).⁶ Thus, while the Act tries to guarantee access to land by Nigerians, it also makes provisions such as section 28 of the Act to ensure that the power of the government to acquire land in public interest and for public purpose is not diminished.

However, the exercise of the power of revocation of an existing right of occupancy under the Act has generated controversies which have militated against the realization of the objectives of the Act. According to Prof. Yakubu, “this is the part of the law which frightens many land users”.⁷ One of the factors responsible for the controversies over section 28 is the ambiguity and contradiction in the section. The problem of revocation under the Act is always centered on the procedure of revocation. Thus, is the holder of a right of occupancy entitled to be heard before his right is revoked? What is the effect of service of notice of revocation on third parties’ interest? Does the Local Government have power to revoke a customary right of occupancy? These questions form the problems of this article. The objective of this article is therefore to critically examine the provisions of section 28 of the Act by highlighting the areas of ambiguities and inconsistencies therein and proffer answers to the questions identified above.

2. Revocation of Right of Occupancy under the Land Use Act

It is necessary to define the term ‘revocation’ as used under section 28 of the Act although the term has not been defined by the Act. The Black’s Law Dictionary defined ‘revocation’ as the “annulment, cancellation or reversal, usually of an act or power”.⁸ Applying the above definition to Section 28 of the Act, it is submitted that revocation is the annulment or cancellation of a right of occupancy of an individual by the Governor or any officer duly authorized on the ground of overriding public interest.

It has been contended that the Act provides for two forms of revocation. That specified by section 28 of the Act and the type classified as ‘statutory revocation’ under section 5(2) of the Act. The difference is that whereas the former recognizes ‘overriding public interest’ as ground for revocation, the latter takes place where the Governor has been induced by error or fraud to grant a statutory right of occupancy, and the proceeds to extinguish the earlier grant which was a nullity in the first place with another grant.⁹ This article deals with revocation under Section 28(1) which vests in the Governor the power to revoke a right of occupancy for overriding public interest. The power of revocation may be exercised in respect of either statutory or customary right of occupancy, whether granted or deemed granted by the government.¹⁰ Overriding public interest in both statutory and customary right of occupancy means:¹¹

Where a holder of a right of occupancy alienates by assignment, mortgage, transfer of possession, sub-lease or otherwise of any right of occupancy or part thereof without the consent of the authority that

⁴ B.O Nwabueze, *Nigerian land Law*, (Nwamife Publishers Ltd 1974, 484-485; Femi Okunnu, *Contemporary State Land Matters in Nigeria: The Case of Lagos State*, (Sankore Publishers Ltd 2003), 11-12.

⁵ L.T.L 1962 s.34

⁶ L.U.A 1978, Cap. L5, LFN 2004 s.1.

⁷ M.G. Yakubu, *Notes on the Land Use Act* (Ahmadu Bello University Press, 1986) 37.

⁸ Bryan Garner, *Black’s Law Dictionary* (9th Edn, Thomson Reuters 2009), 1435.

⁹ J.B. Daudu, ‘Judicial Abridgement of the State Governor’s Powers under section 5(2) of the Land Use Act: Activism or Pragmatism’ in, S M G Kanam and A M Madaki (eds), *Contemporary Issues in Nigerian Law: Legal Essays in Honour of Hon. Justice Umaru Faruk Abdullahi* (Department of Private Law Ahmadu Bello University Zaria 2006), 560.

¹⁰ Taiwo Adewale, *The Nigerian Land Law* (Ababa Press Ltd. 2011), 239.

¹¹ LUA 1978, s28 (2) (3); *Adole v Gwar* (2008) 4 SCNJ 1 18.

granted the right of occupancy.

Where the land is required by the Federal, State or Local government of the Federation for public purpose.

Where the land is required for mining purpose or the pipelines or for any purpose connected therewith.

Where the land is required for the extraction of building materials (this applies only to customary right of occupancy).¹²

It can be seen that Section 28(2) (a) of the Act does not include 'sale', an important form of alienation having regards to Sections 22 and 26 of the Act. Was the exclusion of 'sale' in the provision intentional or mere omission? It may be recalled that Section 34(2) of the Land Tenure Law of 1962 which is in pari material with section 28 (2) of the Act mentions 'sale' as the first item in the alienation category. This is how it ought to be because 'sale' is the most regularly invoked measure of alienation in a competitive economy where land is a scarce commodity.¹³

The argument in support of the omission may be justified on three grounds. First, the individual does not own land. Thus, he or she cannot purport to sell what he does not own.¹⁴ Secondly, since the interest of an individual is limited to a right of occupancy, it is only the remaining term of years he can assign or transfer. Thus, to use 'sale' and 'assignment' in the context of section 28 will be merely repetitive. Thirdly, it may be argued that the omission of 'sale' in Section 28(2) (a) is deliberate. It is better to interpret the Act as a whole by reference to other provisions of the Act is to be read alongside with Section 22(a) of the Act which also deals with alienation of statutory right of occupancy. Both Sections 28(2) (a) and 22(a) of the Act do not mention 'sale'. Thus, the omission can be said to be deliberate. Be that as it may, alienation by whatever name including 'sale' without the consent of the government will be a ground of revocation.

However, The Governor must also revoke a right of occupancy where a Notice to that affect has been given by the President or on his behalf. Such notice must clearly state that the land is required for public purpose.¹⁵ Through this provision, the Act has made land acquisition by state government easy, but created problems for the Federal Government. Thus, some state governments have reacted to the mandatory provisions of the section in different ways.¹⁶ While some have been slow in responding to Federal Government's notices served on them in compliance with the Act, others have either refused to honour such notice or have consented to honour them on terms the Federal Government have found difficult to accept.¹⁷

Section 28(4) of the Act contemplates a system of synergy between State Government and Federal Government. Experience however has shown that the requirement of land by the Federal Government is sometimes politicized.¹⁸ One may ask, if the Federal government goes cap in hand to the Governor when it requires land for public purpose, how does the Land Use Act fit into the Exclusive Legislature List of the 1999 constitution?¹⁹

Although the power of revocation can be exercised on the ground of public purpose, Section 28 of the Act has not defined 'public purpose'. However, section 51 defined 'public purpose' to include:

For exclusive Government use or for general public use.

For use by any corporate body directly established by law or by any corporate body registered in which

¹² L.U.A s.28 (3) (2007), 515.

¹³ Niki Tobi, *Nigerian land Law*, (Ahmadu Bello University Press 1987), 88

¹⁴ The Latin Maxim is '*Nemo dat quod non habet*'; meaning, 'You cannot give what you do not have'.

¹⁵ LUA 1978 s.28 (4); J., Achimugu, *Understanding Land Administration and Ownership in FCT and Other Parts of Nigeria*. (2011), 196.

¹⁶ B.A. Ban, 'The Problems of Land Acquisition and Administration in the Public Sector' in, *Olayide Adigun (ed), The Land Use Act Administration and Policy Implication: Proceedings of the Third National Workshop held at the Nigerian Institute of Advanced Legal studies, University of Lagos, April 9-11, 1990 (University of Lagos Press 1991)*, 98.

¹⁷ Ibid.

¹⁸ Abugu Uwakwe, *Land Use and Reform in Nigeria Law and Practice (Immaculate Prints 2012)*, 144.

¹⁹ Olanipekun, Wale, 'Constitutionality of an Unconstitutional Act: The Unconstitutional Entrenchment of the Land Use Act in Nigerian Constitution' in Amos Agbe Utuama (ed), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd. 2016), 166.

the Government owns share, stocks or debentures.

For or in connection with sanitary improvements of any kind.

For obtaining control over land close to railway lines, road of any kind or other public work of convenience.

For obtaining control over land required for development of telecommunications or provision of electricity.

For obtaining control over land required for in connection with planned urban or rural development settlement; economic, industrial or agricultural development and educational and other social services.

When the purpose of revocation is requirement of land by the Local, State or Federal government for public purpose, any of the purposes stated in section 51 of the Act is implied. But the term 'public purpose' is a question of fact, and depends on certain conditions.²⁰

The lists of items constituting 'public purpose' in section 51 were not meant to be exhaustive. The natural implication therefore is that a right of occupancy may be revoked for any other public purpose not specified in section 51 provided that it does not violate the 'ejusdem generis' rule of construction in the sense that the purpose must fall within the class of the public purposes already specified. But the Supreme Court interpretation of the definition of 'public purpose' in *Osho v Foreign Finance Corporation*²¹ is a contrast. The court stated that any other purpose for revocation of a right of occupancy not specified as public purpose cannot be lawful purpose under the Act.²² The attitude of the court was informed by the reasoning that:²³

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 be strictly complied with and strict constructions of the provisions made.

While the purposes specified by section 51 of the Act are wide enough to cover many purposes qualified as public, it cannot provide a justification for the sweeping construction of the definition. It is still debatable whether 'public purpose' is limited to those specified under section 51 of the Act.²⁴ However, a strict interpretation of Section 28 of the Act reveals that neither the Local Government nor the Federal Government has the power of revocation. Thus, there appears to be a conflict between Section 28 and Section 6 of the Act in relation to revocation of customary right of occupancy. Some writers have argued that the power of revocation is also exercisable by the Local Government over lands within its jurisdiction.²⁵ They posited that while the Governor is empowered to revoke Customary right of occupancy, section 6 of the Act appears to vest the same power in the Local Government of the area where the land is situate. Thus, they argued that section 6 is more in line with the general intendment of the Act, particularly section 2(1) (a) under which control and management of land within the meaning of the sub-section is vested in the Local Government.

It is submitted, with respect, that the above view is wrong. First, literal interpretation shows that section 28 of the Act does not give the Local Government power of revocation for overriding public interest under the section. The section empowers the Governor to revoke customary right of occupancy or statutory right of occupancy for overriding public interest. If the draftsman wanted the Local Government to exercise the power of revocation, it would have been expressly stated in section 28 of the Act. More so, section 28 (3) provides for the power of the Governor to revoke for overriding public interest in the case of Customary right of Occupancy. The Governor has been given exclusive power to revoke Customary right of Occupancy under section 28. Secondly, where the Governor (as in Lagos State) has designated all the land in the state as urban area, where or how does the local government exercise power of revocation?

The correct position as far as the power of the Local Government is concerned is that the

²⁰ A.M.D Olong, *Land Law in Nigeria*. (2nd edn, Malthouse Press Ltd 2011), 123.

²¹ (1991) 4 NWLR (pt. 184) 157.

²² Ibid 195.

²³ Ibid 195.

²⁴ I.O Smith, *Practical Approach to the Law of Real Property in Nigeria* (3rd Edn, Ecowatch Publications (Nigeria) Ltd. 2013), 524.

²⁵ M G Yakubu, *Notes on the Land Use Act* (A B U Press 1986), 39-40; M.G.; Niki Tobi, *Nigerian Land Law*. (Ahmadu Bello University Press 1987), 91.

power of revocation vested in the Local Government is restricted to the use of the land for public purpose. Thus, where customary right is to be revoked for overriding public interest, only the Governor has power to revoke same. However, where the overriding public interest also amounts to public purpose, it would appear from the provisions of section 28(3) (a) of the Act that the Governor equally has power to revoke a customary right of Occupancy.²⁶ In any event, section 6(4) of the Act vests the Local Government with exclusive rights to the land so occupied after revocation against all persons except the Governor.²⁷

2.1. Procedure for a Valid Revocation

The conditions for a valid revocation are contained in section 28(6) and (7) of the Act as follows:

Revocation must be by a person who has the power to revoke i.e. the Governor or a public officer duly authorized by the Governor.²⁸

Notice shall be issued stating the purpose of revocation as prescribed by the Act. Any revocation for purposes outside those prescribed by section 28 of the Act cannot be justified, and may be challenged in a court of competent jurisdiction. The Revocation Notice must state details of the ground of revocation so as to enable the holder of the right determine the particular public purpose. Where the revocation is for public purpose, it is not enough to state just that, there is the need to spell out the particular public purpose as stated in section 51 of the Act.²⁹ The question might arise as to whether the statement as to the purposes for which the land is required is to be treated as conclusive. It has been submitted that the governor cannot usurp from the courts the function of answering such questions.³⁰ Thus, it may be argued that a statement in a Notice that the land is required for a particular public purpose is not conclusive. It is a question to be determined by the court.

Notice shall be served on the holder

Notice of revocation is very important. The essence of the Notice was stated in *Horse Estate Ltd v Steiger*³¹ as being 'to give the person whose interest it is sought to forfeit the opportunity of considering his position before an action is brought against him'.³² By virtue of the Notice, the right holder may wish to decide whether to admit the breach, remove it and compensate the Governor, and whether to apply for relief. The Notice must state the particular public purpose for which the land is acquired. The mode of service must comply with the Act, otherwise the Notice will be void. The purpose of notice is to inform the holder thereof of the steps being taken to extinguish his right.³³ Section 44 of the Act provides for the mode of service, and the following constitute good and proper service:

Delivery of Notice to the person to whom it is to be served; or

By leaving it at the usual or last known place of abode of that person; or

By sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or

in the case of an incorporated company or body, Notice is to be served only by delivering it to the Secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid letter addressed to the secretary or Clerk of the company or body at that office; or

if it is not practicable after reasonable enquiry 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, 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.

The rule under the provision is that service of notice of revocation is personal. This is

²⁶ I.O. Smith, *Practical Approach to the Law of Real Property in Nigeria* (3rd Ecowatch Publications (Nigeria) Ltd, 2013), 526.

²⁷ *Ibid.*

²⁸ *Majiyagbe v AG Northern Nigeria* (1957) NNLR 158.

²⁹ *Osho v Foreign Finance Corporation* (Supra) 195 para D-E.

³⁰ G L, Fricke, *Compulsory Acquisition of Land in Australia and Particularly in Victoria* (Law Book Company Ltd 1975), 49

³¹ (1899)2 QB 79 91-92

³² Roger J Smith, *Property Law*, (Pearson Education Limited), 412.

³³ A Adewale, *The Nigerian Land Law* (Ababa press ltd 2011), 239.

particularly prescribed by section 28(6) (7) of the Act. However, substituted service is permitted where after enquiry; the holder is neither available nor ascertained. Therefore where no foundation has been laid for by-passing personal service, any substituted service will be void.³⁴ Non-compliance with the above statutory provisions as to service of Notice of revocation makes it void.³⁵ Thus, a Notice purportedly given by publication in the newspaper or by any other method without following the provision of section 44 of the Act on this is void because that method was not contemplated. Consequently, the revocation is liable to be set aside by a court of competent jurisdiction.

2.2. Effect of Revocation

The Act has stipulated the effect of revocation on right of occupancy under section 28(7) of the Act. It provides that upon the receipt of such notice issued on the holder of a right of occupancy, his title shall be extinguished forthwith or on such later date as may be stated in the Notice. Therefore, does it mean that revocation is automatic upon receipt of the notice of revocation?

According to Niki Tobi, the extinction of the right of occupancy is automatic on the receipt of the Notice of revocation by the holder.³⁶ This position has been re-iterated by the Supreme Court in *Adole v Gwar*³⁷ where the court held that:

Under Section 28(6) And (7) Of The Act, Notice Of Revocation Must Be Given To The holder Of a Vested Right before Such Right Can Be Revoked And The Service of The Notice Must be In Accordance With The Provisions Of Section 44 Of The Act. It is Only Where Such Proper And Adequate Notice Was Given To The Holder As Stated Above That His Right Of Occupancy Shall be Extinguished on The Receipt Of Such Notice.

With respect, the above position is misconceived. A community reading of the provisions of section 28 and 44 of the Act together with sections 36(1) and 43 of the Constitution of the Federal Republic of Nigeria, 1999 will reveal that it is imperative to afford holder of a right of occupancy the right to be heard before revocation. This interpretation is in tandem with the rule that expropriatory statutes which encroach on a person's proprietary rights must be construed strictly against the government but sympathetically in favour of the right holder. In *Provost v Edun*³⁸ the Supreme Court held that:³⁹

It is settled law that expropriatory statutes which encroach on a person's proprietary rights must be construed fortissimo contra preferentes that is strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition.

The requirement for a holder of a certificate of occupancy to be afforded fair hearing before revocation is not expressly provided for in sections 28 and 44 of the Act. However, decided cases have emphasized that the holder of the right is entitled to fair hearing. In *Obikoya & Sons Ltd v Governor of Lagos*,⁴⁰ it was held that it is not correct that it is only when an element of 'fault' is involved under section 28 (2) (a) of the Act that the owner or holder of land is entitled to be heard; the mere taking away of his right is a breach of his constitutional right for which he is entitled to be heard. This conclusion becomes inevitable if the provision of sections 28 and 44 of the Act are considered in the light of section 36 of the 1999 constitution. The implication of the right to be heard is that the Notice of Revocation must contain particulars as would allow the holder to know the ground upon which the revocation is been made. Based on the provisions of sections 28 and 44, as well as the decision of the court in *Obikoya & Sons Ltd v Government of Lagos state*,⁴¹ it appears that the right to fair hearing afforded to a holder of right of occupancy is signified by a Notice of Revocation, and the said notice is served on the holder, then upon receipt of the notice issued on the holder of the right, his

³⁴ A.A Utuama, *Nigerian Law of Real Property*, (Shaneson C.I. Ltd 1989), 144.

³⁵ *Osho v Foreign Finance Corporation* (Supra).

³⁶ Niki Tobi, *Nigerian land Law* (Ahmadu Bello University Press Ltd. 1987), 97.

³⁷ (2008) 4 SCNJ 18.

³⁸ (2004) 2 SCNJ 156.

³⁹ *Ibid* 178

⁴⁰ (1987) 1 NWLR (pt 50) 385.

⁴¹ (1987) 1 NWLR (pt 50) 385.

title shall be deemed to have been extinguished forthwith or on such later date as may be specified.

On the authority of *Provost v. Edun*⁴², it is submitted that whether revocation is for public purpose or due to default/non-compliance with the provisions of the Act, revocation does not automatically extinguish the title. There is need for the holder to be given fair hearing before revocation which extinguishes the holder's title. Otherwise, the law will be seen to be sympathetic to the government which will result in arbitrary exercise of the power of revocation without affording the right holder the opportunity to be heard. A more sympathetic approach is to require that a right holder be given fair hearing before his right will be revoked. In short, the holder should be notified in advance before the actual revocation.

The Supreme Court in the case of *Orianzi v. A.G. Rivers State*⁴³ stressed the need for strict compliance with the provisions of section 28 of the act. In this case, sometime in 1981, the Government of Rivers State offered a property for sale to the appellant who accepted the offer, paid the purchase price, and was put into possession. Later in 1986, the Government of Rivers State appointed a Commission of Inquiry to look into the allocation of plots and abandoned properties between 1st October, 1979 and 31st December, 1982. The Commission recommended that the appellant's property be retained as government quarters. The government accepted the recommendation, and by Legal Notice No 3 of 1986 published in official gazette of Rivers State No 9 Volume 18 to 27th March, 1986 that the appellant's right in the property had been revoked. The property was retained as government quarters for Six months, and was subsequently sold out.

The appellant consequently commenced a suit against the government and the High Court gave judgment, and the appeal was allowed, and the decision of the lower court was set aside. The appellant therefore appealed the Supreme Court. The Supreme Court held that to revoke a right of occupancy for public purpose, the letter and spirit of the law must be adhered to. The court was also emphatic in stating that if such power of revocation is to be exercised, the holder of the right must be notified in advance. The Supreme Court held further that:⁴⁴

The revocation of the right of occupancy is not just a mere executive or administrative act that can be done in secret or any surreptitious manner and later conveyed in official gazette. The title holder is not only entitled to the Notice of the Proposed revocation with the public purpose for the revocation clearly spelt out, he is also entitled to be heard on the proposed revocation of his title.

On the need to strictly comply with requirements of the Act in revocation of right of occupancy, the Supreme Court held that:⁴⁵

By section 28 of the Act, it shall be lawful for the Governor to revoke any right of occupancy for overriding public interest. However, the right of revocation must be exercised in accordance with the provisions of the Act. To revoke a right of occupancy for public purpose, the letter and spirit of the law must be adhered to. The terms of revocation, as provided under sections 28 and 44 of the Land Use Act, must be strictly complied with and strict construction of the provision made. It is not the intendment or intention of the Land Use Act that the Governor shall use his powers to grant land arbitrarily without regard to the existing ownership or holdings granted before the operation of the Act. The Act provides checks and balances which must be observed before making any grant, the conditions under which such grant can be revoked and what follows after such revocation.

It is further submitted that revocation like forfeiture is not automatic. Forfeiture is controlled by Statute which allows the lessee an opportunity to remedy the breach in many cases. Revocation like forfeiture is at the discretion of the appropriate authority, and revocation for some cause is in some respect subject to principles pertaining to the law of forfeiture.⁴⁶ As such, it is not automatic as it can be waived. Thus, the position that the right of occupancy is not extinguished on the receipt of the Notice of Revocation is more fair, just and reasonable. The essence of fair hearing is to afford the right holder opportunity to know the grounds of revocation, and challenge the procedure, if necessary. Therefore, the right holder ought to be notified in advance of the proposed intention of government to

⁴² Supra.

⁴³ (2017) 6 NWLR (Pt. 1561) 224.

⁴⁴ Ibid 296.

⁴⁵ Ibid 272.

⁴⁶ R. W. James, *Nigerian Land Use Act: Policy and Principles* (University of Ife Press ltd 1987), 142.

revoke his or her right of occupancy.

It has been submitted that a right of occupancy is liable to be forfeited upon commission of a breach of any covenant in the certificates of occupancy by the holder, and this is obliquely implied in section 18 of the Act.⁴⁷ Why will the Governor revoke a right of occupancy for failure of the holder to comply with the terms of unknown special contract or even the terms of certificate of occupancy imposed on him without his consent? Onuoha lamented that the provision gives no room for service of Notice of breach and request to rectify the breach before the exercise of the power of revocation, more so that alleged breach.⁴⁸ Although a revocation was not made to further the legitimate ends of government as contained in the notice of revocation, but simply to transfer the acquired land to an individual or group of persons.⁴⁹

However, the revocation of a right of occupancy does not extinguish any debt due to the Government in respect of such right of occupancy.⁵⁰ Therefore, where a right of occupancy is revoked for failure to pay Ground rent, the Government can still recover the amount of Ground rent in arrears. This act will therefore not amount to waiver of the default giving rise to revocation. Thus, revocation does not extinguish the debt due to government; it only extinguishes the right of occupancy.

The effect of revocation on third parties has not been captured by section 28 of the Act. It may be noted that there was such a provision in the original section 34 of the Land Tenure Law which was adopted in section 28 of the Act. But by the Land Tenure Law (Amendment) Edict, 1966, sub-section 7 of section 34 was repealed, and two new sub-sections were enacted. The new sub-section 7 of section 34 provides that revocation of a right of occupancy shall not affect the rights of any mortgagee, sublessee or sub-underlessee to whom the land has been lawfully mortgaged or underlet before the notice of revocation. It does not seem that the draftsman knew of the existence of the Land Tenure Law (Amendment) Edict, 1966.⁵¹ Although the right of occupancy is extinguished upon revocation, it is doubtful whether the reversionary interest of the landowner is over-reached. Prof. Smith stated that where a Certificate of Occupancy is granted to a tenant who is subject to customary tenancy, the overlord retains his right as a reversioner in case the right of occupancy is revoked for any reason, and the overlord may apply for a grant of the Certificate of Occupancy.⁵²

3. Conclusion

The power of revocation therefore serves as a tool for balancing the interest of the right holder to own land, and the interest of government to acquire enough land for infrastructural development. Thus, section 28 of the Act has empowered the Governor to revoke right of occupancy whether statutory or customary where the land is required for the overriding public interest. More so, section 28 has also provided to be followed in the revocation of a right of occupancy.

It is the findings of this paper the provisions of section 28 of the Act are ambiguous. First, the procedure for revocation provided in section 28 of the Act does not clearly afford the right holder the opportunity to be heard before his right can be revoked. It merely provides for service of Notice of revocation. Secondly, it appears that section 28 of the Act does not give the Local government power to revoke a Customary right of Occupancy. The Local Government only has power to revoke a customary right of occupancy in public purpose as specified in Section 6(3) and 51 of the Act in respect of a land situate in non-urban area. Finally, the section does not take into consideration the interest of third parties such as mortgagee, sub-lessee etc. who have acquired interest in the right of occupancy sought to be revoked. Thus, it appears that in the event of revocation, the interest of third parties shall also be extinguished.

It is thus recommended that section 28 of the Act be amended so that the ambiguities and

⁴⁷ A A Utuama, *Nigerian Law of Real Property*, (Shaneson C.I ltd 1989), 140

⁴⁸ Anuoha R A, 'Compulsory Acquisition Without Compensation Under Nigerian Law' in Amos Agbe Utuama (ed), *Critical Issues in Nigerian Property Law*, (Malthouse Press Ltd 2016), 50.

⁴⁹ *Osho v foreign Finance Corporation* (1991) NWLR (pt 184) 188.

⁵⁰ LUA 1978 s 32.

⁵¹ Niki Tobi, *Nigerian Land Law*, (Ahmadu Bello University Press 1987), 98.

⁵² I O Smith, *Practical Approach to the Law of Real Property in Nigeria* (3rd Ecowatch Publication (Nigeria) Ltd, 2013), 132-133.

inconsistencies in the section can be removed. Thus, amendment of section 28 of the Act should specify instances where the Governor and the Local Government can independently revoke of occupancy in overriding, and section 28 of the Act should contain provision for the protection of interest of third parties in the event of revocation. It is also recommended that the Act, especially section 28 (5) (7) and 44 of the Act be amended so that it will include the requirement for fair hearing before final revocation. This will bring section 28 of the Act in line with section 36 of the 1999 constitution (as amended) which provides for fair hearing.

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