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LAND LAW

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QUESTION

The pandemic Covid- 19 broke out in Kuzuland. The Governor, in pursuant of the powers conferred on him under the Quarantine Law, made an executive order closing down all public places including bars, restaurants, hotels, clubs, event centers, among others.  Any public place which continues such businesses shall be demolished as provided in the executive order.  S. 5 of the Quarantine Law provides fines and imprisonment as the penalty for default.

Recently, Tarzan hotel has been operating in defiance of this order despite warnings. As stipulated in the order, the governor demolished Tarzan hotels.

Chief Ajah, the owner of Tarzan hotel, has been expressing his displeasure on all media platforms. He believes the action of the Governor is unconstitutional and contravenes the procedures under the Constitution and the Land Use Act. For him, even if he were wrong, the punishment was unlawful. He has sworn to contest the Governor’s action in court and get redress. Chief Ajah has approached you for your legal advice.  **Succinctly** advise him with legal authorities as to his chances of success in court in an action contesting the legality of the Governor’s action in demolishing his hotel particularly in the light of the Quarantine law, the Executive Order, the Constitution and the Land Use Act. Assume that the laws of Kuzuland are same as the relevant Nigerian Legislations.

ANSWER:

The question bothers on whether the Governor’s act of demolishing Tarzan Hotels, was lawful or constitutional.

Chief Ajah owning the hotel property, means that he has Right of Ocupancy over the land on which the hotel is built. The governor in his official capacity has a right in the constitution, to revoke a right of occupancy. But there are certain conditions that must be met before he can exercise such right.

Firstly, the revocation must be based on overriding public interests *SECTION 28(1) OF THE LAND USE ACT 1978.* And such interests must be for some public purposes. Now the section mentioned earlier, lists what constitutes overriding public interest. And some of them include; for use by the state government in regards electricity, railroad, government facilities and projects like airports, hospitals etc. SECTION 51 OF THE LAND USE ACT 1978, talks about public purpose. And it mentions what constitutes public purpose as: for exclusive government use or public use, for use by corporate body belonging to government or by a corporation in which the government holds shares in, use for mining of oil or raw materials etc. and according to these sections, nothing is said as regards the land being used to endanger public health, as a reason to constitute overriding public interest.

This bring about the second issue of whether Chief Ajah’s keeping his hotel running during the quarantine order, constituted endangering public health. And whether such endangerment would warrant the Governor revoking his right of occupancy.

The laws regarding the governor’s right to revocation of the right of occupancy, does not make mention of public health safety, as an overriding public interest as regards the right. Therefore, if the Governor’s reason for demolishing Mr Ajah’s hotel, was based on his not adhering to the quarantine order. He has then not adhered to the stipulations of *SECTIONS 28(5),(4), 51 OF THE LAND USE ACT 1978.*

And even if his reason did fall under overriding public interest, he didn’t give Chief Ajah a valid notice of revocation. The notice of revocation is meant to be personal and state the reason for the revocation, as in the case of *LAGOS STATE DAM & PROPERTY CORPORATION V FOREIGN FINANCE CORPORATION* which states that the notice must be personal. He also didn’t give Chief Ajah, any compensation, which is valued based on the improvements made on the land.

My advice to Chief Ajah therefore is that, he can bring an action in court against the governor for wrongful revocation of his right of occupancy of the property on which *TARZAN HOTELS* is built. As he the governor used arbitrary means. He had not followed the due conditions stipulated in *SECTIONS 28 AND 51 OF THE LAND USE ACT 1978.* And also that he Chief Ajah is entitled to compensation from the government for the Governor’s act.