**NAME: AJAYI OLUWASUNMISINUOLA ARAMIDE**

**LEVEL: 400**

**MATRIC NO: 16/LAW01/024**

**COURSE: LAND LAW II**

**LECTURER: BARRISTER OLUBIYI**

**TEST**

**ANSWER**

**LEGAL ISSUE:** Whether the action of the Governor by demolishing Chief Ajah’s hotel was legally right in the light of Quarantine law, the Executive Order, the Constitution and the Land Use Act.

**RULE/PRINCIPLE and APPLICATION:** Before the promulgation of the Land Use Act, land was owned by the community of family, or individual and this was not uniform. There was no security of titile to land, it encourage fraudulent practices, it led to hike in urban areas, it was difficult for government to acquire land for developmental and public purposes and it affected zoning and planning. Therefore The Constitution Drafting Committee was drafted, which nationalized all lands in Nigeria. Then The Land Use Panel 1977 was set up with the Land Use Decree No. 6 1978 which is now the Land Use Act 1978. Section 1 of the LUA vests all land in the governor, however, the governor is not supposed to use such power for selfish reasons, it is a power that should be held in trust fpr all nigerians.

Now, based on the case in question, I’ll be focusing on **Revocation of rights of occupancy** which is provided for in section 28 of the LUA**.** Revocation of rights of occupancy is the right of the Governor to revoke someone’s right of occupancy. However, before the governor can revoke the right of occupancy, there has to be: Purpose, Notice: this is provided for in section 28(6) of the LUA, Adequate compensation.

If these criterias are not met, the court will question the revocation by the governor.

It’s important to note that although the Constitution provides that Every citizen of Nigeria is empowered to acquire and own immovable property anywhere in Nigeria. However, this right to own immovable property like every other right is not absolute but subject to certain qualifications. Therefore, the governor has the right to revocation of occupancy.

Based on the case in question, the governor had a right to revoke a right of occupancy for overriding public interest. 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 or for any purpose connected therewith. 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. 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 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.

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.

According to Section 28(6) of the act, notice of revocation is very important. The governor must give the holder of the occupancy notice before revocation. The mode of service must comply with the provision of the act, otherwise the notice would be void. In the case of S.O Adole v. Boniface B. Gwar, the SC held that revocation of title and service of notice to the holder are two mandatory requirements that have to be complied with where a title to land is revoked.

In line with SECTION 44 of the Constituion, there must be prompt payment of compensation. Therefore, upon revocation, there must be prompt payment of compensation. The holder is entitled to compensation.

In the light of the above, it can be seen that the Governor of Kuzuland had the right and power to take the action he took, as Chief Ajah breached the provisions of Section 5. Of the Quarintine Law and he is also liable to pay fines and imprisonment as the penalty for default. Also, the governor had purpose for the actions he took. It can also be seen that Tarzan hotel operated despite several warnings, so there was notice. Therefore, the only thing Chief Ajah is entitled to is prompt compensation.