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LAND LAW

The legal issue for determination in this legal quagmire is whether the Government's act of demolishing Tarzan hotel was constitutional and lawful. The writer answers this issue in the negative

RULE

The legal issue will be resolved by the interpretation of the Land use Act, Executive order as well as the Quarantine law. Revocation of right of occupancy is provided for in section 28 of the Land Use ACT 1978 which governs the use, control and management of land in Nigeria. The Governor of a state has the right to revoke the occupancy of a person. However, the Act gives three key points to be considered before revocation. These points are;

- Purpose of revocation. Does the occupancy override public interest?
- Notice of revocation. Is there a valid notice as to the revocation of the right?
- Compensation. Has adequate compensation been given?

Purpose of revocation was provided for in section 28(2)(5) of the Land use Act. One of the purposes for revocation is breach of any provision of the law.

Notice of revocation must also be given to the occupant of such land. In the case of *Obi v Minister of FCT*, it was held that the notice of revocation was a condition precedent and section 44 of the land use act also stipulates the mode of service of notice to be followed otherwise the revocation is invalid. According to section 28(6) of the Land use Act, the notice must be personal and it should state reason for such demolition. Once a person has received notice, the right has been revoked. In *Ononuju v AG Anambra state*, notice was held to be invalid because it was published in a gazette and not addressed personally to the occupier of the land.

Applying the above given principles to the scenario given, an executive order was given ordering all bars, clubs and hotels to close down so as to reduce the spread of the virus. The executive

order also mentioned that defaulting businesses shall be demolished although section 5 of the Quarantine law stipulates the punishment of fine and imprisonment. The executive order however is inconsistent with the constitution and provision of the land use Act. The government can make executive orders but such orders must be tandem with the laws of the land already existing and this is provided for in section 315 of the CFRN. The executive order cannot serve as sufficient notice for the revocation of right of occupancy. Although the action of Chief Ajah by opening his hotel overrides public interest, proper notice has to be given before such revocation should take place. According to the case of Amgbe v Sokoto local government, a right that was revoked without purpose or notice was void and unconstitutional and this also backed up by section 33(2) of the CFRN. The notice given must be addressed personally to the occupier of that land and not just published in an executive order otherwise such notice is invalid and void. Also, the stipulated punishment according to Section 5 of the Quarantine law for default includes fines and punishment and this is contrary to the punishment given by the Government.

In conclusion, I would advise Chief Ajah to go ahead with suing the government for the demolition of Tarzan Hotel as such act was unconstitutional and unlawful as he wasn't served proper notice in accordance with what the court held in Onojuju v Anambra State and the demolition was contradictory to the stipulated punishment in the quarantine law.