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**Matric Number: 16/Law01/009**

**Course: Land Law II**

**Level: 400 Level**

**Test**

**Answer**

The legal issue is whether the act of the Governor in demolishing Tarzan Hotels in response to his executive order, regardless of the S.5 Quarantine Law, was unconstitutional and a violation of provisions of the Land Use Act.

The legal issue is resolved in the positive.

The general rule of law relating to this issue can be seen in Section 28(1) of the Land Use Act which provides that it shall be lawful for the governor to revoke a right of occupancy on the ground of overriding public interest. Subsection 2(b) goes further to define that it would amount to overriding public interest if the land is required for public purposes. Any exercise of the power of revocation for purposes outside those outlined in S28 of the Land Use Act will be against the policy and intention of the Act and will be declared null and void.

Therefore the three important questions to be asked are what was the purpose of the revocation? Was there valid notice? And was adequate compensation given?

As regards to the first requirement, the purpose of revocation must be for overriding public interest and anything short of that does not conform to the provisions of the Land Use Act. Where a person’s title is revokes, it must only be done for public purpose. In relation to the second question, notice must be given before revocation of statutory right of Occupancy which must state the purpose of revocation as seen is **LSPDC v. Foreign Finance Co.** Failure to state the purpose will be a breach of S33(2) of the CFRN 1999 (as amended). Also, adequate compensation must be given by virtue of S.44 of the CFRN.

It is also a general rule of law that an executive order has the force of law provided it has solid basis in the constitution and does not conflict with an existing statute.

In the case before me, the Governor in pursuant of the powers conferred on him under the Quarantine law, made an order closing down all public places and any public place which continues such businesses will be demolished as provided in the executive order. It is also important to note that S.5 of the Quarantine Law provides fines and imprisonments as a penalty for default.

The actions of the Governor was unconstitutional in the sense that the constitution in S44 (2) allows for the imposition of penalties or forfeiture for any breach of law which the Quarantine law already provided for. The executive order as such will not take force of law also, because it conflicts with the provisions of the Quarantine law.

Also it has been clearly emphasized that before revocation of a statutory right of occupancy or a forceful take over by the government, it must be for public purposes. The requirement of public purposes as been met since the purpose of the revocation is to promote public health as expressed in **Amale v. Sokoto**. However the other two requirements were unmet, that is, there was no notice or adequate compensation. Thus, the order is a violation of the Land Use Act and shall therefore not have the force of law.

It should also be noted that the government is not allowed to be oppressive and unconscionable in the exercise of its powers. If the statute (Quarantine Law) opines that fines and imprisonment is enough penalty, anything greater than that may be seen as oppressive and derogating from the intention of an already existing statute.

In conclusion, Chief Ajah can institute an action in court for damages since the executive order cannot stand as a result of its confliction with the Constitution and the Land Use Act as expressed above.