NAME: OLUWADARE TESTIMONY

MATRIC NO: 16/LAW01/173

ISSUE

The legal issue for consideration is whether the Governor’s action of demolishing the hotel was unconstitutional

INTRODUCTION

Prior to the Land Use Act, the land tenures system that existed in Nigeria was not uniform. In the Southern part, customary land tenure system existed where land belonged to the entire community, chiefs and sometimes individuals who had acquired such communal lands. In the North, the **Land Tenure Law of 1962** governed the administration of land. Under the Land Tenure Law, land belonged to the state government who held such land in trust for the people. The best any individual could possess with respect to land was a right of occupancy which could either be statutory or customary.

**The Land Use Act** vested all land in the Federal government or is agencies (solely in the Governor of the state) who would hold such land in trust for the people and would henceforth be responsible for the allocation of land in all urban areas to individual resident in the state and to organization for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on the Local Government. This is the essence of the Act. **Section 1 of the Land Use Act** vests all land comprised in the territory of each state in the state Governor who shall hold it in trust and administer same for the use and common benefit of all Nigerians in accordance with the provisions of the Act. The Act nationalizes the ownership of land. It creates a trust for the benefit of all Nigerian citizens who are the beneficiaries and the governor is the trustee. Hence, the Governor only has nominal ownership of the land.

Where a right of occupancy is stated to be revoked for public purpose, there is a need to spell it out in the notice of revocation

PRINCIPLE

Although the Governor has the right to administer land to the people, he also has the right to revoke rights of occupancy. The Governor is empowered to revoke rights of occupancy for overriding public interests. This power is exercisable in respect of either Statutory right of occupancy or customary right of occupancy. This provided for in **Section 28(1) of the Land Use Act**. In the case of a statutory right of occupancy, this refers to

1. Alienation of interests in land in contravention of the Land Use Act or any regulations made thereunder.
2. Requirement of the land by local, state or Federal government for public purposes
3. Requirement of the land for mining purposes or oil pipelines or any purpose connected therewith **(Section 28(2) of the Land Use Act)**

Notice of Revocation

Any revocation shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and the holder must be notified (Section 28(6) of the Land Use Act). The notice must state the reason for the revocation. In Lagos State Development Property Corporation V. Foreign Finance Corporation, it was held that the notice of revocation must be personal to the holder irrespective of whether the land is developed or undeveloped. Hence, it cannot be substituted by a general notice published in a gazette or newspaper. A publication of such acquisition can only follow after a personal notice has been given to the holder. The mode of service as stipulated in Section 44 of the Land Use Act must also be complied with otherwise, the notice shall be void. In **S.O Adole v. Boniface B. Gwar**, the supreme court held that notice of revocation of tite and service of such notice to the holder are two mandatory requirements that have to be strictly complied with where a title to a piece of land is revoked. Also, **in Goldmark Nigeria Ltd v. Ibafon Co. Ltd**, the Supreme Court further emphasized that publication in the gazette does not constitute sufficient notice. There must be personal service on the person.

APPLICATION

From the scenario given, in accordance to Quarantine law, an executive order was made to close down all public places and demolish any public place that continues business. This is a measure put up to curtail the outbreak of COVID-19 pandemic.

In accordance with Section 28(6) of the Land Use Act, any revocation shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and the holder must be notified. Also, in Ononuju v. AG of Anambra State, the notice was published in the gazette instead of being sent to the plaintiff personally. The court held that such revocation is invalid.

By section 39 of the Land Use Act, the high court has exclusive original jurisdiction with respect to land in respect to which a statutory right of occupancy has been granted under the Act. This is also in line with the unlimited jurisdiction granted to High Courts under Section 272 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). However, the federal High Court does not have jurisdiction to entertain matters under the Land Use Act even when the Federal government or any of its agencies is a party to the suit despite the provision of Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

In my opinion, in this situation the Executive order and Quarantine order are superior to the Land Use Act and the Governor was right in demolishing Chief Ajah’s hotel as his acts were in contrary to public interests. The Governor’s action were unconstitutional but they were right in order to ensure public safety. However, Chief Ajah can ask for compensation in accordance to Sections 29, 44 and 30 of the Land Use Act.