

Buchi Oneil Ofulue

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LAND LAW TEST

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### **Legal Issues**

Whether the Governor of Kuzuland's act of demolishing the Tarzan Hotel is lawful? This issue is resolved in the negative because the punishment prescribed in the Executive Order is inconsistent with the punishment prescribed in the Quarantine Law and further because it violates the right purpose for which a governor may revoke a right of occupancy.

### **Rule**

The Executive Order made by the Governor was made pursuant to the Quarantine Law which stipulated in S. 5 of the Quarantine Law provides fines and imprisonment as the penalty for default. It is trite in law that although the Governor has certain powers, that those powers are exercisable within the ambit of the law. This was the case in the Administrator/Executors of the Estate of General Sani Abacha (Deceased) v. Samuel David Eke-Spiff where the late military general attempted to revoke the right of occupancy of the respondent for his personal use. The court held that this action was contrary to the provisions of the Land Use Act.

Generally speaking, an Executive Order is not law and it cannot prescribe punishment for violation of an action. In the case of Faith Okafor v. Governor of Lagos State and Anor (2016) the court held that the appellant could only be prosecuted for an offence in a written law. This is similar to the provisions of Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

Therefore, the written laws which would apply are punishment in the Quarantine Law from which the Governor derived the power to make the Executive order, Section 43 and 44 of the 1999 Constitution which guarantee right to own imovable property and protects the rights of individuals from compulsory acquisition of property.

It should be noted that whereas the governor had the right to make the Executive Order, that right is only exercisable within the scope of the law which enabled him to make the order in the first place. The intentment of the Quarantine Law, therefore, being for the **Prevention** of the Spread of Communicable diseases and not for a vendetta, any act or order made that is not for the prevention of the disease is *ultra vires*.

Section 1 and the Preamble of the Land Use Act vests all land in the state in the Governor to hold in trust for the people of that state for the development of the state or public purposes. The Act, baring all circumstances, in section 28 of the Land Use Act empowers the Governor to revoke a Right of Occupancy.

Section 28(1) states that such revocation may only be for overriding public interest. The case of *Amale v Sokoto Local Govt. Authorities* explains that public purpose is that the land is to be used for purposes that benefit the collective/society. These relate to:

Section 28(2)(a) if the holder alienates his right of occupancy contrary to the provisions of this Act;

Section (2)(b) the requirement of the land for public purposes by government

Section(2)(c) for mining purposes or oil pipelines or for any purpose connected therewith.

Section 5(a) for the breach of the provisions of Section 10 of the Act;

Section 5(b) breach of term contained in the certificate of occupancy;

It is pertinent to note that revocation is not valid except the holder of the right of occupancy is given notice in accordance with section 28 of the Land Use Act. This notice of revocation is meant to be personal and state the reason for the revocation. Thus in *lagos state dev & property corporation v. foreign finance corporation* it was held that notice given in the government gazette is not valid notice in accordance with section 28(6)(7) of the Land Use Act.

Section 29 of the Land Use Act and Section 44 CFRN states that compensation must be given for land that has been compulsorily acquired within the meaning of the sections.

### **Application**

The provisions of the hitherto stated laws only allow the governor to revoke a person's right of occupancy for the reasons stated in section 28 of the LUA (supra) and this instant case does not fall within that category. Thus, the governor's demolition of the hotel is clearly not within the contemplation of the LUA. However, the *Abacha's* case (and other authorities) will suffice to prevent declare the governor's action illegal.

Furthermore, from the authorities above, it is obvious that the Quarantine Law already provides punishment for the violation of the provisions of the Law and as such, the Executive Order is an overreach.

### **Conclusion**

My advise to Chief Ajah is the action of the governor is illegal and he will succeed in his claim in before the High Court.