EGHE-ABE OGHOSA AGNES

16/LAW01/067

400 LEVEL

QUESTION:

The pandemic Covid- 19 broke out in Kuzuland. The Governor, in pursuant of the powers conferred on him under the Quarantine Law, made an executive order closing down all public places including bars, restaurants, hotels, clubs, event centers, among others.  Any public place which continues such businesses shall be demolished as provided in the executive order.  S. 5 of the Quarantine Law provides fines and imprisonment as the penalty for default.

Recently, Tarzan hotel has been operating in defiance of this order despite warnings. As stipulated in the order, the governor demolished Tarzan hotels.

Chief Ajah, the owner of Tarzan hotel, has been expressing his displeasure on all media platforms. He believes the action of the Governor is unconstitutional and contravenes the procedures under the Constitution and the Land Use Act. For him, even if he were wrong, the punishment was unlawful. He has sworn to contest the Governor’s action in court and get redress. Chief Ajah has approached you for your legal advice.  **Succinctly** advise him with legal authorities as to his chances of success in court in an action contesting the legality of the Governor’s action in demolishing his hotel particularly in the light of the Quarantine law, the Executive Order, the Constitution and the Land Use Act. Assume that the laws of Kuzuland are same as the relevant Nigerian Legislations.

The legal issue borders on the legality of the governor’s action of demolishing Chief Ajah’s hotel.

The Land Use Act (1978) grants the governor of a state the power to revoke a person’s right of occupancy for overriding public interest by virtue of **section 28** of the Act. However, the governor must issue appropriate notice to the land holder and the reason for the revocation must be contained in the notice as was stipulated in **Lagos State Development and Property Corporation v. Foreign Finance Corporation (1987).**

Based on the provisions of **section 315 of the 1999 constitution of the federal republic of Nigeria,** a state governor can pass an executive order subject to the provisions of the constitution. This means that an executive order is invalid if it directs the performance of any act that is in direct violation of any law. Executive orders have legal force and validity only when they are based on and are within the constitutional or statutory authority; it must conform with the requirements of existing statutes.

The executive order in the case scenario is based on **section 5** of the Quarantine Law which provides fines and imprisonment as the penalty for default and that law is the enabling legislation for the exercise of the executive powers. Thus, the destruction of the property is beyond the powers of the enabling law. In **Onah v FRN (2017)** the court established that

“While the sentence of the court must be in accordance with what is prescribed by the statute creating the offence, a court cannot impose a higher punishment than that prescribed for the offence.”

The executive order is a subsidiary legislation and even though it has the force of law, it cannot override the provisions of its enabling law. The executive order is incapable of prescribing a penalty outside of and higher than what the enabling law which is the Quarantine Act prescribes. Therefore, the act of the governor in destroying the property is above the provisions of the enabling law, is a resort to self-help and is unconstitutional, null and void.

 The right to property is a fundamental right guaranteed by the constitution and can only be infringed in the execution of the order of a properly constituted and established by law. Every person is entitled to fair hearing within a reasonable time by a court or other tribunal established by law by virtue of **section 36(1)** of the 1999 constitution of the federal republic of Nigeria. Thus, where the rights and liabilities of an individual are to be determined, he is entitled to fair hearing and since Chief Ajah’s hotel was destroyed without recourse to court, his right to fair hearing was infringed upon. Furthermore, the case of **Garba v University of Maiduguri** established the principle that before the guilt of a person is legally determined, he is entitled to be heard.

My advice to Chief Ajah is that he will succeed in an action in court based on all the above as his fundamental rights were infringed upon and the executive order of the governor contravenes existing statute and the governor is also incapable of prescribing a penalty outside of and higher than what the enabling law which is the Quarantine Law prescribes.