**NAME: UZOWURU ADANNA CHIKANAELEANYA**

**MATRICULATION NUMBER: 16/LAW01/209**

**COURSE CODE: LPB 402**

**COURSE TITLE: LAND LAW II**

**LECTURER: DR. OLUBIYI**

**DATE: 15/05/2020**

The legal issues for determination are;

1. Whether the action of the Governor in demolishing Tarzan Hotel is in accordance with section 28 and the provisions of the constitution.
2. Whether the Governor rightly demolished Tarzan hotel without due service of a notice of revocation
3. Whether Chief Ajah can successfully bring an action against the Governor for wrongful demolition(revocation)
4. I resolve this issue in the negative. In line with the land Use Act, section 28 provides that a right of occupancy may be revoked by the Governor for overriding public interest. It’s to be noted that this power may be exercised in respect of both statutory and customary right of occupancy, granted, or deemed.

By Section 28, overriding public interest includes the following;

1. Alienation by the occupier of any right of occupancy or part thereof contrary to the provisions of the Act or any regulations made thereof
2. Requirement of the land by the government for public purpose
3. Requirement of the land for mining purpose or oil pipelines or other purpose connected therewith
4. Requirement of the land for the extraction of the building materials in case of customary right of occupancy.

It is stated that revocation must comply with the intendment of the Act for it to be valid. Any exercise of power of revocation for purposes outside those outlined or enumerated in s. 28, or not carried out in compliance with thaw provisions of the section will be against the policy and intention of the Act and will be declared void. **In CSS BOOKSHOPS** V RTMCRS, it was held that the revocation of the appellant’s right of occupancy was invalid and entered judgment in favor of the appellant.

**The constitution in Section 44 also provides that no moveable property or interest in immovable property shall be taken possession of, or compulsorily acquired. Also, the constitution in s. 315(5) preserves the Land Use Act as an existing law**.

Applying the above stated principles to the fact of the case, the governor’s action is unconstitutional and is in contravention of the Land Use Act. It should also be noted that the Quarantine Law which gives the Governor the power to make the executive order cannot override the provisions of the constitution of KUZULAND namely S. 44 and S. 315(5). Hence, the executive order will be null and void in accordance with S.1 (3) of the laws of KUZULAND. It is however advised that the application of the provisions of S. 5 of the Quarantine Law which provides fines and imprisonment as the penalty for default would have been better applied

1. I resolve this issue in the negative. Although it is not expressly stated that the specific reasons for revocation must be stated , following judicial decisions, where a right of occupancy is revoked on the grounds of public purpose, there is need to state the particular purpose in the notice of revocation.

It should also be noted that revocation of a statutory right of occupancy in connection with personal purpose is ineffective. In **The Administrators of the Estate of General Sani Abacha (Deceased) v Samuel David Eke Spiff & ors,** the supreme court observed that the 1st respondent right of occupancy was revoked and the same land was allocated to the appellant. It was held that the revocation could not be assimilated to be an action taken in the overall public interest.

Acquisition of land has to follow due process and procedure where it will involve the displacement of individual rights. The governor can only revoke a right of occupancy after issuing notice. The notice must state the particular public purpose for which the land is required. There must also be a service of notice on the holder else it is void. **Section 28(6)** provides that a notice of revocation of a right of occupancy must be given to the holder. In **Obi v Minister of FCT**, by virtue of the provision of section 28(6), the notice of revocation of the right of occupancy must be served on the holder.

Further **section 44(a), (b), (c)** provides that any notice required to be served on any person shall be effectively served on him/her by;

1. Delivering to any person on whom it is to be served or
2. Leaving it at the usual or last known place of abode of that person
3. Sending it in a pre-paid registered letter addressed to the person at his last or usual place of abode.

In **SO Adole v Boniface Gwar**, the Supreme Court held that the notice of revocation of title and service of such notice on the holder are two mandatory requirements to be strictly followed where a title to a piece of land is revoked.

A publication in the gazette of a notice of revocation without a personal service on the person concerned will make the revocation invalid. Thus, it is submitted that the actions of actions of the governor is against the provisions of the land Use Act, and is ineffective

1. From the factual matrix and the provisions of the Land Use Act and the Constitution of Zululand, it is obvious that the governor has contravened and failed to follow the provisions of the law. Hence, by S.39 of the Land Use Act, Mr. Ajah can validly bring an action against the Governor in the High Court of the State of Kuzuland.

Where he chooses to opt for compensation, he can apply to the Land Use and Allocation committee as to the amount of compensation payable to him

In my advice to Mr. Ajah, he may successfully bring an action in court, because the Governors action is unconstitutional i.e, the executive order is ultra vires the constitution or where he chooses to opt for compensation, get a reasonable compensation in accordance with S. 29(1) of the Land Use Act. In **Amale v Sokoto**, it was held that the Governor of a state has the power to revoke a person’s right of occupancy for overriding public interest and the duty to pay compensation. Mr Ajah could have been rightly punished under S. 5 of the Quarantine Act.