NAME: ADEWOLE BLESSING .T.

400L

16/LAW01/008

LAND LAW TEST; MRS OLUBIYI

Legal issues

The Legal issues for determination is whether the action of the governor is unconstitutional in accordance to the Nigerian Land Use Act, the 1999 Nigerian constitution and the quarantine Act.

Whether the order by the executive can serve as A valid notice

Whether the demolition of the building by the governor is in the interest of the public

Jurisdiction of court

Rules

Section 28 of the land use act makes provision governing the revocation of a right of occupancy. The governor has the power to revoke rights of occupancy for the overriding public interest. This means the requirement of the land by the government of the state for public purposes within the state, such requirements according to the land use act includes

1. The requirement of the land for mining purposes or oil pipelines or any purpose connected therewith
2. The requirement of the land for the extraction of building materials
3. The alienation by the occupied by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval

Also under the land use act Section 44 provides for a service of notice. It states that a service of notice is required by the act to be served on any person. It must be effectively served on him by (i) by delivering it to the person on whom it is to be served

Ii)leaving it at the usual or last known place of abode of that person at his usual or last known place of abode or delivering it to the secretary or clerk

In addition, as stipulated in Section 1 of the Land Use Act, all land in urban and nom urban areas shall be under the control and management of the governor of each state

Application

From the given scenario and application of the rules highlighted above, the governor has the right under the land use act to revoke a right of occupancy for the overriding public interest. Although the land was not required for public purposes as stipulated in the land use act under Section 28, demolishing of the building was in the best interest (overriding interest) of the public as leaving Tarzan Hotels in operation could cause a public/ community transmission.

However, the governor's action is not in accordance with 1999 Nigerian constitution providing for fundamental human rights, an exception however is in a state of emergency where the rights of citizens are suspended.

The governor failed to serve adequate executive notice to Chief Ajah as established in the case of Ononuju v A.G Anambra State where it was stated that a publication in Gazzette of a notice of revocation without personal service of same on the person concerned does not make the acquisition/ revocation valid.

Conclusion

Generally in Section 39 and 41 of the act, a High Court has jurisdiction in the case of a matter on a statutory right of occupancy or land in urban areas. And an Area or customary court or any order relevant court of equivalent jurisdiction in a star has jurisdiction in the case of a matter touching on or dealing with a customary right of occupancy.

In conclusion, after adequate consideration of the provided legal authorities, although Chief Ajah was in breach of the laws regulating the state, particularly Section 5 of the quarantine Act he was not serviced adequate notice as stipulated in section 44 of the land use act, also the governor has breached Chief Ajah's fundamental right. Therefore, it is my legal opinion that Chief Ajah is entitled to compensation from the governor.