THE PRINCIPLE LEGISLATION ON LAND MANAGEMENT AND CONTROL IN NIGERIA

By

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Abstract

The principle legislation on land management and control in Nigeria is the Land Use Act. This law was adopted from the Land Tenure Law of Northern Nigeria 1962, under which the control and management of all land in the Northern part of Nigeria was under the control of the Governor of the then Northern Region.

1.0 Introduction

The principle legislation on land management and control in Nigeria is the Land Use Act[1]. This law was adopted from the Land Tenure Law of Northern Nigeria 1962, under which the control and management of all land in the Northern part of Nigeria was under the control of the Governor of the then Northern Region[2]. Similarly, the Land Use Act (LUA) by virtue of section 1, all land comprised in a state are vested in the Governor of a state on trust for the benefit of all Nigerians. Another law touching on lands management and control in a state is the State Land Law. Here in Rivers State, it is the State Land Laws (SLL)[3]. The State Land Law was a law enacted by the Colonial Government as crown lands for the use of the Colonial Government[4] through the public land acquisition laws applicable in the Southern States of Nigeria, such state acquired lands become known as State Lands being administered under the State Lands Law by the Governor of the Region[5] or State as the case may be.

Land ownership or use structure in Nigeria under Colonial Rule was designed to suit the economic and political motives of the British imperialists[6].

The State Land Law of Rivers State[7] (the law) was enacted to make further and better provisions for the management and control of Rivers State Land[8] having regard for the fact that all lands comprising in the territory of every State in Nigeria are vested in the Governor of that State[9] (Rivers State inclusive) it

[1] Promulgated on 29th March, 1978 as Land Use Decree No. 6 of 1978 but later transmitted into an Act of the National Assembly by virtue of S.I of the Adaptation of laws (Redesignation of Decrees) order 13, 980 were referred to as Land Use Act Cap (LUA) L5 vol. 8 LFN 2004.
[2] S.I Land Tenure Law of Northern Nigeria 1962.
[3] Laws of Rivers State 1999 Cap 125.
[4] Eastern Region of Nigeria Laws Cap 1963.
[5] Ibid.
[6] Oyebola and Oyelami, 1967 cited by N.B Udoekanem et al, "Land Ownership in Nigeria, historical Development, current issues and future expectations, journals of environment and earth science, vol. 4, No. 21, 2014.
[7] S.I SLL
[8] Ibid.
[9] S.I LUA 1978, S35 SLL, 1999

therefore means that the law was enacted subject to the Land Use Act and by extension the constitution[10] and is expected that the exact provision of the law should always be in tandem with the Act.

The essence of this research is to examine the legal and social economic implication or otherwise of the white paper on the sales and allocation of government properties by the Governor Peter Odili administration.

2.0 Subtantive Provisions Of The State Lands Law Of Rivers State Cap 125 Laws Of Rivers State 1999

2.1 Powers of the Governor

By the provisions of the State Land Law of Rivers State Cap 125 Laws of Rivers State 1999 (the law), the Governor of Rivers State is the lessor of all State Lands in Rivers State[11]. The powers of the Governor are very wide such that the Governor seems to do virtually everything concerning the lease, revocation and otherwise of all State Lands in Rivers State that is to be used[12].

The Governor of Rivers State, Governor Peter Odili during his administration made use of the law and allocated land to corporate bodies like Daar Communications about 386 plots of land, sold several properties of the Rivers State Government to members of the public. The legal implication is that by section 1 of the Land Use Act[13] and the aforesaid sections of the Rivers State Land Law, the sales are valid alongside the allocation, because it is backed up by law. The House of Assembly who were suppose to serve as a watch dog became a rubber stamp in the hand of the Governor which make it easy for the Governor Peter Odili led administration to carry out its plan without any hindrance.

The social economic implication of the allocation and sales, it is not in the best interest of the state, as these lands as allocated by the Odili administration was not properly allocated, same allocation only favours the rich and those who are close to the Governor, these land would have been used to house industries in the state, for example the 386 plots allocated to Daar Communication Plc as we know, it is a Television Station, this allocation is outrageous and the fact that it was said that it will create employment for the youths is not sufficient reason to allocate such numbers of plots which had not serve the purpose till date. Today, how many youths of the state are working in Daar Communication Nig. Ltd.? The allocation to my mind is not justified as same amount to wastage of state resources.

[10] S 315 (5) (d) (FRN, 1999 (as amended).
[11] SS 1-10, 12, 13, 19, 20, 21, 24 and 25 SLL 1999 and S 1, 5, 7, 10, 24, 27-29, 31, 33, 35, 38, 43, 45, 56 and 47 LUA respectively.
[12] Ibid.
[13] LS law of the Federal Republic of Nigeria.

It is whether the current Governor has the powers by section 9[14]. Although section 34 of the law, with respect purports to vest the power to make regulation concerning the classifying of leases, prescribing of covenants and terms of years, demarcation and survey in state land etc. in the Rivers State Executive Council (members of whom are all appointees of the State Governor)[15] so they are all under the control of the Governor and always do the biddings of the Governor or use they would be fined[16], the implication of the Governor being the appointee of the members of the State Executive Council is that these persons are royalist to the Governor and cannot oppose the Governor's policies on land. These committees were supposed to challenge the allocation or sale of Government properties but they were there to sign documents with respect to allocation and sales of Government properties according to the directive of the Governor. This put the society in a dilemma as there are no checks and balances and the Governor Peter Odili utilize this mechanism to carry out the allocation of government lands and sales of government properties which was not in the best interest of the state. Today, the State lack the presence of industries which would have created job opportunities to the teaming youths of the state like in Lagos State where the government had designated free economic zone where industries are allowed to develop with little or no tax policies. This will see Refinery and other industries spring up that has great social economic impact in the state as job will be created and it will affect the social economic standard of the people.

Section 2 of the Act provides for land use and allocation committee, section 1 of the law empowers the Governor to grant leases of state land, to any individual for any term of years, without any specific or definite tenure, to a native of Nigeria and to also grant licenses for temporary occupation of state lands. The Land Allocation Committee did not function independently meaning that they only carry out instructions of the Governor which is usually not in the best interest of the state, and its implementation is adverse to the social economic development of the state as same only satisfy the wishes of the Governor at the detriment of the state and this is what the white paper on the sales and allocations of Government owned land and properties does to the State by the administration of Governor Peter Odili.

By section 2 of the law, the Governor also has the power to accept the surrender of leases, remit the conditions/covenants under the leases or extend the time for the lessee to comply with conditions under the lease. Section 3 empowers the Governor to grant a licence to any person to enter upon any state land not subject to any temporary licence granted under the State Land Law, the Minerals Act or Petroleum Industry Act are removed or extract stone., gravel, clay or other substance not being a mineral, that is required for building or manufacture of building materials. Where the licence fails to comply with the conditions of the lessee, the Governor is at liberty without recourse to any other person or body to cancel the licence granted the licencee. This function, the former governor of Rivers State Chief (Barr) Nyesom Ezenwo Wike perform with a lot of criticism as in most times are only those who are not on the good book of the Governor that are exposed to such withdrawal. That is to say, it is still surrounded with high level of sentiments.

[14] Land Use Act L.S Laws of the Federal Republic of Nigeria.
[15] S 192 (FRN, 1999 (as amended).
[16] Ibid.

Similarly, lessee is prohibited from assigning, subletting or parting with possession of the land in any way without the consent of the Governor[17]. This section means that you cannot part with your interest in land as those who bought properties from the state government cannot sublet or part with possession and by implication, same hinders development, as a party cannot transfer his/her interest in land without having to obtain the consent and approval of the Governor, and this is a lot of process and no one know when same consent will be sign, thereby hindering economic development of the state, as such transfer of title will have paved way for a company or industry that can create employment to make use of such land or such properties.

This shortfalls affect the society negatively as the living standard of the people are affected negatively and same affects the social economic life of the people negatively.

By section 5, of the law of Rivers State, a minor who is a lessee of the state land is to be treated as if he were of full age regarding his obligations and liabilities under the lease. This law is targeted at allocating the properties or purchase of the Rivers State properties to the children of the politicians and treating the children as if they were adult is faulty as a minor by law does not have the capacity to carry out such responsibilities or liabilities that may arise from such transaction, which ordinarily should have been done through a guidance holding such properties in trust for the Minor. The question is where did the minor realized money to purchase a property or how come the minor is qualified for the allocation of the state properties. This shows that the Land Allocation Committee members were only there to carry out the instructions of the Governor without any independent decision or input from the committee members.

This run short of credibility and fairness in the whole process of the sales and allocations of state properties by the Governor Peter Odili administration, which had jeopardized the social economic growth of Rivers State as same process is characterized with nepotism and favouritism, and cannot be in the best interest of the state, which impact of same is still speaking in the negative till date.

By section 6 of the Rivers State Law on Land, where the Governor and the lessee disagree as to the revised rent to be paid by the lessee upon the expiration of the existing lease, the matter shall be referred to Arbitration based on their agreement, where none exists, then an arbitrator will be appointed by a High Court Judge by (5) of section 6 of the law, the decision of the arbitrator is final if the rent fixed by the arbitrator is less than that demanded by the Governor, the lessee shall pay the cost of arbitration, by section 7 of the law, it is mandatory for a lessee to make improvements on the leased land and once he has so agreed with the Governor and fail to do so, he shall be liable to pay a panel rent to the Governor.

The law requiring that the lessee pay the cost of arbitration, and the lessee not given the right to appeal the decision negates the principle of fair hearing which usually put the lessee under decline or pressure which stand more like a decree and many investors are discouraged from citing their industries in the state due to

[17] S. 4 SLL, 1999, S 21 and 22 LUA 1978.

the fear of uncertainty where it has to do with rent and the issue of unfairness on issue of resolving dispute that may arise between the Rivers State Government and the lessees as the case may be.

Further, section 8 of the law provides that where there is no contrary agreement, every building or improvement a lessee makes on state land shall pass to the Governor when the leases terminates without compensation, but where the lease does not exceed thirty (30) years, the lessee is entitled to remove them within three (3) months of the expiration of the lease.

Section 9 of the law of Rivers State restricts even the courts from sale of state land by any order of court except to a purchaser approved by the Governor. This shows how powerful the Governor has been made under the law.

It is obvious that the law of the state regarding land transaction of the state is so ragid which does not give room for fairness to consider a situation where the Governor may have erred, the party whose right is affected, cannot exercise his/her right using the judiciary and therefore, same stand like a decree.

3.0 Legal Implications

Section 1[18] and section 1[19] bestows all land in the state upon the Governor, who ordinarily was to hold the land on trust for the citizens of the state. But, the Governor of the state under section 9[20] also reserve the power to grant certificate of occupancy to any person who the Governor deem fit, it is from this provision that the Governor Peter Odili led administration made the various allocations of land in the state to his political allied as same allocations and sales were not made on the merit.

The Governor of the state by section 2[21] has the control of all land and therefore the Governor Peter Odili took advantage of the provision of the law to sell state properties and despite the existence of the State Land Advisory Committee, the Governor still have the final say with respect of classifying of lease, prescribing of covenants, sales, lease, mortgage, subletting, demarcating and surveying of state lands.

The Governor is vested with too much powers (as in Colonial times) to deal with state lands, instead of establishing a state lands use and allocation committee to be independent in carrying it functions in practice, the Governor does all allocations of land by himself without any recourse to the state Land Use and Allocation Committee. The Governor by section 1[22] is empowered by law to lease any part of the state land for any term or to any native of Nigeria for an indefinite term with respect, this provision appears to conflict

[18] Land Use Act 1978 and
[19] Of the Rivers State Land Law.
[20] Land Use Act, 1978.
[21] Land Use Act and section 2 of the Rivers State Land Law.
[22] Land Use Act, 1978.

with the common law position which provides for a tenure of ninety-nine (99) years as the duration of a right of occupancy is not provided for in the interpretation section of the Act[23].

Section 28[24], it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest. It is a process where an incumbent government of the state can revoke the allocation done by his predecessors for the interest of the state, it is from this section that the Government of the state can interfere with the allocations done by the Governor Peter Odili led administration which act has the force of law but the challenge is that a situation where the incumbent Governor of the state is an allied to such ex-Governor, the incumbent Governor find it difficult to invoke section 28[25] and section 29[26], the Governor upon any revocation of titles to land or interest in land, pays compensation following the requirement under section 44[27] by serving notices to the parties affected on the intention to acquire such properties for the overriding public interest. By section 20[28] of the law, the Governor is entitled to sue to recover state land illegally occupied or which tenancy has expired however in some cases in the exercise of this power of courts, the Governor with respect arbitrarily takes possession of the property without due process of the law. In *Ogualaji v. Attorney General of Rivers State & Anor*[29] the appellant, 'A' lease state land assigned to him the original lessee (Mr. Briggs) which lease expired and the 1st Respondent sold the said state land to the 2nd Respondent while the appellant was still in possession of the land without first taking out a suit to recover possession in compliance with section 26 of the State Land Law, the Supreme Court held that the purported sales of the land for the 2nd respondent was null and void and of no effect.

Similarly in *Orianzi v. AG Rivers State and others*[30] where the appellant validly bought a house from the Rivers State Government in 1981. The Justice Uwaifo Panel of Inquiry set up by the Federal Military Government to investigate the sale of the property held that the transaction was valid shortly after, the Dickens Sanomo Panel set up by Fedelis Oyakhilome's Government purportedly nullified the sale of the property to the Appellant and sold it to the 3rd Respondent. The Appellant took an action at the High Court, Port Harcourt, and won but the Respondents won at the Court of Appeal. At the Supreme Court, the Appellant's appeal was allowed for failure of the sales to the 2nd Respondent to follow due process when it purportedly revoked the appellant right of occupancy not for overriding public interest[31].

It is submitted from the foregoing that the land ownership or use structure in Nigeria, particularly in Rivers State, under Colonial rule was designed to suit the economic and political motives of the British

[23] S 51 LUA 1978.
[24] Land Use Act, 1978.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] State Land Law, 1999.
[29] (1997) S CLR 2018. http://www.lawonlineport.com accessed 10th February, 2023.
[30] (2017) LPELR – 41737 (SC).
[31] Section 28 LUA.

Imperialists[32] given the brazen manner with which the Government of Rivers State treated the two Appellants in the two cases cited above in Ogualaji and Onazi respectively.

Further to the foregoing, section 5[33] of the law of the State is not fair to the minor and give more advantage to the Governor, it provides thus (2) any minor who became a lessee under the law shall be in the same position with regard to his liability and obligation under or in respect of his lease as if it is of full age.

I submit that being a minor, a minor is ordinarily not expected to be knowledgeable in matter such as a lease transaction as to understanding his liability, obligation and right under a lease. Therefore, to make a minor liable, I will say that this sub section is harsh on the minor in my considered opinion.

It is pertinent to state categorically that any shortfall on compensation cannot be question as such shortfalls of the compensation cannot be challenge in any law court, this put the citizenry in a dilemma[34]. It is obvious that upon acquisition, the land is not paid for but the improvement on the land and it is clear that in acquiring land in certain areas in this Nation, it is costly to do so, and the owners of such land stand to lose the money they use to purchase such land for example it is highly costly to acquire land in the Urban town like GRA in Port Harcourt, Rivers State the amount is quite high. Arbitrarily, other suit regard to the existing ownership or holding granted before the operation of the Act *Ogunleye v. Ono*[35].

Having been vested with the right over the power and authority to control and manage all land in trust for the people as their representation under the provisions of section 1, 2, and 5 of the LUA, the Governor is also granted with the power and authority to withdraw, cancel or revoke any right, interest or grant in respect of the land in the State granted by him in exercise of the power and authority to make the grant.

It will be of important for the Governor of a state like Rivers State to invoke section 28[36] over those properties allocated and sold by the Governor Peter Odili led administration as well as section 38[37] for overriding public interest and declare those large land as an economic free zone that will attract industries and thereby create employments.

4.0 Social - Economic Impact

The allocation and sale of Rivers State properties by the Governor Peter Odili led administration have had high level of social – economic impact which is more in the negative, the Governor invoking section 28[38]

[32] Oyebola and Oyelami (1967) cited by N. B. Udockanem et al in :Land ownership in Nigeria, Historical Development, Current Issues and Future Expectations, journal of Environmental and Earth Science vol.4 No. 21, 2014 and the sitting Governor Dantsoho v. Mohammed (2003) 2 SC, 42; Ibrahim v. Mohammed (2003) 108 LRCN 1133.
[33] Rivers State Land Law.
[34] S 29 Land Use Act 1978.
[35] (1990) 4 SC 100, (1990) 2 NWLR (Pt. 135, 745 (1990) All NLR 341.
[36] LUA 1978.
[37] 1999 Constitution of the Federal Republic of Nigeria (as amended).
[38] LUA 1978.

means that in acquisition of land, the implication is that the Government have to denial the actual owners of their land and allocate same to their choice person which makes the people to purchase land before building houses in their own land. In most case, those who are allotted these lands sell them and make huge amount of money at the expense of the real owners.

Such allocation bring in majority of rich men and the middle class within a particular environment and the down trodden cannot cope in such environment, as there are usually high inflations which the common men of the society cannot cope with. Ordinarily, it is targeted at boasting development, in real sense the real owners all pushed to the village where there are no infrastructures and the rich rejoice as they resist every attempt by the common men to return back to the city.

Today in Rivers State, quite a huge number of our youths are un-employed as a result of lack of industries in the state due to lack of scarce resources like land but the same land as allocated to the people are lying waste like the land to Daar Communication Nigeria Ltd. Who have over 386 plots of land in Port Harcourt are only used for farming and had not produce any positive impact to the society.

5.0 Conclusion

It is obvious that the allocation and sales of properties of the Rivers State Government by Governor Peter Odili led administration was not in the best interest of the state. The said allocation and sales of Rivers State properties has not contributed to the growth of the State, as youths of the state are unemployed which ordinarily the scarce resources such as land was supposed to have benefited the state economically as many of the said allocations are lying waste or had not been utilized to the full benefits of the state and its citizenry.

6.0 Recommendations

Considering the in-depth of my research in the above subject matter, I make the following recommendations:

1. The Governor of the state should invoke section 28 of the Land Use Act on all the allocated lands by the Governor Peter Odili led administration for overriding public interest.
2. That the 386 plots of land as allocated to Daar Communication Nigeria Ltd. Should be declared an Economic Free zone thereby attracting industries to the state which incidentally will create employment for the youths of the state that will eventually affect the economic and the living standard of the people and the state.
3. There should be the consciousness upon any serving Governor of the state that the interest of the state and the people is paramount and should be considered first before any other sentimental views.