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Land Ownership Rights and Governor’s Revocation Power in Nigeria: Striking a Balance

Introduction

The right to acquire and own property is an essential component of Nigerian legal and social jurisprudence sanctioned by the Constitution. In this regard, every Nigerian citizen is imbued with the power to own and maintain immovable property, such as a piece of land or a building erected on it in any location of their choice in the country. Even so, this right to legitimately own land by the citizens is not absolute; it is made subject to the statutory authority of Governors of the States to revoke titles to lands in certain lawfully recognized circumstances.

Rooted in constitutional provisions and legislative measures, the power of the Governors to revoke titles to lands holds implications for citizens and the real estate development landscape in the country.¹ Recently, in exercise of this power, the Minister of the Federal Capital Territory (“FCT”), who exercises on behalf of the President, powers similar to the powers vested in the Governor of a State,² embarked on a mass revocation of titles to lands in the FCT on the grounds of failure of the landowners to pay ground rents and/or develop the lands in question supposedly, after the expiry of the period approved for development stipulated in the title documents.³ This development generated a lot of public outcry within the FCT and the county at large in view of the attendant economic and social effects that the revocation brought on the victims.

Against this background, it has become necessary to understand the context in which the revocation powers of a Governor are wielded and their ripple effects on rights of property owners, communities, and the overarching real estate development landscape in Nigeria. It is in response to this call that we have in this piece, examined the citizens’ rights to own landed property, the Governor’s power to revoke title to such land, its legal foundations and its practical consequences on the landowners. And in final analysis, it is advocated that the revocation power ought to, and should be exercised with a human face and only in situations that truly reflect public good.

¹ Section 28 of the Land Use Act No. 6 1978.

² See section 51 (2) of the Land Use Act No. 6 1978.

³ <https://guardian.ng/news/wike-revokes-165-plots-in-abuja/>.

The Right to Own Property Under Nigerian Law

Constitutionally, every citizen of Nigeria has the right to acquire and own land or landed properties, anywhere in Nigeria.⁴ To strengthen this right and ensure that it is not tinkered with lightly, the Constitution proscribes the compulsory acquisition of land unless compensation is promptly paid and the person claiming compensation is granted right of access to the property to determine in his interest the quantum of compensation to be paid.⁵

It is, however, important to highlight that the right of citizens to acquire and own land does not confer freehold interest or perpetual ownership in the real sense. Rather, by the Land Use Act of 1978 (the “**Act**”), ownership of all lands comprised in the State is bestowed on the Governors of the States⁶ to hold in trust and be administered for the use and common benefits of all Nigerians.⁷ The implication of this is that no individual or group of individuals is capable of claiming perpetual ownership over any land in Nigeria but they are only entitled to possessory rights in accordance with the terms of the right of occupancy (signified by the issuance of a Certificate of Occupancy or C of O) granted or deemed granted by the Governor.⁸

As such, contrary to some misconceptions that acquiring title to land makes one an absolute “landowner,” the grant of a C of O does not confer absolute ownership but an interest in the land known as a right of occupancy. This interest may either be statutory or customary, depending on the location of the land and whether or not it is granted by the Governor or local government authorities. Therefore, reference to revocation of title to lands, in this piece, means the revocation of statutory rights of occupancy or other equivalent rights granted under the Act.

Revocation of Title

A significant implication of this non-absolute interest in land ownership by citizens is the power vested in the Governor or Minister of the FCT to revoke interests in land. There are two instances under which interests in lands may be lawfully revoked by a Governor or FCT Minister under the law, namely: (a) overriding public interest, and (b) breach of the terms of the right of occupancy.⁹

(a) Overriding Public Interest

The Act grants the Governor the power to revoke a statutory or customary right of occupancy for overriding public interest which encompasses the following:

- i. when the holder of a right of occupancy parts with that right, fully or partially (alienation by assignment, mortgage, transfer of possession, sub-lease, or otherwise of), in any way, contrary to the provisions of the Act.
- ii. the requirement of the land by any of the Federal, State or Local Government for public purposes.
- iii. The requirement of the land for mining or oil pipelines or connected purposes.
- iv. Under customary right of occupancy, the requirement of the land for the extraction of building materials.

As a matter of law, where a right of occupancy is stated to have been revoked for public purposes, the public purpose must be clearly outlined in the notice of

revocation.¹⁰ Any revocation of a right of occupancy for other purposes, as against public purposes, is against the policy and intention of the Land Use Act and could be declared invalid, null and void by a competent court.¹¹

(b) Breach of Terms of the Certificate of Occupancy

At the point of its grant, a statutory right of occupancy typically stipulates the terms and conditions upon which it is granted. Thus, a C of O may also be revoked on any of the following grounds:

- a. breach of any of the provisions which a C of O by section 10 of the Act is deemed to contain;¹² or
- b. breach of any term contained in the C of O or any special contract made under section 8 of the Act; or
- c. refusal or neglect to accept and pay for a certificate which was issued as evidence of a right of occupancy but has been cancelled by the Governor.¹³

Procedure for Revocation

Revocation of interests in land is not done arbitrarily, it is required under the Act to be done strictly in accordance with the laid down procedure for such revocation to be valid. As a precursor to effecting revocation, a revocation notice signed by a public officer duly authorised by the Governor must be served on the holder of the right of occupancy, and¹⁴ title of the holder shall be extinguished upon receipt of the notice or on such later date as may be stated in the notice.¹⁵ The purpose of giving a notice of revocation of right of occupancy is to duly inform the holder thereof of the steps being taken to extinguish his right of occupancy,¹⁶ afford him the opportunity to promptly make provision for relocation/resettlement and to initiate the necessary conversation for prompt payment of compensation. Any revocation that does not satisfy this procedure is liable to be declared null and void and accordingly set aside.¹⁷

The power of a Governor or Minister of the FCT to revoke interests in land is not absolute. Hence, a holder of a right of occupancy may appeal the revocation of his title or legal interests in land to the High Court of a State in the case of a revocation by the Governor or the High Court of the FCT in the case of a revocation by the Minister for the FCT.¹⁸

⁴ Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁵ Section 44 of the 1999 Constitution of the Federal Republic of Nigeria as Amended.

⁶ *it has also been clarified that with respect of the FCT, powers of the Governor is exercisable by the President or the Minister of the FCT. See Promasidor (Nig) Ltd v. Amsalco Industry Ltd & Anor (2021) LPELR-56420(CA).*

⁷ s. 1 of the Land Use Act No. 6 1978.

⁸ *Promasidor (Nig) Ltd v. Amsalco Industry Ltd & Anor (2021) LPELR-56420(CA).*

⁹ See generally section 28 of the Land Use Act.

¹⁰ *Ereku v. Military Governor of Mid-Western State (1974) 10 S.C. 59, Osho v Foreign Fin. Corp. (1991) 4 NWLR (Pt. 184)*

¹¹ *Oto v. Adojo (2003) 7 NWLR (Pt. 820)*

¹² In the case of *Obi v. Minister of F.C.T (2015) 9 NWLR (Part 1465)*, the appellant had failed to develop the plot within 2 years, a condition or term contained in paragraph 4 of exhibit 2 (the certificate of occupancy) the 1st respondent possesses the legal right to revoke it.

¹³ s. 28 (5) of the Land Use Act No. 6 1978 and *Obi v. Minister of F.C.T (2015) 9 NWLR (Part 1465)*

¹⁴ Notice can be served by giving it to the person to be served, leaving the notice at the usual or last place of residence of that person, sending a letter to the holder's residence etc.

¹⁵ s. 28 (6) & (7) of the Land Use Act No. 6 1978

¹⁶ *Bichi Investment Nig. Ltd v. Sybron Medical Centre Ltd & Ors (2020) LPELR-51194(CA).*

¹⁷ Section 44(2) of the Constitution.

¹⁸ Section 39 (1) of the Land Use Act No. 6 1978

Courts have in appropriate situations where revocation of titles to land have been ordered, invalidated the revocations for failure to comply with the Act or where it was done, or discovered to have been done for purposes which do not align with public interest properly so called.

Critiquing the Governor's Power of Revocation

The power of a Governor or Minister of FCT to revoke interest in land is rooted in public interests and responsible land management. It enables the government to strategically pursue development initiatives that benefit the wider community,¹⁹ such as essential infrastructure or projects or urban planning efforts. Moreover, the revocation authority serves as a crucial instrument for enforcing land use regulations, and ensuring that private land utilization aligns with broader community planning objectives. In this light, the power contributes to efficient land management, correcting anomalies, preventing land hoarding, and optimizing land use for the collective well-being of the greater number of the people in the society. This flexibility is particularly valuable in dynamically evolving urban and rural landscapes, allowing for a balanced approach between individual property rights and the overarching interests of the community.

Notwithstanding the above laudable objectives, just like every other power, this power is pliable to abuse, and has indeed, been abused and used to settle personal and political scores rather than deployed in furtherance of public good. Thus, if unchecked, the misuse of the power of revocation could negatively impact land tenure security, which may stifle development in the real estate sector of the Nigerian economy. A more pressing concern lies in the potential violation of due process. For example, arbitrary revocations without transparent procedures may infringe upon the constitutional rights of affected individuals. Also, the potential for community displacement, economic stagnation, and ethical considerations further underscores the need for clear criteria, oversight mechanisms, and a judicious application of the Governor's power to revoke land titles.

Reforming the Revocation Process

The power of a Governor to revoke title to lands under Nigerian law is a complex and controversial issue. While there are strong arguments in favor of both limiting and retaining the power of revocation, the ultimate goal should be to strike a balance between the rights of landowners and the responsibility of the government to supervise administration of lands in general, for the overall good of the society.

To strike a balance, a clear and tailored strategy is essential to bolster due process, transparency and accountability. This entails the establishment of unambiguous and standardized procedures, outlining the entire revocation process, while providing affected landowners with transparent information available, evidence, and avenues for recourse. A crucial aspect is the introduction of a mandatory robust, pre-revocation consultation and engagement process, allowing landowners sufficient notice and opportunity to address concerns and rectify violations before facing the possibility of revocation. Concurrently, measures such as mandatory public hearings and clear documentation of decision-making processes, should be adopted to enhance transparency and efficiency of the process.

Additionally, the government should explore alternative approaches to land use enforcement mechanisms and procedures. In this connection, the authorities may consider graduated sanctions, including fines, warnings, or conditional approvals,

¹⁹ Michelman, F. (1967). Property, Utility, and Fairness: Comments on the Ethical Foundations of Just Compensation Law. Harvard Law Review, 80, 1165. <https://doi.org/10.2307/1339276>.

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instead of immediate revocation, which should only be employed as the last resort. It is contended that such an approach will address non-compliance more proportionately and aligns more fittingly with the socio-economic realities of contemporary times in the country.