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**TEMPLARS ThoughtLab**

# Federal Lands Regularization in Lagos State: Did the Apex Court Miss an Opportunity in The Attorney-General of the Federation v The Attorney-General of Lagos?

## Introduction

The Nigerian Supreme Court ("Apex Court" or "Supreme Court") relatively recently, struck out the Federal Government of Nigeria's (the "FGN") claim in ***The Attorney General of the Federation v The Attorney General of Lagos State***[1] **("AGF v AG Lagos State")** where the FGN had challenged the double consent policy, otherwise known as the land regularization policy ("the Policy"), of the Lagos State Government ("LSG") in respect of lands held by the Federal Government ("Federal Lands"). As such, the case was not decided on the merits, having been terminated preliminarily for lack of the necessary legal capacity to sue. Consequently, and as in all other scenarios where the populace (especially the real estate community, in this case) is desirous of the intervention of the Apex Court to resolve their concerns on an issue of national import with a note of finality, the approach employed by the Apex Court in ***AGF v AG Lagos State***, was below expectation, and thus the quest for a more salutary solution continues.

Given the significance of the issues raised in the case, we have, in this thought piece, examined the Policy within the precinct of the Land Use Act[2] ("LUA" or the "Act") to see if it is well-thought out. This piece also reviews the intervention of the Supreme Court in the case to ascertain whether the Apex Court did enough within its powers or if it missed the chance to provide the needed clarity in the raging controversy between the FGN and the LSG in respect of Federal Lands within Lagos State. The thought piece concludes by questioning the propriety of the requirement of consent of the Governor in respect of Federal Lands over which consent had previously been issued by the FGN through the President or their nominee. In the final analysis, it is the authors' view that the double consent regime introduced by the Policy may be too much a burden on the people and thus, impedes investments in the real estate sector in the country.

[1] Suit No.: SC. 50/2011, Ruling delivered on Friday 27 January 2017.
[2] Cap 202 LFN, 1990.

## Land Administration and Control under the Land Use Act, 1978

The LUA, introduced in 1978, was motivated by the need to make land accessible to all Nigerians and available to governments at all levels for purposes of development, amongst others. In furtherance of this objective, under the LUA, ownership or title to all lands within the territory of a State is vested solely in the Governor of the State, who holds such lands in trust for and on behalf of the people.[3] Sequel to the foregoing, the Governor is empowered to grant leasehold interests in respect of such lands by way of a right of occupancy to applicants, while at the same time prohibiting the alienation or transfer of any interests in such lands either by way of assignment, mortgage, transfer of possession, sublease or otherwise without the Governor's consent.[4] The LUA, however, exempts lands held by the FGN or its agencies from the control or influence of the Governor of a State.[5] This implies that the management and control of Federal Lands are vested in, and exercisable by, the President or any Minister designated by them. For this purpose, one would ordinarily assume that for any alienation or transfer of an interest in either a Governor-granted land or a Federal Land by way of assignment, mortgage, transfer of possession, sublease, or otherwise, only one level of consent would be required. and there would be no requirement for a double consent or regularization.

The ring-fencing and exercise of control over Federal Lands appear clear-cut and straightforward on paper; however, this is not exactly so in practice. In Lagos State, for example, grantees of leasehold interests or holders of certificates of occupancy granted by the FGN in respect of Federal Lands are required to apply to the LSG to validate their interests in such lands by obtaining the consent of the Governor and a second certificate of occupancy issued by the LSG. This practice of obtaining a second consent became prominent in 2007 when the LSG established the Federal Government Regularization Unit at its Lands Bureau (the "Unit"), charged with processing applications for the regularization of titles earlier granted by the FGN in respect of Federal Lands.[6]

## The Regularization Policy of the LSG

The Policy requires those who acquire interests in Federal Lands within Lagos (and who may have already obtained their certificates of occupancy from the FGN and registered their interests at the Federal Lands Registry), to re-validate their interests by obtaining the Lagos State Governor's consent and applying for certificates of occupancy in respect of such lands from the LSG. To make the implementation of the Policy effective, the LSG enacted the Urban and Regional Planning and Development Law[7] (the "Town Planning Law"), which requires an applicant for a building permit in the State to possess a valid title to the property in respect of which the building permit is required, thereby necessitating the need for such an applicant to first seek the Governor's consent before embarking on any structural development on the land or property.[8]
It follows therefore, from the nature of the Policy, that if applied strictly, it will, invariably, impose a double-whammy situation on persons holding titles to Federal Lands within Lagos State, including those who may be desirous of carrying out developments or structural improvements on their lands or existing property. This is because, before such

[3] Section 1 of the Land Use Act Cap 202 LFN 1990.
[4] Sections 21 and 22 of the Land Use Act.
[5] See Section 49 of the Land Use Act. Section 297(2) of the 1999 Constitution of the Federal Republic of Nigeria provides that "*the ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria*."
[6] Please see the website of the Unit here.
[7] Cap. U2, 2015.
[8] Regulation 27 of the Lagos State Building Control Agency Regulations 2019 (the "Regulations") made pursuant to the Town Planning Law requires any person who desires to build or construct any structure to obtain a permit ("Planning Permit"). Regulation 26 of the Regulations stipulates that any building construction carried out without a Planning Permit shall be deemed illegal. As a precondition to obtaining a Planning Permit, applicants are required to show valid proof of title through a Certificate of Occupancy, Land Certificate, Governor's consent, and so on. Please see the exhaustive list here.

persons can build on the land (if it is vacant land) or carry out any structural improvement on it (if it is an existing structure), the owner will apply for a permit which may only be issued upon obtaining the consent of the Governor, even though the applicant may already have been issued with the consent of the President or the Minister. In the given scenario, such persons are left with no choice but to willy-nilly observe all the necessary preconditions for the grant of the Governor's consent. Such preconditions range from assessment to payment of assorted fees, or levy, as may be required by the Unit.[9]

Another possible drawback of the Policy is that it creates some level of confusion and uncertainty in the real estate market; practitioners and investors are often caught in the middle of two masters, not knowing who, between the FGN and the LSG, to interface with for the perfection of their interests in Federal Lands.

Thus, the ultimate result is that the Policy may be a disincentive for investments in the real estate sector of the economy, as potential investors or purchasers of Federal Lands may get discouraged owing to the costs and the cumbersome procedural requirements associated with double perfection of title introduced under the Policy as regards Federal Lands.

## The Decision of the Supreme Court in The Attorney-General of the Federation v The Attorney-General of Lagos State

Unsatisfied with the Policy, which seems to be a direct interference with its statutory rights under the law, the FGN invoking the original jurisdiction of the Supreme Court of Nigeria,[10] initiated legal proceedings against the LSG at the Apex Court, in ***AGF v AG Lagos State***.[11] In the case, the FGN contended that by and under sections 49 and 51(2) of the LUA, management and control of lands held by the FGN in any State and the Federal Capital Territory, Abuja, whether developed or undeveloped exclusively vested in the President or Minister nominated by the President. It further contended that the LSG had been interfering with this exclusive power of the FGN to grant consent in respect of lands held by the FGN in Lagos State by requiring transactions on such lands to be submitted to the Governor of Lagos State for consent under its Policy.

It further stated that the FGN had received complaints from many persons who were affected by this Policy, one of whom was the grantee of the land or property located at No. 10, Gerrard Road, Ikoyi, Lagos State, the title of which was registered at the Federal Lands Registry, Ikoyi, Lagos. It contended that following the Policy, the same property was required to be registered at the Lagos State Lands Registry. The FGN argued that the root of title in the said land vested in the FGN as successors-in-title to the Crown, being the original owner of the land. The FGN then urged the Supreme Court to declare that the acts of re-issuing certificates of occupancy, granting consent, or exercising any form of control and management over lands in respect of which title vested in the FGN within Lagos State, by the LSG, were inconsistent with the law and therefore, void and of no effect.[12]

In reaction, the LSG contended that the Policy was not targeted at compelling persons applying for title to Federal Lands—as envisaged under section 49 of the LUA--to obtain

[9] The Unit administers the Regularization Policy. The requirements for Regularization include an application letter addressed to the Permanent Secretary, Lands Bureau or Executive Secretary, Land Use & Allocation Committee, as well as evidence of payment of income tax. All other requirements may be examined here.
[10] Section 232 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
[11] Suit No.: SC. 50/2011, Ruling delivered on Friday 27 January 2017.
[12] See pages 18 to 23 of the Ruling of the Supreme Court in Attorney-General of the Federation v. Attorney-General of Lagos State (Unreported, Suit No. 50/2011), which is reported here here.

the consent of the Governor of Lagos State to validate the transactions relating to the land. It further submitted that the target of the Policy is ***lands vested in the Governor which were dealt with by the FGN in violation of the provisions of the LUA***, and that the LSG had thought that rather than ejecting the grantees from such lands, the LSG, instead, required the grantees to go through the regularization process by obtaining valid title to the land at the Unit.

Unfortunately, the opportunity for the Supreme Court to resolve and rule on the issues on the merits was lost, as the case was eventually struck out upon a jurisdictional challenge brought by the LSG. The challenge was based on the ground, amongst others, that the FGN, having relinquished its interest in No. 10 Gerrard Road, Ikoyi, which is the subject matter of the suit, lacked the standing or requisite authority to bring or sustain the action, and that being so, the Court had become deprived of its adjudicatory powers to entertain the action there being no proper plaintiff before it. In its well-considered ruling, the Apex Court in striking out the case, held thus: "…***it is thus not enough for the plaintiff to assert that the control and management of federal lands exclusively vests in the President who holds same in trust for the federation but to further show that the defendant's act of interference persists in spite of the plaintiff's persisting exclusive title to the land. Having transferred its title in the land to others, it is untenable for the plaintiff to assert that the very title that ceases to vest in it is adversely threatened by the defendant's interference. The plaintiff who lacks the standing to sue, …cannot invoke the original jurisdiction of this Court to assert a title he no longer has, it will be academic and hypothetical for this court to proceed on the matter. It never does that***."

e, Notwithstanding its finding that there was no standing to sue, given the public interest nature of this case, the Supreme Court ought to have proceeded to decide the matter on the merits.[13] Had the Apex Court done so, in the view of the authors, their noble Lords would have made a pronouncement on the propriety or otherwise of the Policy to rest the matter.

Nonetheless, an important point that stood out during the proceedings before the Supreme Court was the admission by the LSG that under the LUA, lands vested in the FGN or its agencies, are excluded from the categories of lands over which the State Governor may exercise any power and/or authority.[14]

Putting aside the contention of the LSG that such lands must have vested in the FGN or any of its agencies at the commencement of the LUA, the admission by the LSG poses a challenge to the real objective or intention of the Policy. Perhaps, to sway the minds of those who find the Policy curious, the LSG clarified that the Policy is intended to rectify a situation where "*land vested in the Governor has been dealt with by the Federal Government (or any of her Agencies) in violation of the provision of the Land Use Act, instead of ejecting the assignee/lessee of the Federal Government from the land, he would be required to go through the Regularization process of obtaining valid title to the land at the Lands Bureau of Lagos State*".

Taken on its face value, it follows from this clarification by the LSG that it is not in respect of all Federal Lands located in Lagos State that a subsequent grantee or purchaser would be required to seek the Governor's consent or apply to the LSG for a certificate of occupancy in line with the Policy. The only lands affected are those in which title originally

[13] See *Dingyadi & Anor v INEC & Ors* (2011) LPELR-950(SC) where the Supreme Court stated that "*[it] has the power to make consequential order where there is an element of public policy in a matter which requires urgently securing public confidence in the administration of justice*." (P. 25).
[14] Page 9 of the Ruling.

vested in the State Governor, but which may have been occupied by the FGN or its agency unlawfully. Quite commendably, even though this case was not decided on the merits, the clarification offered by the LSG is helpful. It confirms, at least theoretically, that lands belonging to the FGN or any of its agencies before the commencement of the LUA do not require regularization, but that lands that the FGN or any of its agencies has improperly leased to third parties require regularization because those lands did not belong to the FGN in the first place.

## Our Thoughts

In the authors' view, to address the controversy generated by the Regularization Policy, a consideration of the relevant provisions of the LUA, which vest the FGN with rights over Federal Lands, specifically, sections 49 and 51(2) of the LUA, is imperative.

For ease of reference, the relevant provisions of the LUA are reproduced below:

**Section 49**:

> *Nothing in this Act shall affect any title to land whether developed or undeveloped, held by the Federal Government or any agency of the Federal Government at the commencement of this Act and, accordingly, any such* shall continue to vest in the Federal Government, or the agency concerned.

**Section 51(2):**

> *The powers of a Governor under this Act shall, in respect of land comprised in the Federal Capital Territory or any land held or vested in the Federal Government in any State, be exercisable by the Head of the Federal Military Government or any Federal Commissioner designated by him in that behalf and references in this Act to Governor shall be construed accordingly.*

A clear reading of the above provisions clarifies that Federal Lands are exempt from the lands over which control and management vest in the Governor. More instructively is that title to Federal Lands vests in the FGN; and the President or a Minister appointed by the President exercises in respect of Federal Lands, the same powers that a State Governor exercises in respect of other lands. What then is the essence of the Policy in respect of Federal Lands? We struggle to find any.

Equally very significant is that the reversionary interests in Federal Lands flow back to the FGN,[15] and that being the case, it follows that the FGN (or the President) could never have been divested of this interest in the first place. As the holder of the reversionary interest in Federal Lands, the FGN reserves the right to grant or renew any interests or indeed regularise titles in respect of all such lands, the same way the Governor of a State does in the case of lands within a State other than Federal Lands. In that context, it becomes easily predictable that the Policy threatens the reversionary interest of the FGN. Perhaps, this would have been sufficient to clothe the FGN with the requisite standing to sustain the claim in ***AGF v AG Lagos State***.

Against the foregoing backdrop, it becomes prescient to respectfully hold the view, that the Supreme Court may have missed the mark by a long mile when it held that the Federal

[15] *Archibong & Ors v Ita & Ors* (2004) LPELR-535(SC); *Sterling Plantation and Processing Co. Ltd v Agbosu & Ors* (2013) LPELR-22146(CA).

Government had divested itself of its interest in the subject matter in dispute. We believe that a better approach would have been for the Apex Court to not strike out the matter on the ground of want of standing. The FGN has a reversionary interest in such lands so that even after an alienation or transfer, which the LSG argued to be a divestment of interest, the remainder of the statutory right of occupancy that the FGN granted, returns to the FGN. If the Apex Court had considered the matter on the merits, there, perhaps, would have been a different outcome and the controversy that the Policy has generated would have been resolved once and for all.

Everything put together, it seems to be that the LUA does not envisage the proposition of the LSG that there could be two holders of freehold interests in respect of Federal Lands in Nigeria—in this case, the FGN and the LSG. It will appear that that proposition is a far stretch beyond the intentions of the makers of the LUA, and consent of the President, and consent of the Governor, over any land, are mutually exclusive. This, we believe, would have been the position of the Supreme Court in ***AGF v AG Lagos State,*** *had* the Apex Court not struck out FGN's claim.

**Conclusion**

The case of AGF v AG Lagos State presented the earliest and very rare opportunity for the Supreme Court to properly delineate the scope of the Policy within the confines of the LUA, clear the uncertainty in real estate transactions on Federal Lands located in States, and adopt the realities of land practices in other progressive jurisdictions. Regrettably, this opportunity was lost. Regardless, the clarification of the LSG is commendable as it represents the correct interpretation of the LUA, in our view. It is now clear that while regularization is not generally required for Federal Lands, it is required for lands over which the FGN or any of its agencies improperly gets involved in violation of the right of the LSG to claim title over such lands. This clarification, even though seemingly theoretical, ushers in some glimmer of hope to real estate investors in Lagos State. In any event, since the matter was not decided on the merits but struck out on technical grounds, there is a chance that the controversy will be revisited in the future in a way that the merits would be considered and resolved with a note of finality.