journals.unizik.edu.ng/index-php/jcpl ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Governor's Consent, a Challenge to Land Alienation in Nigeria

Nneoma Iroaganachi*

Abstract

This work examined closely the challenge of the requirement of Governor's consent in the alienation of rights of occupancy. Hitherto, land transactions are made cumbersome and difficult by this requirement of consent due to procedural and other problems that are associated with same. A Simple random sampling technique was used in selecting respondents for the questionnaire that was administered. The data collected was analyzed using Statistical Package for Social Sciences (SPSS) analytical tool while the results were presented in tables. It was revealed that the subject of Governor's consent had been shrouded in controversies both in practice and the judicial precedents by courts. Inelegant and ambiguous pronouncements of higher courts, coupled with non-compliance and a somewhat sluggish and divergent processes of obtaining governor's consent are identified to be part of the problems. It was recommended among others that adequate measures should be taken to ensure enforcement of the legal requirement, while ensuring less cumbersome land alienation. Also, a more uniform process should be adopted by the various states to check the excess of any unscrupulous Governor or agents of government in granting or refusing to grant the consent. Furthermore, more women participation should be encouraged in such land transactions while the courts are encouraged to make judicious and unambiguous pronouncements thereby causing a legislative rebirth and a new lease of life in this important area.

Introduction

Before March 29th 1978, there existed a dual land tenure system in Nigeria which had much complexities and uncertainties. For Esan[1];

> *Prior to the promulgation of the Land Use Act, we have the Land Tenure Law of Northern Nigeria and a different law operating elsewhere in the country. The Land Use Act was promulgated with the primary objective of alleviating the difficulties hitherto encountered by both individuals and governments in securing land for various uses. This resulted in two main interests in land i.e., statutory right of occupancy in land situated in urban area and customary right of occupancy in the case of land in rural area. The terms of the interest are fixed, it is for a period of 99 years with option for renewal and the interest is made by deed…*

*Nneoma Iroaganachi PhD, Estate Management and Valuation Department, Faculty of Environmental Technology, Abubakar Tafawa Balewa University, Bauchi. email: nneomairoaganachi@gmail.com.

[1] A. Esan "Statutory Requirement of Governors Consent" *The Journal of Nigeria Law* (JNL). (Publication of Private Law Department, Faculty of Law, A.B.U Zaria, University Press, 2015 506.

Adewale[2] also adumbrated that;

> *Land, which is one of the factors of production, has become a factor for constant litigation, bickering, attacks, deaths and violence in different communities in Nigeria. It got to a stage that it caught national attention. Hitherto the land tenure law and the general law were in operation in the Northern part of Nigeria. The various customary methods of holding land and the general law regulating land law existed in the Southern part of Nigeria too. In order to solve the intractable problems relating to land, the Land Use Act was promulgated.*

The main purpose of the Land Use Act is evident in the wordings of the Preamble thereof:

> *WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law: AND WHEREAS it is also in the public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be asserted, protected and preserved.*

Omotola[3] opined that;

> *The statutory and customary rights of occupancy are transferable subject to consent requirement. It should be noted that the rule that the consent of the governor or that of the local government must be first had and obtained before any transfer of right over land is the most potent provision of the Act which enhances security of title. By requiring the consent of the governor to such transfer, it will be possible to control and regulate them and keep proper records of all transfers.*

Similarly, it is the succinct opinion of Abugu[4] that;

> *It is very difficult to delimit the extent and scope of the powers of the governor in granting or withholding consent. This is more so, as no provision is made in the Act that the consent should not be unreasonable withheld. On first impulse, the power of the Governor appears to be absolute. In this regards some writers have suggested that 'if the consent is refused there is nothing the affected party can do'. The basis for this conclusion is founded on the language of the consent provisions which obliges the holders to seek governors' consent without directing the governors to give the consent, thus making the power discretionary.*

Review of Land Use Act and Decided Cases

For the avoidance of repetition, it is imperative to state that a plethora of cases abound bringing to light the seeming confusion caused by earlier court pronouncements and judgements on the

[2] T. Adewale The Nigerian Law (Lagos: Princeton and Associates Publishing Co. Ltd. 2016) 220.
[3] J. A. Omotola Essays on the Land Use Act 1978 (Lagos University Press, 1984) 26.
[4] U. Abugu Land User and Reform in Nigeria (Abuja: Immaculate Print 2012) 92.

subject. The Supreme Court have in some cases reviewed their earlier stance while refusing to perpetuate an unfair decision by reason of technicalities or precedent adherence.

In *Nigeria Industrial Development Bank Ltd v Olalomi Industries Ltd*[5] Kayode J.S.C admonished that;

> …It is my view that it will be in the interest of justice to do so rather than allow the mortgage to eat his cake and still have it back. The court should resist it at all cost the attempt at using it as an engine of fraud or cheating or dishonesty … it would be tragic to reduce judges to a sterile role and make an automation of them. I believe it is the function of the judges to keep the law.

Also, in the case of Bulet Intl. (*Nig) ltd. v Olaniyi*[6], Onnoghen, C.J.N stated that the judiciary is not designed as an engine to perpetuate injustice, oppression or impunity and will always resist efforts by anyone to so use it.

The provisions of section 22(1) and (2) of the Act should not, therefore, be interpreted to mean that any agreement to alienate without first obtaining the governor's consent is void; rather, it should mean that such agreement is inchoate until the governor's consent is obtained as was succinctly argued by Adewale[7].

Similar assertions were made by Alubo[8];

> *The law requires that for alienation of (C.R.O) Customary Right of Occupancy, (S.R.O) Statutory Right of Occupancy or Sub-under lease, the consent of the appropriate authorities must be had and obtained. It must be noted that no agreement is needed to enter into contract of sale or mortgage or transfer or assignment. If such an agreement is so entered, it is a mere agreement to sell or mortgage or transfer or assign as the case may be…*

In the recent case of *Kolo v Lawan*[9] the Supreme court had to decide among other things on whether in the circumstances of this case and from the pleadings and evidence before the Court of Appeal, the court of Appeal was right when it held that the appellant did not prove that the Borno State Government and authority to grant the Certificate of Occupancy to the appellant as there was no proper proof of acquisition and revocation of the piece of land by the Borno State Government. While unanimously dismissing the appeal, the Supreme Court held that;

Under the Land Use Act 1978, two types of rights of occupancy were created viz:

a. Statutory Right of Occupancy
b. Customary Right of Occupancy

[5] [2002] 5 NWLR (Pt. 761) 532.
[6] [2017] 17 NWLR (Pt. 1594) 270 – 94.
[7] Adewale ,*op cit.* 256.
[8] Alubo Contemporary Nigerian Law (2nd Ed. Jos: Innovative Communication Publishers, 2012) 145
[9] [2018] 13 NWLR (pt. 1637) 495.

Both Statutory Right of Occupancy and Customary Right of Occupancy are of two classifications viz:

i. Statutory Right of Occupancy granted by the state government pursuant to section 5(1)(a) of the Land Use Act; and Customary Right of Occupancy granted by the local government under section 6(1)(a) of the Act.

ii. Statutory Right of Occupancy deemed to have been granted by the State Governor pursuant to section 36(2) of the Land Use Act and the Customary Right of Occupancy deemed to have been granted by the Local Government under section 34(2) of the Act. An actual grant is naturally a grant made by the Governor of a state or a Local Government whilst a deemed grant comes into existence automatically by the operation of the law. In the instant case, the respondent bought from a deemed grantee of the disputed land. The fact that the appellant had a certificate of statutory right of occupancy issued under the Land Use Act 1978 was not a conclusive evidence of any right, interest or valid title to the disputed land.

A certificate of occupancy is therefore, only a 'prima facie' evidence of title. It is a presumption of title which could be rebutted by a better title which is established by another contending person over the same land. It is noteworthy that under most of the native law and custom operating in Nigeria, an owner of a piece of land is entitled to transfer his absolute interest in the land if he so desires to another and grant exclusive possession of same.

Under Native Law and Custom

In *Atanda v Comm. L. & H. Kwara State*[10] the Supreme Court on the requirements for a valid sale of land under native or customary law held that;

For a sale of land under native or customary law, to be valid, the following requirements must be met;

a. There must be payment of money or agreed consideration;
b. The transaction must be witnessed by witnesses;
c. The actual handing over of the land must be done in the presence of the same witnesses.

The above holden notwithstanding per Sanusi, J.S.C[11] cautioned that;

It would appear to me that even though the appellant claimed that the purchase of the land he made was done under the Customary or native law, the procedure of the purchase he made fell short of the requirement under customary law which as of necessity must be fulfilled or complied with. To my understanding, by introducing the agreement i.e. exhibit A, which is a sort of deed of conveyance, the transaction was meant to be governed or made under English law rather than under native law and custom.

[10] [2018] 1 NWLR (Pt. 1599) 32.
[11] *Ibid* 54.

From the above succinct opinion of the erudite Supreme Court judge, it is obvious that the form and style that ought to be adopted for a sale under an English conveyance is different from those of the customary law. It is crystal clear that any appellant's failure or neglect to bring his transaction under the customary law would be detrimental to his cause and make the obtaining of Governor's consent a necessity.

Whenever a person who is party to a land transaction desires to confer, transfer, limit, charges or distinguishes howsoever in favor of another his right over land, he must obtain the consent of the governor of the state.

To be successful, such a person must be a holder of a grant under section 5 or 6 of the Land Use Act or a deemed right holder under Section 36(2) of the said Act. In line or consonance with the legal equitable maxim 'Nemo dat quad non habeat' which literally means that any person cannot in law give what he does not have as a general rule, where a person does not have a good title he would be estopped from asserting such title as his own.

In *Kolo v Lawan's* case[12] the Supreme Court held that;

> *A certificate of Occupancy properly issued to a holder presupposes that the holder is the owner in exclusive possession of the land it relates to. The certificate also raises rebuttable presumption that at the time of issuance, there was not in existence a customary owner whose title has not been revoked. In the case where it was proved by evidence that someone else had a better title to the land before the issuance of the Certificate of Occupancy, the said certificate become void and liable to be revoked.*

By virtue of the provision of the very first section of the Land Use Act, all the land in the territory of a state was vested in the governor, who in turn hold the land in trust and administers same for the common benefit of all Nigerians. It is believed that the granting of the Governor's consent should fall within his administrative duties which must be done justifiably and honestly in the furtherance of the enjoyment of land rights by the people. This weapon in the hands of the Governor must not be unnecessarily wielded against the land holder or a prospective land holder. The consent should always be given except in the case or face of an obvious fraud or threat to the peace of the state. In practice however the procedure of obtaining the Governor's consent in some states is onerous and defeats the general purport of the Land Use Act.

The Supreme Court in the aforementioned case of *Kolo v Lawan*[13] also held that;

> *Mere tendering of an instrument of title to land such as a deed of conveyance or a certificate of statutory or customary right of occupancy in court does not automatically prove that the land therein purportedly conveyed, granted or transferred by the instrument becomes the property of the grantee. The existence of a certificate of occupancy is merely a 'prima facie' evidence of title to the land it covers and no more. Mere registration does not validate spurious or fraudulent instrument of title, or transfer or grant which in law is patently invalid or*

[12] [2018] 13 NWLR (Pt. 1637) 495.
[13] *Ibid* 521 – 22.

> *ineffective. In the instant case, the appellant was granted Statutory Right of Occupancy in 1995 through Exhibit C, at that time there exist a Customary Right of Occupancy deemed to have been granted to the respondent which right had not been extinguished.*

Before a party can convey a good title by applying and obtaining the Governor's consent, he must possess credible evidence of a good title himself. In other words, his certificate of occupancy must be valid and authentic.

In the case of *Ilori vs Ishola*[14], on the requirement of Governor's consent to alienate statutory right of occupancy the Supreme Court held that;

> *By virtue of section 22(1) of the Land Use Act, it shall not be lawful for the holder of a statutory right of occupancy to alienate same or any part therefore by assignment, mortgage, transfer of possession, sublease, or otherwise howsoever without the consent of the Governor first had and obtained.*
> *By virtue of section 26 of the Land Use Act any transaction or any instrument which purports to confer on, or vest in any person any interest or right over land other than in accordance with the provisions of the Land Use Act shall be null and void.*

Agreement by Land Holders

Furthermore, the question as to whether the statutory requirement of Governor's consent to alienate, prohibits holder of land's right to enter into agreements to alienate was clearly answered by the Supreme Court in Ilori's case[15];

> *Section 22(1) of the Land Use Act 1978 does not prohibit the holder of a statutory right of occupancy from entering into some form of negotiation which may end with a written agreement for presentation to the Governor for his consent, so long as such written agreement is understood and entered into "subject to the consent of the Governor". Therefore, there would be no contravention of section 22(1) by the mere fact that such an agreement to alienate was executed before being forwarded to the Governor for his consent. In the instant case, it was clearly stated in the 4th recital in exhibit 2 that the agreement was entered into subject to the Governors consent.*

Per Nweze J.S.C[16];

> *As shown in the leading judgment, part of the arguments of the appellants was that the Governor's consent to the assignment under consideration in the appeal was not obtained prior to the transaction as required by the Land Use Act, citing section 22 and 26 of the Act. Again, as shown in the leading judgment, the evidence of the appellants own witness was that all necessary requirements for obtaining the Governor's consent for the agreement between the parties had been*

[14] [2018] 15 NWLR (Pt. 1641) 77.
[15] *Ibid* 81.
[16] *Ibid* 100-1.

> *fulfilled. This is also the background to the reasoning of the lower court at pages 404-5 of the record.*
>
> *Late Ilori undertook to obtain the consent of the Governor. He benefited from the transaction but failed or neglected to do so before his death. It is not open to the representatives his own estate to seek to nullify the transaction on the basis of no-procurement of the Governor's consent or invalid or irregular consent of the Governor. The late Ilori, as the holder of the certificate of occupancy had the duty to apply for the Governor's consent. It is morally despicable for a person who has benefited from an agreement to then turn around to allege that the agreement is null and void.*

In order to avoid unnecessary repetition, it suffixes to state that very similar pronouncements of court in line with the ongoing discuss abound, showing the controversy and the later corrective judgment by the Supreme Court. They include the cases of *Awojugbagbe Light Ind. Ltd v Chinukwe*[17]; *International Textile ltd vs Aderemi*[18]; *Savannah Bank vs Ajilo*[19]; UBN Plc vs Ayodara and Sons Nig. Ltd[20] respectively.

The above notwithstanding, the memorable pronouncements of Per Ogundare, J.S.C in *Ugochukwu v C.C.B Ltd*[21] is very apt;

> Savanna Bank vs Ajilo (Supra) never laid down any prescription that a person could escape liability in the circumstances described above, that is that the doctrine of equity should permit a person to take advantage of his own wrong in failing to obtain the consent of the Governor.

That notwithstanding, some Justices of this court continued to peddle *Savannah Bank v Ajilo* (supra) as authority for that proposition, see for example, UBN Plc v Ayo Dare and Sons Nig Ltd (supra), (2007) 4 KLR (Pt.235) 2022, 2024; (2000) 11 NWRL (pt.679) 644: Indeed, Ogundara, J.S.C explained at page 1286 of the report. The Court in *(Ugochukwu v CCB*[22]; further stated;

> *It has become rogue these days for mortgage in similar circumstances to fall upon the decision of this court in Savannah Bank vs Ajilo (supra) as a vehicle to escape from their liability under the mortgage deeds they have willingly entered into. I think that (this) is an unfortunate development and I do not think that that case, that is, Savannah Bank vs Ajilo (supra) decides such a thing. In any event, I hope that someday this court will have an opportunity to revisit that case. To allow a mortgagor to reside from his liability on the ground of his failure to do that which the law enjoins him to do will only result in paralysis of economic activities in this country. This court, I dare say, will not allow such a situation to arise.*

[17] (1995) 4 NWLR (Pt. 390) 379.
[18] (1999) 8 NWLR (Pt.614) 268.
[19] (1989) 1 NWLR (Pt.97) 305-7.
[20] (2000) 11 NWLR (Pt.679) 619.
[21] (1996) 6 NWLR (Pt.456) 524.
[22] *Ibid* 525.

Aside from the cumbersome nature of obtaining the prescribed Governor's consent in most states of Nigeria, a major problem of non-compliance with the dictates of the regulation seem to exist strongly. Some people go ahead to alienate their rights without first obtaining the Governor's consent and because no strict enforcement machinery is put in place, they seem to get away with such impunity.

Furthermore, this insistence of the law for Governor's consent to be obtained before the relevant alienation is valid have the potential of defeating in the long run the very aim of the Land Use Act especially as evidenced in its preamble. In other words, the concept of a mandatory Governor's consent may negatively affect the ability to make land readily available for the sustenance, enjoyment and the meeting of other needs of Nigerians.

Limitations on Women

It is imperative to emphasize that the women members of the society are frequently denied access to land in sufficient quantity like their male counterparts. This is done either passively or actively by the practice that is put in place in most States of the Nation. Our laws and practice ought always to be fair and not be an instrument of bullying and the entrenchment of inferiority complex in women. It should rather be used to build confidence and encourage them regarding their land rights. Women should therefore be aided by the land law and practice operating in Nigeria to cross seemingly invisible barriers thereby insulating them from any existing pervert and unacceptable standards as was canvassed in a yet to be published work[23].

The present restrictions on woman's ability to hold and enjoy land are detrimental to their economic, social and indeed overall well-being. The stance of our land law regarding this is to say the least is deplorable and unfortunate. They ought to be given undeniable access to land in practice. Although it can be argued that our laws did not actively or expressly deny land rights of women, however, in practice this limitation and discrimination is palpable. It is an unwritten code that women are inferior and ought to be provided for by their fathers, husbands and other male relations, hence they do not require land rights like the men.

To test the validity of some of the presumptions and assumptions made in this work, a semi-empirical study is conducted through the distribution and analysis of structured questionnaires by random sampling. The data collected was analyzed using SPSS Statistical but descriptive tools of analysis and presented in tables below, with a gender flavor. The respondents are from the Bauchi State Ministry of Lands and Housing. It is believed that the Staff of the Ministry of Lands and Housing deal directly with the public, especially with regard to the issue of the Governor's consent. Their opinion will therefore represent a fair view of the state of affairs.

[23] M.S. Muhammad and N. Iroagnachi Accessing Land by women in the North East: (Unpublished Paper).

Table 1 Effect of Governor's consent on Alienation of Right of Occupancy

Response Analysis	Yes	No	Total
Male	11	4	15
Female	9	1	10
Total	20	5	25
Total in %	**80%**	**20%**	**100%**

From the table above, it shows that 80% of the respondents agree to the fact the Governor's consent has a definite effect on the alienation of Right of Occupancy, while 20% were of the opinion that it does not have any effect on the said alienation.

Table 2 Non-Compliance to obtaining Governor's consent

Response Analysis	Yes	No	Total
Male	11	4	15
Female	8	2	10
Total	21	6	25
Total in %	**76%**	**24%**	**100%**

The table above shows that 76% of the respondents were in agreement that there is non-compliance to obtaining Governor's consent on alienation of Right of Occupancy while the remaining 24% were of the view that there is compliance to obtaining the consent of the Governor before alienation of Right of Occupancy.

Table 3 Citizen's awareness on the legislation for obtaining Governor's consent

Response Analysis	Yes	No	Total
Male	10	5	15
Female	6	4	10
Total	16	9	25
Total in %	**64%**	**36%**	**100%**

The above table showed that 64% of the respondents claimed that there is awareness on the side of the public of the legislation on obtaining Governor's consent, while 36% believe that the public are not aware of the said legislation.

Table 4 Complaints regarding the cumbersome nature of the requirements

Response Analysis	Yes	No	Total
Male	15	0	15
Female	2	8	10
Total	17	8	25
Total in %	**68%**	**32%**	**100%**

The table above shows that 68% of the respondents disclosed that there are numerous complaints regarding the cumbersome nature of the requirements for obtaining Governor's consent, while 32% suggested that the process is not cumbersome as perceived by many.

Summary of Findings

This study made several findings;

i. It was found that the requirement that Governor's consent be first obtained has over the years created and is still creating endless controversies with regard to land transactions in Nigeria. Thus, the resultant hardship and frustration to land holders and prospective land owners. The cumbersome and slow process involved often discouraged prospective applicants. This in turn affects the transfer of rights of occupancy.

ii. That in practice, people ignore and avoid adherence to the express dictate of the Land Use Act regarding obtaining the consent of the Governor for land transactions. They go ahead to alienate without the requisite consent. Although, this act is illegal there is hardly any negative consequence due to the fact that there seem to be no machinery put in place to police a strict adherence. The people then resort to the customary forms of alienation and by the use of witnesses etc. the tenure of the buyer seemed secured and less precarious while the said consent requirement remains only a paper tiger, who the people pay only lip service to.

iii. Earlier pronouncements of the appellate courts on this issue had given rise to controversies but recent interpretations and holdings of the Supreme Court has resulted in the emergence of a more settled law that is devoid of controversy thereby ameliorating the frustrations that is mated out to the applicants and have gone a long way to prevent injustice through not allowing a mortgagee to reap from his own wrong doing.

iv. That few women had applied for Governor's consent and most have little or no knowledge of the process. This position is strongly believed to have resulted from customary and financial limitations on women and the equally labourous on women and the equally labourous process of acquiring the said Governor's consent.

Recommendation

The work recommends as follows;

i. That there should be legislative rebirth of sections 21, 22 and 34 of the Land Use Act respectively. This is aimed at making the Governor's decision to give or withhold consent on objective rather than a subjective one. A person would have and unhindered access to appeal against decisions of a Governor to withhold consent is unnecessarily or unfairly refused, a holder may legally challenge such refusal.

ii. A time limit within which an application for consent must be treated and the result given ought to be set out by the law. This will go a long way to cushion the hardship caused by incessant delays to prospective land developers land lords and other interest persons, thereby facilitating a stress free alienation of land.

iii. That the Supreme Court must painstakingly make their pronouncements especially with regard to land issues. Some of their earlier decisions had formed the subject of controversy although very recent pronouncements appear more justiciable and express on the issue of Governor's consent. The above notwithstanding, more bold and express pronouncements on the subject in future would be welcome to avoid conflicting interpretation and application of sections 21 and 22 of the Land Use Act.

iv. That there should be uniformity with regard to the method employed in obtaining the Governor's consent in all the 36 states of Nigeria including the Federal Capital Territory. This uniform procedure will help to remove unnecessary bureaucracy by unscrupulous Governors and those acting for them.

v. That forthwith, women land rights must be preserved and protected and that special consideration should be given to applicants for Governor's consent that are of the female gender.

vi. Machinery must be put in place to ensure adequate compliance of the dictates and requirements of the Land Use Act especially with regards to obtaining Governor's consent.

Conclusion

In conclusion, it is evident form the findings of the work that there is a practical component regarding the requirement of the Governor's consent for the validity of the land alienation transactions. The aforementioned practical components include actual compliance to the dictate of section 21 and 22 of the Act. The provision of a uniform procedure in practice and more humane and unambiguous pronouncements of the apex court become imperative.

Once these are put in place, the issue of the requirement of Governor's consent would become a valuable and beneficial tool in the achievement of the aims of the Land Use Act as expressed in its preamble and the practice will have a new lease of life.