



Ekiti state property protection (anti-land grabbing) law, 2019- A trouble shooter legal master piece

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Abstract

The Nigerian history is dotted with stories of crisis and violence associated with land ownership claim. The reason for this is not far-fetched as land pervasively underpins human activity. Indeed, land remains the object of competition in a number of potentially overlapping ways as an economic asset, as a connection with identity and social legitimacy and as political territory competition over land and its resources constitutes the center of the nexus between land and conflict. Land dispute may occur between individuals, between ethnic groups between communities, between nations; as witnessed between Nigeria and Cameroon over Bakassi Peninsula. Given the fact that land is a limited and multipurpose resource, there is likelihood that conflict arising from land ownership claim will remain protracted into distant future. However, in an attempt to scale down land dispute to a bearable level, governments, both at the Federal and State levels as evident in the enactment of the 1978 Land Use Act, are often constrained to put in place regulatory framework to minimize the competition over land claim. The recently enacted Ekiti State Property Protection (Anti-Land Grabbing) Law, 2019 showcases one of the legislative efforts on the part of the government to curb land conflict in Ekiti State. However, the Law has more questions to contend with than answers over land dispute in Ekiti State. This paper *inter alia* examined some of the salient provisions of the Law with a view to determining their applicability or otherwise in certain circumstances especially where there is rival ownership claim between the parties involved. The constitutional conflicts dwelling on the right of the Nigerian citizens to own immovable property anywhere in Nigeria which the Law ostensibly eroded was equally analytically highlighted in the paper.

Keywords: anti-land grabbing, land ownership claim

Introduction

Land dispute in Nigeria has become a perennial challenge with its attendant acrimony in spite of the extant Land Use Act put in place by the Federal Government to address land administration in the country. The recently enacted Ekiti State Property Protection (Anti –Land Grabbing) Law is yet another effort to combat the menace of land orchestrated dispute in Ekiti State. The Law *inter alia* specifically seeks to forestall a resort to self help in land ownership claim. Undoubtedly, resorting to self help to claim or defend landed property is a potential danger area that may precipitate break down of law and order.

However, before the Law can avail a claiming party, ownership of the affected land is fulcrum and central and this requirement constitutes the fundamental bane in the applicability of the Law. The Law does not also help matter when it defines “encroacher” to mean person(s) who make entry into another person’s property without right or permission. As already observed here, it is when ownership of land is first and foremost settled that one can determine with exactitude who is in possession in law or who is an encroacher of the particular land concerned as possession in law does not necessarily connote mere physical possession of the land. The situation is further compounded by the fact that the Law is criminally focused as it criminalizes any infraction of the provisions therein contained and which situation presents two fundamental challenges.

The first challenge stems from the fact that before any alleged offender can be exposed to culpability under the Law, he must have undergone criminal trial and be convicted as charged. The

second challenge which stems naturally from the first one is the legal constraints of determining land ownership dispute in a purely criminal trial. Put differently, land ownership claim is a matter for civil jurisdiction of the relevant court and the standard of proof is on the basis of preponderance of probability. Where therefore there is an unresolved ownership contention, it will amount to travesty of justice and a gross judicial aberration for the provisions of the Law to apply to punish an alleged offender who is either seeking to enter into the affected land or remaining on same on the ground of ownership claim.

Equally, the prohibition by the Law of the right of a land owning family from freely selling its land to non-indigene except upon the approval granted by the Bureau of Lands and Housing and the traditional ruler(s) of the community is clearly overbearing and unconstitutional as it prejudicially interferes with the ownership right of such land owning family and the prospective non-indigene purchaser by negating his right to freedom from discrimination and right to acquire an immovable property anywhere in Nigeria. These among other salient considerations form the thrust of this paper.

Entry into Land in Possession of the Owner

By the community reading of the provisions of the Law, ownership is made a recurrent decimal thereby kick-starting the legal virus that fatally afflicts the applicability of the Law in certain respects. Indeed, the Law provides thus ^[2]

As from the commencement of this Law, a person or group of person shall not use force or self help to take over or grab any landed property or engage in any act inconsistent with the proprietary right of the owner in the State.

By the usage of the word “owner” in this provision, it is assumed or taken that ownership is not in dispute and that the person in physical possession is actually the owner of the land. It is thus apparent that this provision will run into a legal hitch where the issue of ownership is under contention between the person in physical possession and the person who is seeking to take over the land.

In prohibiting entry by means of violence into landed property in the State, the Law provides thus ^[3]

A person who without lawful authority, uses or threatens violence for the purpose of securing entry into any landed property for himself or for any other person commits an offence.

By the literal rule of interpretation, the clear import of the above provision is that a person will escape culpability where he has lawful authority to enter a property notwithstanding that his entry is by means of threat or violence. A yearning gap is however created as the Law does not state who determines and what constitutes lawful authority for the purpose of this provision. However, it is hoped and believed that lawful authority will necessarily encapsulate a situation where a person enters landed property pursuant to the judgment order of the court delivered in his favour. In such instance, there can be no liability for forcible entry into such property even where the occupier is unwilling to vacate the property.

Occupation of Land as an Encroacher

The Law, while prohibiting any person from remaining on the land against the wish or interest of the owner posits thus ^[4]

A person who is occupying a property as an encroacher and fails to leave the property on being required to do so by the owner or on behalf of the owner of the property commits an offence.

As earlier observed, before the relevant provisions of the Law can be safely applied to punish any person as an encroacher, there must be no dispute as to rival ownership claim on the land. Where the person alleged to be an encroacher puts up a defence bordering on his ownership of the disputed land, it follows that save and except upon resolution of such rival claim by a court of competent jurisdiction, it becomes premature to put a tag of an encroacher on his neck and neither can the relevant provisions of the Law be invoked to mete out any punishment to such an individual in the circumstance.

A person may not be in physical possession of land and yet may be the *defacto* owner of such land. In the same vein, a person may be in possession of a landed property in sheer capacity of a trespasser. Possession is a matter of law and not strictly restricted to a mere physical possession.

In *Osineye v. Lawal* ^[5] it was held thus:

Possession in law does not mean mere physical occupation or control of a piece of land which may have originated from the tort in acts of trespass, by stealth or even by permission of the true owner of the land. Possession in law arises from the right and entitlement to such possession by lawful title or ownership of the land in question

In applying the provision of section 3 (2) of the Law, resort must necessarily be had first and foremost to determining the issues of who is legally in possession so as to forestall a situation where the Law will be unfairly applied to aid a sheer trespasser or using the Law as an instrument to promote illegality whereby a person who either by crook or manipulative measure is found to be in possession is being unjustifiably protected against the rightful owner simply because he is in mere physical possession.

The Law goes further to provide ^[6] that anyone who enters or is in occupation of any property by virtue of any title derived from an encroachment or license or right given by an encroacher shall himself be treated as an encroacher for the purpose of the law. The Law provides for a fine of N200, 000.00 or six months imprisonment or both for an offender convicted for occupying property as an encroacher ^[7]

A person who acquires title from an original encroacher may however escape liability if he can prove or establish that he is a purchaser for value without notice of the defect in title of the original encroacher. As there is no law without an exception, the burden imposed on a purchaser for value without notice to prove his innocence constitutes one of the exceptional instances in the administration of criminal justice where the accused person bears the burden of proof which ordinarily is the responsibility of the prosecution in criminal trial. Obviously, section 4 of the Law dwells on criminal trespass.

Inoperativeness of Bonafide Claim of Right under the Law

Bonafide claim of right is an amalgam of the Latin and English languages. In Latin, anything BONA FIDE connotes good faith. Thus, for a claim of right to qualify as bonafide claim of right, it must be made in good faith without fraud or deceit. It must be sincere and genuine ^[8]. The defence of honest claim of right is available to a party who is acting with a genuine motive and belief to take or protect property over which he asserts a honest claim of right. This defence is statutorily provided for thus: ^[9]

A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud

The above provision has been given judicial endorsement in a number of cases. In *Ibeziako V. State* ^[10] the Court held thus:

A claim of right exists whenever a man honestly believes that he has a lawful claim, even though it may completely be unfounded in law or in fact... The burden is on the prosecution to exclude defence of bona fide claim of right made by the accused.

In a land dispute, where there is a reasonable belief on the part of a party that the disputed land belongs to him, his entry cannot amount to an offence of forcible entry ^[11].

To establish a charge of forcible entry, unlike unlawful assembly, it is sufficient that the entry on land is in a manner likely to cause a breach of the peace. However, where there is evidence that the accused persons were in the process of asserting a bonafide claim of right, there is no reason why that defence cannot avail them, and this defence is in addition to the defence Under Section 292 of the Criminal Code.

On the potency of a bona fide claim of right, the Supreme Court has held thus ^[12]

That defence appears to be very wide in scope... In order to be criminally liable in all offences other than those rare cases of strict liability, mensrea is required. Where a claim of right is available as a defence, it negatives the requisite mensrea. In some cases the elements constituting mensrea are not difficult to ascertain, e.g of willful and unlawful damage to property: a claim of right presents no difficulty and will avail an accused in the appropriate circumstances. If however ownership is contested, the burden of proving mensrea must be discharged by the prosecution. The issue may turn on the strength of the claim to ownership according to the evidence or on the honesty of the belief in the claim according to the circumstances. The relevant factors then simply are the 'claim to ownership' not necessarily 'ownership' and the "honest belief in the claim" not necessarily the 'reasonableness of the claim.

Analyzing the defence of bonafide claim of right within the context of both sections 3 and 4 of the Law, it is quite intriguing that the defence is like a two edged sword in this circumstance as it may be available to both the person seeking to enter a property as well as the person already in occupation of such property depending on the merit or otherwise of their respective counter claims. A person who seeks to enter a property on the basis of his honest claim of right that he is the owner of such property cannot be said to have committed a breach of the Law. Equally, a rival claimant already in possession of such property who believes that he is in lawful occupation as the owner cannot be said to have violated the Law. At any rate, whichever way the pendulum of the scale of bonafide claim of right tilts, the legal import of the defence is that it ultimately avails a rightful party.

Where ownership claims over a landed property are diametrically tied between rival claimants the application of the Law will be entangled in a knotty legal barb wire until and unless the issue of ownership is effectively resolved. Put differently, applying the relevant provisions of the Law to inflict criminal sanction on a person who seeks to enter a landed property or a person in possession who is alleged to be an encroacher without the determination of their respective rival ownership claim put forward by them, will be antithetical to the age long principle of fair hearing.

Jurisdictional Constraints under the Law

Generally, the jurisdiction of the court is notionally classified into two segmentations as either civil or criminal. In the exercise of its jurisdiction, different standard and procedures appertained depending on which of the two forms of jurisdiction is being

exercised. The Law, while vesting jurisdiction to try offenders stipulates thus ^[13]

The special offences court or any other courts shall have jurisdiction to try any person for any offence specified in this Law.

The foregoing provision is rather nebulous to an extent. It is noteworthy to observe that as at the time of coming into force of the Law and even up till now, there is no special offences court put in place or established to try offenders under the Law.

The simple import of this development is that for now, offences under the Law are only triable by any other courts. No specific court is however categorized as falling within the definition of any other courts in the State. Thus, in the absence of the special offences court, the only other courts that can ostensibly assume jurisdiction under the Law to try offenders are the Magistrate and the High Courts respectively.

The jurisdictional challenge under the Law emanates from the dichotomy between civil and criminal jurisdiction of the court. It is settled law that the jurisdiction of the court is statute bestowed. In *Bello V. Damisa* ^[14] the Supreme Court held thus:

Courts are donated or conferred with jurisdiction to adjudicate on matters by either the Constitution or statute with regard to some subject matters or suits including appeal. Where a statute or Constitution confers jurisdiction on a court, such serves as a mandate given to it to adjudicate on the matter(s) in question and once a court is not so conferred with such jurisdiction, it then becomes incapacitated and cannot thereof adjudicate or determine the matter.

Given the fact that the Law is criminally focused, an offender under the Law can only be arraigned under the criminal jurisdiction of the court and certainly not under its civil jurisdiction. It follows therefore that where a person has been arraigned under the Law for criminal trial, the Court cannot oscillate its jurisdiction, in the course of such criminal trial, by delving into the determination of land ownership dispute which is civil in nature and which can only be tried under the civil jurisdiction of the Court.

It is settled law that crime is committed against the State ^[15], hence, criminal prosecution is undertaken by the State through relevant agencies. It is therefore not the responsibility of the victims of the crimes to prosecute criminal infractions that occurred against them. The courts in criminal and civil suits have different powers just as the parties differ. In civil suit, a party sues another person because of a dispute or problem between them. The objects of civil trial are quite distinct from that of criminal cases. In civil cases, the outcome of litigation is substantially parties focused. While in criminal cases, the end result is State or society inclined. A convict may be exposed to a monetary penalty which may be by way of fine payable to the State treasury or restitution to the specific victim of the crime; imprisonment, death penalty or any other appropriate sanction or some combinations of these penal sanctions.

As a matter of procedure, a person accused of a crime is generally arraigned on a formal charge and his plea is accordingly taken thereto. Indeed, arraignment marks the incipient of a criminal trial ^[16]. Aside from the above marked distinction between criminal

and civil cases, another yet difference is the standard of proof required. In civil cases, the standard of proof is discharged on the balance of probabilities or preponderance of evidence which translates to a verdict in favour of a party who adduces stronger evidence on the imaginary scale of justice ^[17] On the other hand, in criminal trial, the prosecution has the burden of proving the guilt of an accused beyond reasonable doubt ^[18] and this burden does not shift but rests on the prosecution throughout the trial. The Supreme Court restated this principle of law when it held thus ^[19]

By virtue of Section 137 of the Evidence Act, the commission of a crime by a person must be proved beyond reasonable doubt. The burden of proof lies on the prosecution and it never shifts. If on the entire evidence, the Court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof and the accused will be entitled to an acquittal.

In every criminal trial, the prosecution must prove all the essential ingredients of an offence beyond reasonable doubt. In Idris vs. State ^[20] the court held thus:

The burden of proving that any person has committed a crime or a wrongful act rests on the person who asserts it and this is more often than not, the prosecution. Where the commission of crime by party is in issue in any proceeding be it civil or criminal, it must be proved beyond reasonable doubt. In discharging the burden, all the essential ingredient of the crime alleged must be proved beyond reasonable doubt. The burden never shifts. Therefore if in a criminal trial, on the whole of the evidence before it, the court is left in a state of doubt, the prosecution would have failed to discharge the burden of proof which the law lays upon it and the defendant would be entitled to an acquittal.

The Supreme Court equally held that ^[21]

In criminal cases, the standard of proof by the prosecution is beyond reasonable doubt and not on the balance of probability.

The law is settled that both the criminal action and civil claim can be simultaneously pursued. In S.S Ltd V Adamu Oladiran ^[22] it was held thus:

Both the criminal action and civil claim can be pursued simultaneously and a criminal allegation can also be pleaded in civil case.

However, criminal and civil claims cannot be tried together in a single suit due to the differences that obtain in civil and criminal trial arrangements as already highlighted herein. Illustratively therefore, what then happens where a person is standing trial under the Law and issues are joined on the ownership of the land where the alleged infraction of the Law occurred? Can the court that is exercising criminal jurisdiction now validly summons and assume civil jurisdiction to entertain ownership claim to title in a purely criminal matter which is not the subject matter of the trial before it? This is not legally possible or allowed. It follows therefore that it will then be practically difficult for the

prosecution to establish the guilt of such an accused person beyond reasonable doubt as expected by the law without first and foremost resolving such ownership dispute surrounding the affected landed property. It is noteworthy to observe here that dispute or conflict arising from landed property is generally about rival ownership claim.

Any decision reached by the trial court in such circumstance without resolving the contentious dispute on ownership will be in violation of the right to fair hearing of the accused person. The true test of a fair hearing is not whether a party had a hearing during the trial but the impression of a reasonable person who was present at the trial whether from his observation justice has been done in the case ^[23]. Every court has the primary obligation to hear and determine issues in controversy before it as presented by the parties as the abiding ethos of adjudication is to do substantial justice between the parties.

The Requirement of Obtaining Clearance under the Law before Sale of Land and Sections 42 and 43 of the 1999 Constitution

The requirement of obtaining clearance from the Bureau of Lands and Housing and traditional ruler(s) in the affected community before a land owning family can sell its land to non indigene in Ekiti State has once raised the over flogged but unresolved issue of ownership of land in the country. It is an understatement to state that ownership of land has remained a lingering contention in Nigeria notwithstanding the extant provision of the Land Use Act which vests land within the State in the State Government ^[24] in trust for the citizenry.

Prior to the enactment of the Land Use Act in 1978, absolutistic view of the concept of ownership of land in Nigeria reigned supreme and this connotes that the owner of land can competently exercise all incidents of ownership over his landed property ^[25]. In relation to real property, ownership has been held ^[26] to mean a complete and total right over a property. The owner of the property is not subject to the right of another person as long as he remains the allodia owner. In so far as the property inheres in him, nobody can say anything. This is because the property begins with him and ends with him.

The enactment of the Land Use Act in 1978 has however precipitated the emergence of two schools of thought on the issue of ownership of land in Nigeria. The first school is nationalization school of thought and the second is private property right school of thought.

According to nationalization school of thought, the preexisting customary land tenurial system has been subsumed under the Act with the implication of removing corporate groups, families and chiefs from the trusteeship of land and replaced them with the State Governor in whom Section 1 of the Act now vests trusteeship. Indeed, the Act extinguishes individual land rights. Justice Kayode Eso JSC in giving judicial credence to the nationalization school of thought in Nkwoocha V Governor of Anambra State ^[27] held thus

The tenor of that Act as a single piece of legislation is the nationalization of all lands in the country by the vesting of its ownership in the state leaving the private individuals with an interest in land which is a mere right of occupancy.

The private property right school of thought maintains a different pole from the nationalization school of thought by asserting that the Act does not and cannot be said to have nationalized all lands in the State. This school is of the firm view that the right of the citizen to enjoy his interest in land is intact and that the right to alienate his interest is only made conditional when such land transaction falls within the provision of section 36 of the Act which requires the consent of the Governor before alienation.

It has been argued^[28] that if the Governor is the owner of all lands in the State, it would not have been necessary to insert section 28 of the Act which gives the Governor the power of revocation. The Governor is not the beneficial owner of the land by virtue of section 1 of the Act, but only a trustee in favour of all Nigerians. The Act still recognizes the various units of ownership^[29] that were in existence prior to its enactment by virtue of its sections 24, 29(3) and 35. There are three types of ownership namely customary ownership, customary right of occupancy and statutory right of occupancy. The basic import of the Act is that the Governor as trust owner has the radical title in the land while the real ownership resides with indigenous owners.

Indeed, it is believed that the Land Use Act has not practically taken away land from customary land owners as the Act makes the requirement of payment of compensation a condition *sine qua non* to valid acquisition of land by the government^[30]. The Nigerian Constitution equally supports the Land Use Act on the issue of payment of compensation to land owners upon compulsory acquisition when it provides thus^[31]

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law that, among other things-

- a. requires the prompt payment of compensation thereof and
- b. gives to any person claiming such compensation of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

It is evident that the ownership right of the citizens is still being recognized under the Act, hence, the imperativeness of payment of compensation whenever acquisition occurs of their respective lands.

The Ekiti State Property Protection (Anti- Land Grabbing) Law however seems to have detracted from one of the incidents of ownership which is the right to deal with the property with unfettered hindrance. The Law curiously specifies thus^[32]

Any land- owning family who wishes to sell or give out permanently large expanse of land to non- indigenes of the State must get authorized clearance from the Bureau of Lands and Housing and the traditional ruler(s) of the community otherwise the land will revert to the State

This particular provision raises some fundamental issues touching on the incident of ownership and constitutional concerns and which clearly run the provision into constitutional crisis. The Nigerian Constitution patently guarantees right to freedom from discrimination as it provides thus^[33]

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person-

- a. Be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.

The Constitution further provides^[34]

No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

In the same vein, the Nigerian Constitution bestows on the Nigerian citizens the right to acquire and own immovable property anywhere in Nigeria. To this end, the Constitution provides thus^[35]

Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

The implication of the provision of section 6(5) of the Law is obvious to the effect that a land owning family cannot exercise its ownership right to freely sell its land to a prospective buyer of any other extractions in Nigeria except if such buyer is from Ekiti State. In the same vein, a non indigene who either needs land in the State for residential settlement or for the purposes of investment cannot freely acquire such land save and except upon the clearance from the Bureau of Lands and Housing and the traditional ruler(s) of the affected community.

Aside from the fact that this condition constitutes unnecessary bottleneck and can negatively impact on the influx of investors in the State, it also amounts to an infraction on the Nigerian Constitution as exemplified in Sections 42 and 43 above by constituting indigene ship status into a constraint in freely acquiring landed property in the State.

The Law fatally failed to depict any rationale for such clearance or the parameters to be considered in the obtainment of the requisite clearance or to deserve its refusal. It then means that the Bureau of Lands and Housing and the traditional ruler can for ulterior motive or for no reason at all arbitrarily refuse to give the needed clearance thereby frustrating the land owning family from freely exercising their ownership right over such landed property as well as the constitutional right of the prospective non indigene purchaser from acquiring and owning immovable property anywhere in Nigeria including Ekiti State.

A deeper crisis is created by the Law when it makes the consent of the Bureau of Lands and Housing and that of the traditional ruler(s) of the community conjunctive by the usage of the word "and". Given the way the provision of the Law is couched on the issue of clearance, it suffices to stress that clearance by the Bureau of Land and House without the corresponding clearance of the traditional ruler(s) of the affected community will fall short of the requirement of the Law which has specified the concurrent consent of both entities.

Indeed, the requirement of clearance by the land-owning family from the Bureau of Land and Housing and the traditional ruler(s) before selling its land aside from being constitutionally illegal, is a sure trap to expose such family to the exploitative and corrupt tendencies of the officials of the Bureau of Lands and Housing and the traditional ruler(s) who may go out of their way to be demanding for certain percentage of the purchase price; before giving their clearance. Indeed, it is unlikely that such clearance will be gratuitously given the pervading corrupt practices that have infiltrated the Nigerian environment.

A land owning family that is desperately in need of money and is lucky to get a buyer will have no option than to give in to the corrupt and exploitative advances of the clearing authorities to obtain the much needed clearance.

The Nigerian Constitution remains the supreme and the grundnorm of all the laws in the country and to that extent, any law that conflicts with the Constitution shall be void to the magnitude of its inconsistency. The supremacy of the Nigerian Constitution is clearly specified thus ^[36]

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

The Constitution further provides that ^[37]

If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.

The Supreme Court has in a number of cases has affirmed the supremacy of the Constitution. In *Idoko v. State* ^[38]

The Constitution is our supreme law and any law that stands in conflict with it is null and void to the extent of its inconsistency.

Equally in *Ugboji v. State* ^[39] the Supreme Court held thus:

By the provision of section 1 of the Constitution of the Federal Republic of Nigeria, 1999, the supremacy of the Constitution is asserted. Any law or provisions thereof that run riot and violent to the provisions of the Constitution or is in conflict with the constitutional provision is null and void to the extent of its inconsistency.

The Ekiti State Property Protection (Anti-Land Grabbing) Law, 2019 is a Law enacted by the House of Assembly of Ekiti State. The 1999 Constitution of the Federal Republic of Nigeria (as Amended) is a Law duly enacted by the National Assembly. To that effect, the Ekiti State Property Protection (Anti-Land Grabbing) Law, 2019 is inferior to the Constitutional provisions as particularly enshrined in Sections 42 and 43 of the said Constitution which provide for the right to freedom from discrimination and right to acquire and own immovable property anywhere in Nigeria.

The law is trite that where there is a conflict between the Law made by the Federal Government and that of the State Law over the same subject matter, the Federal Law will prevail and the

State Law shall be null and void to the extent of its inconsistency. The Nigerian 1999 Constitution (as amended) provides that ^[40]

If any Law enacted by the House Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void.

Much as the Land Use Act has to some extent qualified the ownership right of indigenous or customary land owners in Nigeria, it is however difficult to situate within the Act the requirement of clearance by land owning family from the Bureau of Lands and Housing and the traditional ruler(s) before exercising its right of sale to non indigenes in Ekiti State. The only consent provided for in the Act before alienation is when a holder of Statutory Right of Occupancy seeks to divest his unexhausted interest granted under such occupancy in favour of another person.

The requirement for clearance by the land owning family under the Law becomes more profoundly questionable as it relates to the traditional rulers to which the Act has not assigned any statutory obligation in the alienation of land within the State. To say the least, this particular provision is constitutionally offensive and only deserving to be accorded a befitting quiet burial without much ado.

Conclusion

Undoubtedly, no responsible government will endorse resorting to self help under whatever guise as such an unwholesome act is an open invitation to anarchy, conflict, violence and blood shedding. It is apparent that in one breath, the Law courageously aimed at curbing the untoward conduct of self help in land oriented dispute in the State. However, the Law ultimately presents a scenario of cleansing a blot with an inky hand and ended up creating more problems that it sets out to address.

Indeed, there is yearning need for the law to be fine tune to be in consonance with the relevant constitutional provisions as they relate to the right of the citizens to own immovable property anywhere in Nigeria and the freedom of such owners to exercise unfettered right of all incidents of ownership over such property. Equally, save and except where there is no ownership claim as a defence, the applicability of the law against an alleged offender should be stepped down until there is a decisive resolution of any arising rival ownership claim.

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18. See Section 139(1) of the Evidence Act, 2011 where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged is upon such person.
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21. OZAKI vs. STATE (1998) 1 ACLR 27 ;at 34. Also in IKO vs. STATE (2003) 3 ACLR 49 at 59 it was held that Supreme Court that in all criminal cases, the prosecution has throughout the burden to prove beyond reasonable doubt the guilt of the person charged.;
22. (2016) All FWLR (Pt. 836) pg 520 at 544 para G. See also: OTUKPO V JOHN (2013) All FWLR (Pt. 661) pg. 1509 at 1512 paras D-A.
23. ADAMU V F.R.N. (2018) ALL FWLR (PT. 958) PG. 1042 AT 1054 PARAS B-C It is needless to state that the right to fair hearing is a fundamental constitutional right guaranteed by section.....of the Nigerian 1999 Constitution. Therefore, any breach of the provisions, particularly in trials, will render such trials null and void no matter how otherwise well and brilliantly conducted
24. Section 1 Land Use Act
25. Incidents of ownership include the right to possess, the right to use, the right to manage, the right to income of the thing, the right to the capital, the right to security, the right of transmissibility, the right of absence of term, the right to prevent harm, the right to execution and the incident of residuary.
26. (Attorney General of Lagos State v Attorney General of the Federation and 35 others (2003) 12 NWLR (833)1) Some scholars such as Umezulike (Umezulike "Does Land Use Act expropriate" Another View (1986) 5 JPPL p. 61 , Fatula (Fatula A.O :*Fundamentals of Nigerian Real Property*, Afribic Press Ibadan 2012 p. 175 and Nwabueze (Nwabueze 'Nationalization of Land in Nigeria" paper delivered at Annual Bar Dinner, Onitsha Branch on 8th December, 1984 p. 1) are clearly in unison as to the import of the Act which they posited abrogated the right of ownership of land hitherto enjoyed by Nigerians and concede to the citizens a mere right of occupation and usage while reserving ownership right to the State Government.
27. (1984) 6 SC 362 AT 404
28. Omotola, J. A. Does Land Use Act Expropriate? (1985) 3 JPPL p1
29. Fekumo, J. F. Does Land Use Act Expropriate?- A Rejoinder (1978/ 88 8/9 JPPL. p 5-20)
30. Section 29 Land Use Act
31. Section 44 Constitution of the Federal Republic of Nigeria (as Amended), 1999.
32. Section 6(5)
33. Section 42(1)
34. Section 42(2)
35. Section 43
36. Section 1(1)
37. Section 1(3)
38. (2018) All FWLR (Pt.957) 767 at 962 paras. C-D
39. (2018) All FWLR (Pt. 926) 73 at 98 paras. E-G.
40. Section 4 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)