

Fundamental right to property and equality of opportunities in Nigeria- Linkages and intersections

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Abstract

Under the Nigerian legal system, the right to property is not just a human right; it is a fundamental right breach of which can be redressed in a Court of law. Aside, being a justiciable right, the national Constitution also lays down mandatory preconditions for compulsory acquisition of property some of which are proper service of notice of revocation and payment of compensation. These notwithstanding, the right to property is still subject to the proviso that the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. While this proviso established equality of opportunity in the ownership of minerals, conversely, it antagonised inalienability of property rights on the other hand. This puzzle was resolved in this paper which adopted doctrinal research method and examined contemporary statutory provisions and judicial decisions on the complex relationship between the right to property and equality of opportunity in Nigeria. The paper queried the ambiguous modalities for determination of adequacy of the compensation for compulsorily acquired property and the lack of promptitude in payment of compensation and recommended among other things that clear timelines and modalities for payment of compensation should be adopted.

Keywords: Fundamental rights, human rights, property, equality, compensation, derogation

Introduction

This article draws attention to the rude awakening or paradox that under the Nigerian legal system, on one hand, the right to property antagonises equality of opportunities and on the other hand it recognises equality of opportunity with respect to property rights in assortment of ways. While the right to property is a fundamental right that is inalienable and imprescriptible, meaning that citizens are at liberty to own as much property as fortune and ingenuity can avail them without let or hindrance which can be seen to be antagonistic to the concept of equality of opportunity yet it is also provided in the national Constitution that property rights are subject to certain legally permissible derogations and more particularly that the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly. This means that no one citizen or group of citizen shall exclusively own minerals, mineral oils and natural gas as they belong to the common wealth. Against the foregoing background and for ease of discussion and to aid better understanding, this article will be divided into convenient segments to critically examine the broad meaning of human rights and the strict or limited meaning of fundamental rights under the Nigerian legal system as a justification for treatment of right to property as a fundamental right and its juridical implications. Detailed consideration will be given to right to property as a fundamental right and incidences of equality of opportunity with the right to property including the lawful derogations and obstacles to the right to property. In the end, hands on recommendations will be made with a view to strengthening

the right to property while preserving equality of opportunity in property rights.

Human rights includes fundamental rights

In the case of *Jerry & Anor v IGP & Ors* ^[1], the Court of Appeal restated in clear terms that the human rights law of Nigeria is contained, inter alia, in two major documents. These are the Constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples' Rights, domesticated as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1990 ^[2]. The Constitution of the Federal Republic of Nigeria, 1999 as amended ^[3] guarantees what are called "Fundamental Rights" in its Chapter IV and the rights therein enshrined are largely the traditional civil and political (libertarian) rights and freedoms. It is the duty of the Court to protect these rights.

On the other hand, *Order 1 Rule 2* of the Fundamental Rights (Enforcement Procedure) Rules, 2009 applicable in Nigeria defines "Fundamental Right" to mean any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and People's Rights (Ratification and Enforcement) Act and interprets "Human Rights" to include fundamental rights ^[4]. This was confirmed in *Osondu & Anor v A-G Enugu State & Ors* ^[5]. This is a broad definition although the reality remains that they do not mean one and the same thing in terms of justiciability. While fundamental rights guaranteed in Chapter IV of the CFRN, 1999 as amended are expressly declared to be justiciable, the bundle of economic, social and cultural rights known as fundamental objectives and directive principles of state policy in Chapter II of the CFRN, 1999 as amended are

declared non-justiciable in *section 6(6)(c)* of the CFRN, 1999 as amended.

It has been held judicially in the case of *Hassan v Economic and Financial Crimes Commission*^[6] that the human person possesses rights because of the very fact that it is a person, a whole, master of itself and of his acts, and which consequently is not merely a means to an end but an end, an end which must be treated as such. Fundamental rights are rights which are owed to man because of the very fact that he is man. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. The moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life.

The statutory and case law authorities cited above served to confirm that human rights include fundamental rights. However, only human rights that are constitutionally guaranteed and declared justiciable can be enforced in the courts^[7]. These are styled “fundamental rights”^[8] and it is in this limited legal sense that the right to be property is discussed in this presentation.

Strict or limited juridical meaning of “fundamental right” under Nigerian rights system

The choice of the use of the taxonomy or descriptive epithet “fundamental right” is deliberate as it is the heading of Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 as amended which contain the group of rights that are justiciable which include but are not limited to the right to acquire and own property immovable property anywhere in Nigeria under *section 43* and the right payment of compensation upon compulsory acquisition of property under *section 44*. These rights are justiciable because *section 46(1)* of the CFRN 1999 as amended expressly grants any person who alleges that his fundamental right provided for in Chapter IV of the Constitution has been, is being or likely to be contravened in any state to apply to any High Court in that State for redress. In *Inspector Gabriel of the C.O.P Monitoring Unit, Lagos v Ukpabio & ors*^[9], it was held by the Supreme Court, per Okoro, JSC, that The rights enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) are termed Fundamental for the simple reason that they are inalienable natural rights which stands above the ordinary laws of the land and are primary conditions to civilized existence. It is for their natural inalienability that the law prioritizes their preservation against violation. See *Fawehinmi v. IGP* (2002) 7 NWLR (Pt.767) 606.

It is for this reason that *section 46(1)* of the 1999 Constitution grants any person who alleges that his fundamental right provided for in Chapter IV of the Constitution has been, is being or likely to be contravened in any state to apply to any High Court in that State for redress. The Court referred to here is definitely not exclusive to High Court of a State but both Federal High Court and State High Court. See *Federal University of Technology Minna, Niger State & Ors v Bukola Oluwaseun Olutayo* (2017) LPELR- 43827 (SC). It follows therefore that in matters for enforcement of fundamental rights, both the High Court of a

State and the Federal High Court have concurrent Jurisdiction.

In *El-Rufai v Senate of the National Assembly & Ors*^[10], it was held by the Court of Appeal that Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 describes rights set out from sections 33 to 45 as “fundamental rights.” Citing the Black’s Law Dictionary, the Court of Appeal adopted the definition therein of the term “fundamental rights” as:

1. A right derived from natural or fundamental law.
2. Constitutional law. A significant component of liberty, encroachments of which are rigorously tested by Courts to ascertain the soundness of purported governmental justifications. A fundamental right triggers strict scrutiny to determine whether the law violates the Due Process Clause or the Equal Protection Clause of the 14th Amendment. As enunciated by the Supreme Court, fundamental rights include voting, interstate travel, and various aspects of privacy (such as marriage and contraception rights). - Also termed fundamental interest.”

At the time of commencement of this proceedings in the lower Court the Fundamental Rights (Enforcement Procedure) Rules 1979 with commencement date of 1st January, 1980 was in operation. Order 1 Rule 1(1) of the Rules also defined “Fundamental Right” to mean ‘any of the Fundamental Rights provided for in Chapter IV of the Constitution’.

In *Ransome-Kuti v Attorney General of the Federation*^[11], Eso, JSC, stated that a fundamental right “is a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself” and “it is a primary condition to civilized existence”. The same apex Supreme Court held in *Lagos State Govt & Ors v Abdulkareem & Ors*^[12] that “fundamental right is a right that stands above the ordinary laws of the land; it also includes any rights stipulated in the African Charter.” In *Abacha & Ors v Fawehinmi*^[13], *Iguh, JSC, as he then was held as follows*

I need to stress, in the first place, that the African Charter on Human and Peoples' Rights was duly adopted by Nigeria in 1983 by the enactment of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act. 1983, Cap. 10, Laws of the Federation of Nigeria, 1990. As a result, the rights and obligation therein covered under the said Charter became fully and legally enforceable in Nigeria as any other municipal or domestic law of the land.

Fundamental right is a justiciable right infraction of which can give rise to legal action. In *Fort Royal Homes Ltd & Anor v EFCC & Anor*^[14], the Court of Appeal per Yahaya, JCA, held among other things that human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. And when they are protected as legal rights they then become known as fundamental human rights which are protected by the grundnorm of the society, that is, the Constitution of the Federal Republic of Nigeria. It was tersely stated in *Igwe v Ezeanochie*^[15] that “Fundamental right are rights derived from natural or fundamental law”. However, it will be shown in the immediate ensuing paragraph that all human

rights are not fundamental rights under the Nigerian legal system.

Right to property as fundamental right

The right to property enjoys protection at international, regional and national levels. Provisions regarding the right to own property are found in *article 17* of the Universal Declaration of Human Rights, 1948^[16] to the effect that- (1) Everyone has the right to own property alone as well as in association with others and (2) No one shall be arbitrarily deprived of his property. This does not differentiate between moveable and immoveable property. Curiously, the right to property recognised in *article 17* of the UDHR is not recognised in the International Covenant on Economic Social and Cultural Rights, 1966^[17] which is a principal global document on economic and allied rights. This was primarily because of the inability of governments to agree on a formulation governing public takings and the compensation therefrom^[18]. At the continental level, *article 14* of the African Charter provides that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Within the Nigerian legal system, the right to own property is a fundamental right enshrined in two different sections of the CFRN, 1999, as amended. Firstly, in *section 44* of the CFRN, 1999 as amended, it is provided that

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

It must be noted that unlike *section 17* of the UDHR, 1948, this protection extends only to ownership of immovable property which is simply understood to mean land or things attached thereto. In *Itam v Effiong*^[19], it was held that an immovable property can simply be identified as any land or anything attached to land or soil including all structures or objects like buildings or trees standing on it. Anything which is attached to earth and all chattels are immovable properties.

Secondly, there is safeguard or protection for moveable and immovable property in *section 44(1)* of selfsame Constitution wherein it is enacted that

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 purposes prescribed by a law that, among other things-

- a. Requires the prompt payment of compensation therefore; and
- b. Gives to any person claiming such compensation a right of access for the determination 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.

The above constitutional provision was vigorously interpreted in *Kandix Ltd & Anor v A-G & Commissioner for Justice, Cross River State & Anor*^[20] wherein it was held that in the absence of a proper notice of revocation of right of occupancy, the purported revocation of that right of occupancy by the Governor or Officer duly authorized by the Governor is ineffectual. This is because *section 44* of the Land Use Act, 1978 makes provisions for service of notices

by different modes and this must be strictly observed^[21]. The purpose of giving notice of revocation of a right of occupancy is to duly inform the holder thereof the steps being taken to extinguish his right of occupancy. In the absence of a proper notice of revocation of right of occupancy, the purported revocation of that right of occupancy by the Governor or Officer duly authorised by the Governor is ineffectual. As the Notice of Revocation was not served strictly in accordance with *section 44* of the Land Use Act, 1978, was set aside by the appellate Court. On the whole, the appellate Court found merit in the appeal and accordingly allowed same. The Court of Appeal held that the failure to give the mandatory notice of revocation to the appellants as required by law rendered the purported revocation void. It was thereby declared that the subsequent re-allocation of the appellants' land to other private persons was illegal, null and void and of no effect whatsoever and the appellants' right and title to the revoked land were still subsisting. The Court of Appeal further held that neither the breach of the covenant to pay the ground rents nor the purported claim by learned counsel for the respondents that the plot was not fully developed can save the notice of revocation from being declared null and void and consequently setting it aside since the Notice of revocation was not served on the appellants nor adequate compensation paid^[22]. This was also the basis for the earlier decisions in *NITEL v Ogunbiyi*^[23], *A-G Bendel State v Aideyan*^[24], and; *Nigerian Engineering Works Ltd v DENAP Ltd*^[25].

Without sounding repetitive, breach of right to property is breach of fundamental right. It follows therefore that the person whose property was acquired without necessary compliance with provisions of the Constitution, has a right of access to the Courts to ventilate his grievance as held by the Supreme Court in *Tsoho Dan Amale v Sokoto Local Government*^[26]. Furthermore, it was held in *Government of Enugu State of Nigeria & Ors v Onya & ors*^[27] that the right to property is by the Constitution of the land and any interference therewith must be strictly in accordance with the law. Interference with property rights of citizens *vi et armis (with force and arms)* by governmental bodies must be depreciated if the rule of law is to be enthroned. Furthermore, if there is a breach of fundamental right, it does not lie in the mouth of the party in breach to canvass that there was no miscarriage of justice arising from the breach. The breach of the fundamental right being fundamental overrides and overtakes the common law principle of "no miscarriage of justice. This is because by the breach, the doctrine of technicality is gone as the adherence to technicality is receptive of the concept of miscarriage of justice^[28]. Following from the constitutional protection of the right to property, it has been judicially determined that compulsory acquisition of immovable property by Government must follow due process. In *Goldmark (Nig) Ltd & ors v Ibafo Co Ltd & Ors*^[29], the Supreme Court held answered the question whether the government has the right to compulsorily acquire property. It held that

This Court had always emphasized that government has the right to compulsorily acquire property on payment of compensation. There is no argument about such Constitutional power. There are statutes which provide for the procedure of acquiring property by the government. Government is expected to comply with those statutes which it has enacted.

The property of a person property cannot be forcefully acquired without due process of the law. There should be no forceful acquisition of property and there must be payment of compensation. In the case of *Teumpenkenso v Ribadu & Anor* ^[30], it was held that the forceful manner the farmland of the appellant was acquired by the respondents without any compensation being paid to him impacted negatively on the appellant's right to ownership of property as entrenched in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The right to own property is a feature of the Nigeria Constitution and by this provision, every Nigerian citizen has a right to acquire and own immovable properties anywhere in Nigeria without him being discriminated upon or molested except as the Constitution provides. If for any reason the property whose interest is vested in the citizen was acquired for any purpose, the law makes adequate provisions for compensation for such acquisition under *section 44(1)(a) and (b)* of the CFRN, 1999 as amended.

In sum, it must be stated that the constitutional guarantee against compulsory acquisition of property is a remarkable innovation by the framers of the CFRN 1999 as amended as there is no equivalent provision in the erstwhile 1979, 1963 and 1960 Constitutions of Nigeria. The mischief the legislature set out to cure is that no Nigerian citizen shall be denied ownership of property or acquisition of land in any part of Nigeria merely because he is not from that part of country. This is against the experience of the abandoned property syndrome which was used to compulsorily and illegally acquire the property of Igbo ethnic nationality who fled and left their property in some States considered not their home states during the Nigerian Civil War, only to return to be told by the natives that those property were confiscated by the State governments where they were abandoned. With these provisions, the incidences of abandoned property in Nigeria have been laid to rest as unconstitutional and a violation of the inalienable right to property barbaric.

Meaning of equality of opportunity

Equality of opportunity is a controversial concept. It is an idea that has proved at once contested and elusive ^[31]. Demand for equality does not deny existence of natural differences between men. To deny that is to enter Orwell's *Animal Farm* and to learn that when all are equal some are more equal than others. Equality definitely involves a certain leveling process. Equality of opportunity means all should have an equal start in the race for success. In our society, opportunity goes with accident of birth. Mere equality before law does not guarantee equality of opportunity. Equality of opportunity cannot be achieved by the majestic equality of law which forbids rich and poor alike to steal breed and to sleep under the bridges. Tawney argues that if the rules of a game give a permanent advantage to some of the players, it does not become fair merely because they are scrupulously observed by all who take part in it ^[32]. The author accordingly asserts that its existence depends not merely on the absence of disabilities but on the presence of abilities. Equality of opportunity depends upon economic equality. Laski grasped the heart of the problem when he reasoned that political equality is never real unless it is accompanied by virtual economic equality. Otherwise, political power is bound to be the handmaid of economic power. Without economic equality, political equality is a farce, a cruel joke played upon people

politically. The paper agrees with Rousseau's contention that only that is true democracy where no citizen should be wealthy enough to buy another and not poor enough to be forced to sell himself ^[33].

Freedom and equality are foundational values that we draw upon when envisioning a better society. Equality of opportunity is a social ideal that combines concern with freedom and equality, and this social ideal provides a vision of how we ought to live together. At first glance, the value of equality can seem to demand uniformity that seems dystopian. For instance, if everyone were forced to wear the same clothes, pursue the same hobbies and have the same number of children, we would think this was intolerable. However, we should be careful not to reject equality entirely on this basis. Equality is still attractive if we limit its scope to some areas. For instance, equality before the law and equal rights to vote seem to be at the heart of our convictions about how we should live together. Inequality in these areas seems as intolerable as sameness in dress, family size or in our choice of recreational activities. Equality of Opportunity is one such combination and it has been a rich source of academic and political debate, a political slogan, and a widely held conviction about how human beings should live together. At its most basic, Equality of Opportunity requires that all human beings are equal in the sphere of opportunity. Equality of opportunity is usually opposed to slavery, hierarchy and caste society, where social positions, life prospects and individual freedoms are determined by membership of some group that you are born into, such as the aristocracy. Our acknowledgement of the importance of freedom and equality motivate the theory and practice of equality of opportunity ^[34].

1. Equality of Opportunity with respect to property rights in Nigeria

Shorn of all its conceptual disputations, equality of opportunity is guaranteed under the Nigerian legal system under *section 42* of the CFRN, 1999 as amended which makes copious provision abolishing discrimination. The fundamental right to freedom from discrimination is guaranteed in *section 42* of the CFRN, 1999 as follows

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 citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or
- b. be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

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

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office

under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

It can only be pointed out in amplification that the right to freedom from discrimination is reserved exclusively for a citizen of Nigeria going by the wordings of *section 42(1) and (2)* of the CFRN, 1999 as amended.

Incidences of equality of opportunity with respect to property ownership and particularly immovable property in Nigeria include allocation of land compulsorily acquired as compulsorily acquired from their original owners as State land under the aegis of the Land Use Act, 1978. These lands are parcellated and subsequently allocated to allottees including artificial persons. The concept of state land is a direct affront on the right to property and a feeble effort to entrench equality of opportunity in the regime of property rights in Nigeria. There is also the mass housing schemes by built by government agencies like federal housing authority and sold or leased to citizens although it is arguable that this remains the exclusive preserve of the very rich. Furthermore, *section 44(3)* of the CFRN, 1999 as amended provide that the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation. Using a Welfarist understanding, these derogations can be defended because the right to property is governed by the considerations of equality. This is inevitable if it is intended to remove the glaring inequalities of fortune and opportunity which deface civilisation.

Lawful derogation of right to property

Right to property is said to be inalienable- a citizen cannot surrender it, and a government cannot violate it. Under the Nigerian legal system, a delicate balance is struck between these two extremes because the right to property, although constitutionally guaranteed as a fundamental right, is not absolute. It is subject to certain derogations erected under the same constitution. Granted that *section 44(1)(a)* of the CFRN, 1999 as amended states that 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 a law that, among other things requires the prompt payment of compensation therefore, it is however provided in *section 44(2)* that

Nothing in subsection (1) of this section shall be construed as affecting any general law

- a. for the imposition or enforcement of any tax, rate or duty;
- b. for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;
- c. relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.
- d. relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;

- e. relating to the execution of judgments or orders of court;
- f. providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- g. relating to enemy property;
- h. relating to trusts and trustees;
- i. relating to limitation of actions;
- j. relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- k. relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
- l. providing for the carrying out of work on land for the purpose of soil-conservation; or
- m. subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The above provision is clear on the lawful derogations to the right to property. Hence, property right is not absolute. Land can be acquired for public purpose. As explained in *Davies v Ifo Local Government & Ors* ^[35], the public policy embodied in compulsory acquisition of land, is predicated on the need to elevate public interest above individual or private interest when it comes to ownership and interest in land. Therefore, the law provides that where land owned by an individual is required for overriding public interest, the individual ownership or interest in the land should give way to the larger public interest or purpose, and for that reason, the law allows land owned by individual to be compulsorily acquired by the government for public purposes. Thus, even as the Constitution of the Federal Republic of Nigeria, 1999 guarantees in *section 43*, the fundamental right of the individual to own immovable property, it recognizes in *section 44(1)*, that such immovable property can be compulsorily acquired for purposes prescribed by law, but mandates that prompt compensation shall be paid for such compulsory acquisition. Whether these provisions are complied with or obeyed more in breaches will be explained in the ensuing paragraph.

As an addendum, arising from the provisions of *section 44(2)(b)* ^[36] and *(e)* ^[37] of the CFRN, 1999 as amended, it must be noted that property used for terrorism can be lawfully seized or confiscated or forfeited in circumstances provided under the Terrorism (Prevention and Prohibition) Act, 2022 ^[38].

Obstacles to fundamental right to property in Nigeria

It bothers repeating that the right to property is one of the fundamental rights in Nigeria. It was earlier noted that *section 43* of the 1999 Constitution of the Federal Republic

of Nigeria (as amended) makes a general provision that all citizens of Nigeria have a right to acquire and own immovable property anywhere in Nigeria and that *section 44(1)(a)* boldly states that no person shall be deprived of his property save by in the manner and purposes prescribed by the authority of law and no property shall be compulsorily acquired without any compensation. However, the right to property is not seamless as it is still saddled with a number of obstacles arising either from the way the law is framed or from implementation of the legal provisions by the executive or bureaucracy. Firstly, the provisions of the Land Use Act, 1978 have been used to unjustly divest persons and peoples of their lands leading to clamour for abolition of the Land Use Act. It has further opened a floodgate of constitutional litigations in Nigeria.

Secondly, but sadly, upon compulsory acquisition of property, the amount of compensation, the principles on which it is to be determined, the manner in which it is to be paid are all left to the discretion of the legislature. Thirdly, the promptitude of payment (meaning the quality of acting and without delay) is left to the whims and caprices of the executive. In some instances, compensation is not paid at all or where paid, it is paltry and not adequate. In many notable instances, compensation is paid after very long and tortuous administrative delays

Way forward and recommendations

In order to strike a delicate balance between enjoyment of fundamental right to property and accommodating equality of opportunity in property matters, the following recommendations are put forward namely-

1. Due process must be followed in the compulsory acquisition of property. The government has a right to acquire land for public purposes but in doing but the government is duty bound to follow all the requirements of the relevant laws ^[39]. The Courts should continue to uphold the principle that “compensation follows lawful acquisition. As held in *Ekanem v A-G and Commissioner for Justice, Akwa Ibom State & Ors* ^[40], the payment of compensation or the grant of an alternative can only be considered if the acquisition is found to have complied with the provisions of the law for the revocation of a right of occupancy for overriding public interest and therefore proper.
2. Compulsory acquisition of immovable property or can only be made for public purposes in order to accommodate the equality of opportunity principle.
3. Adequate compensation must be paid and promptly too. Inadequate compensation or compensation paid after an unreasonable passage of time or delay is abnegation of the right to property.
4. Adequate compensation should be interpreted to mean “just equivalent” which in business parlance means full market value determined by demand and current economic realities.
5. Allocation of State land must be transparent and equitable consistent with the principles of equality of opportunities. It should not be the exclusive preserve of the very rich to own State land compulsorily acquired from the poor natives.
6. No one should be discriminated against in the allocation of State lands and mass housing schemes embarked upon by government.

Conclusion

The need to preserve the right to property as a fundamental right cannot be overemphasised. The constitutional deprivation of the right of exclusive ownership of land where minerals and gas are found can be condoned as according to equality of opportunity because such natural endowments should be used for the benefit of all citizens. However, to the extent that proceeds from minerals, oil and gas are not used for the benefit of all citizens because of corruption and sleaze and to the extent that there are still incidences of hunger and poverty, diseases and underdevelopment in Nigeria despite being a major oil producing nation raises the crucial question whether that legal provision was made to serve the whims and caprices of the elites and political leaders instead of the interest of teeming masses. Compulsory obedience to constitutional safeguards erected for compulsory acquisition of property will always help to strike the needed delicate balance between divesting a citizen the right to property and maintaining equality of opportunity.

References

1. (2014) LPELR-24625(CA) (Pp. 36-37 paras. B) per Abiru, JCA.
2. African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10 Laws of the Federation of Nigeria 1990.
3. Hereinafter abbreviated and referred to as “CFRN, 1999”.
4. In *Statmak v C.O.P & Anor* (2018) LPELR - 46324 (CA), fundamental rights was defined as basic moral guarantees that people in all countries and cultures allegedly have simply because they are people.
5. (2017) LPELR-43096(CA) (Pp. 60 paras. D) per Tur, JCA. This was relied on by Saulawa, JCA in *Akinosun v COP Kwara State & Ors* (2020) LPELR-49739(CA) (Pp. 12 paras. D).
6. (2014) 1 NWLR (Pt. 1389) 607.
7. In *Edeh v C.O.P Bauchi State* (2014) LPELR-23354(CA), it was held by the Court of Appeal that Fundamental Rights (Enforcement Procedure) Rules is a statutory provision by virtue of the Constitution and not under the rules of any High Court. Fundamental human rights take precedence over other statutes and the Courts would always uphold them and guard against their being whittled down. Where there is apprehension of breach of fundamental human rights, a person can always approach the Courts. Breach of fundamental human rights includes any violation of the provisions of the fundamental rights clause. See also *SUNDAY OKPETU V. COP, DELTA STATE & ORS* (2001) FWLR (PT.69) P.1331 C.A
8. *Section 6(6)(c)* of the CFRN, 1999 as amended. *Bobade Olutide & Ors v Adams Hamzat & Ors* (2016) LPELR - 26047 (CA); *Alhaji Nojiya Isiyaku & Anor v Commissioner of Police, Yobe State* (2017) LPELR - 43439 (CA); *William & Anor v Usen & Ors* (2018) LPELR - 46163 (CA); *Agbai & Ors v Okogbue* (1991) LPELR - 225 (SC).
9. (2022) LPELR-57032(SC) (Pp. 23-24 paras. C).
10. (2014) LPELR-23115(CA) (Pp. 50-51 paras. E) per Tur, JCA.
11. (1985) 2 NWLR (Pt. 6) 211 at 230.

12. (2022) LPELR-58517(SC) (Pp. 95-96 paras. F) per Abubakar, JSC citing in support *Chief (Mrs.) Olufunmilayo Ransome Kuti v Attorney General of the Federation & Ors* [1985] 6 S.C.246 or (1985) 2 NWLR (Pt.6) 211 and *Fajemirokun v Commercial Bank Nig Limited & Anor* (2009) LPELR- 1231 (SC).
13. (2000) LPELR-14(SC) (Pp. 53 paras. B).
14. (2017) LPELR-42807(CA) (Pp. 19 paras. A).
15. (2010) 7 NWLR (Pt. 1192) 61.
16. Hereinafter abbreviated and referred to as the “UDHR”.
17. Hereinafter abbreviated and referred to as “ICESCR”.
18. This fundamental omission or inadvertence in the ICESCR definitely unmasks a deep and enduring disagreement over the proper status of economic, social and cultural rights in the international human rights arena. This initial rejection has buoyed the extreme view that economic, social and cultural rights do not constitute rights as properly understood at all and that treating them as rights undermines the enjoyment of individual freedom, distorts the functioning of free markets by justifying large-scale state intervention in the economy, and provides an excuse to downgrade the importance of civil and political rights. For further reading, see N.O. Obiaraeri, *Fundamental Themes on International Human Rights* (Owerri, Zubic Infinity Concept 2015).
19. (2013) LPELR - 20417 (CA).
20. (2010) LPELR-4389(CA) (Pp. 8-9 paras. E).
21. In the construction of expropriatory provision in a statute, such statute must be construed by the Court *fortissime contra preferentes*. Such a statute should be construed by the Court strictly against the acquiring authority and sympathetically in favour of the complainant or the owner or possessor of the property against any irregularity in the procedure for acquisition as laid down by the enabling statute. See *Bello v Diocesan Synod of Lagos* (1973) 1 All NLR (Pt. 1) 247; *Peenock Investments Ltd v Hotel Presidential* (1983) 4 NCLR 122; *Osho v Foreign Finance Corporation* (1991) 4 NWLR (Pt. 184) 157; *Nigerian Telecommunications Ltd. v Ogunbiyi* (1992) 7 NWLR (Pt.255) 543; *C. S. S. Bookshop Ltd v The Registered Trustees of Muslim Community in Rivers State* (2006) 11 NWLR (Pt. 992) 530.
22. The case of *Adole v Gwar* (2008) 11 NWLR (Pt.1099) 562 at 603 and 607 was cited in support.
23. (1992) 7 NWLR (Pt. 25) 543.
24. (1989) 4 NWLR (Pt. 118) 646.
25. (1997) 10 NWLR (Pt. 525)481.
26. (2012) LPELR- 7842 (SC).
27. (2021) LPELR-52688(CA) (Pp. 40 paras. A) per Oyewole, JCA.
28. Per Tobi, JSC, (as he then was) in *Edibo v State* (2007) LPELR-1012(SC) (Pp. 23-24 paras. D).
29. (2012) LPELR-9349(SC) (Pp. 71-72 paras. G) per Adekeye, JSC.
30. (2017) LPELR-42984(CA) (Pp. 12-15 paras. C-C). See also *Elf Nigeria Ltd v Opere Sillo & Anor* (1994) 6 NWLR (Pt. 350) 250 and *Alao v Akano* (2005) 4 SCNJ 65.
31. Stanford Encyclopedia of Philosophy, “Equality of Opportunity”, available at <https://plato.stanford.edu/entries/e>. Last accessed 3/1/24.
32. R.H. Tawney, *Equality* (Unwin Books, 1971) 116.
33. Goodreads, ”Jean-Jacques Rousseau”, available at https://www.goodreads.com/author/quotes/7994.Jean_Jacques_Rousseau. Last accessed 5/1/24.
34. “Stanford University, An Introduction to Equality of Opportunity”, <https://edeq.stanford.edu/sections>. Accessed 3/12/23.
35. (2023) LPELR-60363(CA) (Pp. 39-40 paras. E-E) per Mohammed, JCA. See also *Ereku v Military Governor, Mid-Western State of Nigeria & Ors* (1974) LPELR-1156(SC) and *Ononuju & Anor v A-G Anambra State & Ors* (2009) LPELR-2692(SC).
36. For the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence.
37. Relating to the execution of judgments or orders of court.
38. On seizure and forfeiture of property or funds on account of terrorism, see Part XII (*sections 77-81*) of the Terrorism (Prevention and Prohibition) Act, 2022.
39. In the Nigerian case of *Usulor v Ebonyi State Government Anor* (2020) LPELR-49935(CA) (Pp. 29-30 paras. D), it was held that the government has a right to acquire land for public purposes but in doing so, the government is duty bound to follow all the requirements of the relevant laws and pay adequate compensation which was not done in this case.
40. (2014) LPELR-24250(CA) (Pp. 24 paras. C) per Otisi, JCA.