

What to do with the Land Use Act

By Layi Babatunde

ON March 29, 1978, a rather monstrous and bizarre law of general application over land in Nigeria, entitled The Land Use Act 1978, came into effect.

Its explanatory note goes thus: "The Act vests all land comprised in the Territory of each State (except land vested in the Federal Government or its Agencies) solely in the Governor of the State who would hold such land IN TRUST (Capitals Supplied) for the people. The Governor would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State or to Organisations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Government." This explanation was largely enacted in the opening clauses (Section 1 thereof) of the Act.

Several arguments have been advanced, for and against, the promulgation, continuing existence and application of this bizarre statute. Some of the arguments in favour of the promulgation of the Act were that: the Act will enthrone egalitarianism in land holding; remove or minimise the difficulties associated with acquiring land for Government programmes; ameliorate or terminate some of the uncertainties and constraint that attend purchase or lease of family land, make less expensive the cost of, especially in the south of Nigeria, acquisition of land by Government, individuals and corporate bodies, infrastructure will be easier and cheaper to provide; housing for all by the year 2000, etc.

However, the Supreme Court per Aderemi, JSC., in *Adole v. Gwar* (2008) 3-4 S.C. 78 at 132 para. 15-30 put the net effect of a community reading of the at thus:

"... a community reading of all the provisions of the Act leaves me with the impression that the Act has not wiped out or divested citizens of their rights over land. And as would be seem Anon from the judicial decisions through the interpretations given to many of the provisions, the courts have made the Act to acquire human face. No doubt, the Act has removed the radical title in land from the individual citizens and vested it in the Governor of each State in trust for the use and benefit of all Nigerians. Thus, the control and management of the land in urban areas in each State are vested in the Governor, while other land, subject to the act is under the control and management of the Local Government 'of the area in which the land is situated.'" (Underlining supplied)

But how much of these have been achieved since the Act came into effect over Thirty years ago? We are all living witnesses to how housing has become "cheap" and "readily available," especially, the housing estates in a number of states "appropriately" named after some of the Trustees/Governors.

At the heart of the security and distortion in the Niger Delta is the fall out of this Act.

On a number of occasions the Certificate of Occupancy issued pursuant to the Act has become a big burden to Banks, Financial Institutions and even individuals; as the Government guarantees nothing by its issuance. Instances of multiple certificates on the same piece of land abound and experience, at least, in Lagos State, has shown that it is one document of Title that is easily faked. The battle between pre-existing

rights over land and subsequent grant pursuant to the provisions of the Act, continues to rage in and out of the court (see *Ogunleye v. Oni* (1990) 4 S.C. 130) and there are several instances of those who hold the Certificate issued by government over so-called government acquired land, but cannot take physical possession, because the original land owners will not let them.

Sometimes, they are forced to re-purchase from these landowners subsequent to a purchase from Government. Even inter-governmental relationship is not spared. A typical example is the deadlock over properties sold by the Federal Government in Lagos State whereby buyers are stuck with fresh demands from the Government of Lagos State. The Land Regulations of the State government and that of the Federal Government are at loggerheads and titles registered at the Federal Government Registry are also being registered at the respective State Registries, thereby exposing lenders to grave risk.

Some people have argued, that the fault is not in the Act per se, but in its implementation, Personally, I disagree, you cannot plant cassava and reap yam. The Act in conception, promulgation and implementation, to say the least, is incongruous and bizarre. Let us examine its framework and implementation,

(a) It has been said that the bedrock of Federalism lies in the ability of each tier of government to be master of its own domain. But under the Land Use Act, the ubiquitous Act overrides State laws on Land in their domain, even when such land is not previously vested in the Federal Government or any of its agencies;

(b) The creation of a Trust relationship all over the civilised world is a voluntary act of its creator. It is an office of confidence and strict accountability. A trusteeship is an office of very high fiduciary responsibility, which can never or should never be assumed by force of arms as under the Land Use Act, at its promulgation as a Decree;

Here lies the fallacy of this fake trusteeship created under Section 1 of the said Act. It is, indeed, a monstrous situation, to enact a Trust, without accountability, because Section 47 of the Act ousts the jurisdiction of the courts concerning the most germane aspects of the Act and its implementation. A forced Trust with powers vested on the Trustee to convey trust property to any one he pleases, including himself, without question, must by common sense, be bizarre and monstrous indeed, No wonder, it became contentious before the Supreme Court, in the case of Chief R.O. Nkwocha V. Governor of Anambra State & ORS (1984) 6 S.C. 362, whether or not it will be conscionable or reasonable for elected Governors, to step into the shoes of Military Governors and assume this fake Trusteeship, Power without responsibility or accountability breeds corruption, which is what the Act has encouraged; .

(c) While the Land Tenure Law of 1962 applicable in Northern Nigeria, was a statute passed by the elected representatives of the people of the North, the application of the Land Use Act to the South, was simply by Military fiat. And If the truth be told, no one can blame the North for freely creating a Trust by virtue of the Land Tenure Law, over Northern Nigeria land in favour of the likes of Late Sardauna of Sokoto, Alhaji Sir Ahmadu Bello, KBE, ICCMG, D. Litt (Honoris Causa) because they were simple in lifestyle and non-coveting of the properties and common purse of their people, It has been said that the late Sardauna left no Mansion of his own, nor Bank Account.

How preposterous then, for any ruler of Nigeria of March, 1978 to assume such position and Trust either in Northern Nigeria or South of it. We are all living witnesses to the progressive massive looting of the treasury from then till now. One is tempted indeed, to suggest in view of our recent experience that a strong Judicial Commission of Enquiry be instituted over Land Administration in Nigeria, given that the Land Tenure Law was passed by duly elected representatives of the North, the law provided for land acquisition by government, with a human face, under the Land Tenure Law "inconveniences caused by disturbance" is taken into account in assessing compensation payable on acquired land.

However, under the Land Use Act, no provision is made for this human element of growth and development. This is a factor, were it taken into account, that would have greatly ameliorated the inhuman conditions and suffering prevalent in the Niger Delta;

(d) The Act manifests utter contempt for the tradition of our peoples, especially family life when under clause 36 (5) thereof it prohibited subdivision and transfer of land without prior consent of the Governor. We all know, that one of the ways, that family members derive title over landed property for personal development and progress, is by partition, Any experienced land administrator knows that over time land ownership and administration historically, have been moving progressively towards individual ownership, for reasons of development within each person's capabilities;

(e) The Act envisages that for proper administration of land. Land in each state should be demarcated into "Urban and "non-Urban" areas, but how many states till date, have succeeded in doing that? No wonder, Town Planners has found themselves in real trouble concerning proper land administration all over the country. Added to this burden of Town Planning, is that the Governor can grant a Certificate of Occupancy for all purposes howsoever;

(f) While the Act, as some people have said, was meant to "revolutionise" land administration by simplifying procedure for land acquisition and thereby making land more readily available for development, no explanations have been offered as to why the Act failed to legislate into immediate existence, the corresponding manpower, required to implement this supposed "revolution." Any Law that ignores its environmental and social factors in concept, legislation and implementation, is bound to fail, no matter how you prop it up with the fear of the bayonette. The law certainly lacks manpower and infrastructural support even in Nigeria of today;

(g) In the banking sector, this Act should bear direct responsibility for the distress in some of the Banks, due to unrealised securities. It is unfortunate, that the fake Trustee enacted under the Decree cannot be made accountable; otherwise some Governors should (Government being a continuous) be before the Courts answering either for negligence, breach of trust or misrepresentation. There have been instances of multiple Certificates of Occupancy issued over the same plot of land, but bearing different Registration Numbers. Different registration numbers make detection of the fraud about to be perpetrated on a lender by a customer extremely difficult to detect. There have been instances, where a Governor simply issues a fresh certificate to his applicant friend over a piece of land, on which his predecessor had also signed and issued a Certificate of Occupancy to his own friend.

In some cases, a Certificate of Occupancy is issued to an applicant who already has a Registered Conveyance or Land Certificate. Unfortunately, the question of priority hardly helps, because the land document (s) on the same piece of land carries different registration particulars. This can only happen under an unaccountable Trusteeship as enacted under the Land Use Act, whereby the governor continues to exercise his power to issue evidence of Land ownership, without corresponding responsibility to persons misled thereby. If an inventory of losses occasioned thereby were to be taken, it may approximate about 30 per cent of the losses, to the various distressed banks.

Basically, you do not vest a property on Trust on anyone, unless he is willing and able to completely assume the Trusteeship.

In this case, what the Land Use Act has done is to simply enact a Trust without corresponding responsibility. Besides, why vest in a person power to administer what he does not know? If you know your land, you should know the competing interests, moreso when you are the custodian of issuing the process, evidence of same and effect registration thereof and also keep custody of the register. Why did the Act assume all of these in favour of a Governor?

Now, compare this scenario with what the State of the Register was for instance in Lagos State, before this spoiler of an Act (which seems to dwell more on revenue generation for the various governments and easy access to land for Government officials, their cronies and friends came into the picture.

According to a 1957 report on the Registration of land in Lagos:

"The State arranged, as a sovereign act, to investigate title, and did it once and for all. One final authoritative examination by... the land Registry was substituted for the inconclusive, expensive and constantly repeated examination by private individuals. Thereafter by means of entries in a Register, maintained and warranted by the State all the material particulars with regard to the ownership of a parcel of Land are fully revealed to any interested person, and any alteration of those particulars can be validly effected only by altering the Register.

A simple procedure with simple forms is provided for these purposes, and so conveyancing became easy, quick, cheap and certain."

All these gains have gone with the Land Use Act, as acquiring land in Lagos State for instance, is no more easy, nor quick nor cheap.

(h) Beyond the uncertainties in Title to Land, the cost implication of perfecting one's sometimes uncertain Title, has escalated with the imposition of consent fees; Capital Gains Tax and other impositions by the various State Governments.

Yet, the State under the Land Use Act warrants nothing and offers no indemnity for collecting these huge sums. All it does is to give you a document, after which you are wholly and solely on your own. With due respect, why forcefully vest the land in yourself; collect revenue from it, issue documents of title to whom and as you please and thereafter bear no" obligation in guaranteeing the transaction! What a free meal

all the way for some privileged people under an Act supposedly promulgated to promote egalitarianism!

In the circumstance, there is the urgent need for the Constitution Review Committee to take a very close look at this Act, as it presently stands. The Act needs to be either abrogated or moderated. For one, it was in bad taste to have smuggled it into the 1979 Constitution and to that effect, it should be expunged as its retention amounts to a desecration of a Federal Constitution in a Democracy.

Furthermore, it appears wholly unreasonable to sustain the concept of a "Blind Trust," which the Land Use Act creates in favour of a Governor under Democratic Governance. Blind Trust, has been defined, "as a device used to give management of one's investments to an outside person over whom the beneficiary has no control"

It is proposed, therefore, that any federal legislation on land should apply to the states, only to the extent that any state is willing to adopt it, and in case of any conflict between state and federal laws, state laws should prevail except of course, where the land in question has been validly acquired by the Federal Government of Nigeria or is otherwise required for the business of the Federation.

Perhaps, we may take a cue from the Registration of Titles Act 1935, which was in the first instance enacted for the whole country, but which the North never adopted, while the regions that adopted it did so through their Regional Assemblies. Interestingly the more, is the fact that in spite of its adoption by some regional Assemblies, only Lagos applied the law. This is the beauty of Federalism and restoring the country to a true federation is a task that must be done this time around. The Land Use Act should not be left as it presently stands. The Constitution Review Committee should see to this.