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LAW AND LAND RIGHTS:
WHITHER NIGERIA?



BY

J. A. OMOTOLA



UNIVERSITY OF LAGOS - 1988
INAUGURAL LECTURE SERIES

LAW AND LAND RIGHTS: WHITHER NIGERIA?

An Inaugural Lecture delivered at the University of
Lagos on Wednesday, June 29, 1988.

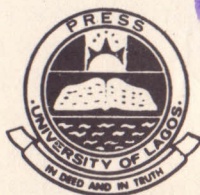
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University of Lagos Press

1988



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DEDICATED

Today is an auspicious occasion in my life. The day marks a turning point in my academic career when I am called upon to deliver my Inaugural Lecture. This Lecture, as you all know was originally scheduled to be delivered on 20th April 1988. If that happened, it would have coincided with my birthday.

To the memory of my late mother

ALHAJA SARATU AYANYINKA AJIBEWAJI OMOTOLA

Lecture has again coincided with an event which is of special importance to me, namely, the first anniversary of the passing away of my mother. Vice-Chancellor, Sir, I am happy to have the opportunity to give the first Inaugural Lecture during your tenure as the Vice-Chancellor of this University. I therefore seek this unique platform to wish you once more a most successful tenure of office. The topic – "Law and Land Rights Whither Nigeria?" – has been chosen with extreme thoughtfulness and excitement because it represents the core of my major research efforts in my academic career. My commitment to Property Law has not been pretentious. I have had the singular opportunity in the past two decades to examine the rules relating to this law to the exclusion of all other rules of law. Indeed, I have been accused by a few friends of over-specialization. I, however, do not propose to offer any apology. On the contrary, I thank this University for affording me the unique opportunity of spending the whole of my academic career examining these rules. My interest in property law dates back to my University days. It was clear to me then that I would soon be finding a career in the field. My joy today is unlimited.

LAW AND LAND RIGHTS: WHITHER NIGERIA?

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An Inaugural Lecture delivered at the University of Lagos on Wednesday, June 23, 1988.

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First Published 1988 by

University of Lagos Press,
Unilag P. O. Box 132,
Yaba, Lagos, Nigeria.



ISBN -978-2264-96-2

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Definition

Land is generally defined to refer to the surface of the earth and anything below or above it. For the purpose of this lecture, Land means the *corpus*, the *res*, the earth or the soil. By rights I also mean the titles or rights to land as here defined. That is, acquisition, possession, enjoyment and disposition of land. Law in this lecture means statute law that is specially enacted to regulate the acquisition, use and disposal of land in this country. That term of statute which is the direct result of policy on land. This definition will exclude such general or specific statutes governing matters relating to interests in land such as the Conveyancing Act 1881, the Settled Land Act 1882, the Property and Conveyancing Law and the like. It will also exclude, except by way of illustration, detailed consideration of the rules of customary or common law relating to land.

Special Nature of Land

Every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the foundation of shelter, food and employment. Man lives on land during his life and upon his demise his remains are kept in it permanently. Even where the remains are cremated, the ashes eventually settle on land. It is therefore crucial to the existence of the individual and the society. It is inseparable from the concept of the society. Man has been aptly described as a land animal.

Land in its virgin state was not the material of man's creative energies; it was god-given, raw and unappropriated. No one had exploited labour to create it, therefore no one person could as a natural right be recognised as owner to hold an exclusive and private title to it. Henry George, Robert Owen and others of their time accused land-owners of

robbery.¹ This traditional view of land appears to find support in the Holy Quoran in *Suratuli Adidi*. Support for the view can also be found in the Holy Bible *Psalms 24*. The Africans expressed the same view about land in another way. They took the view that "land belongs to a large family of whom, many are dead, a few are living and countless hosts are still unborn"² What is important here is that the Africans originally saw land as something which is not capable of being owned by an individual. The special status accorded land by Africans is best seen in the statement that "it is a diety the source of all life, of food and vitality, the custodian of social norms and morals"³. In the African society, it was and is still the practice to commence a traditional prayer by paying homage to the land by way of liberation. Gin or Wine is used, part of which is poured on the land so that their prayer could be heard by the god of land. To the Africans, land was the subject of community ownership. However, it soon became clear that in the realism of everyday living, virgin land no longer existed. The theory of holding it in common was confounded by problems of identification and obstruction so much that in the interest of peace, law and order, some apportionment of the land became necessary. This led to the theories of right which I shall briefly state.

Theories of Land Rights

There are three sometimes conflicting views on the subject of land rights. This I propose to describe as the Occupation Theory, the Labour Theory and the Legal Theory. The Occupation Theory or the Theory of First Settlement, as it is sometimes called, concedes rights to land to the person who was the first to be the original discoverer. Such a person is allowed to enjoy and dispose of the land the subject of his finds. This theory has received universal application and can be said to form the basis of possessory title today. The paramount position given to possession in the ascertainment of title to land can be traced to this theory. It is based on the

Concept that finding is keeping. It dominated Roman Jurisprudence and has been ventilated both in Nigeria and in England.

Against this theory is the Labour Theory which is founded on the doctrine of long possession. Under this theory, the occupation of land over a long period coupled with positive acts of ownership such as sale of the land to somebody else or the erection of permanent structure thereon is said to give the new claimant a right to keep the land for himself.⁴ The most interesting thing about this theory is that the court permits such possessor who is not the first possessor to keep the land against the original possessor. However, although the court protects the rights of the new possessor against attack by the original possessor, it will not allow the former to bring an action of declaration of title against the latter.⁵

There is the third theory that sees property rights as an attribute of legal society. Of this, Berger says: "Property and Law are born together, and died together. Before Laws were made there were no property, take away laws, and property ceases."⁶ This appears to be an antithesis of the theories earlier discussed. Contrary to the occupation or labour theory, this theory takes the view that law gives property rights and also protects their enjoyment.

My task in this lecture will be to state the path which this country had taken in the regulation of land rights, to critically examine the current law relating thereto and of course put forward proposals as to the direction which the law must take in order to achieve the settled or agreed objectives of our society.

Historical Background.

Initially, land was not of much economic value.⁷ This position endured undisturbed until the beginning of the British rule in the 19th century. From that point, the country witnessed a degree of manipulation since the British

brought with them not only their statutes but also the common law of England. The admixture of the British and native systems produced a confusion in the transfer of land rights. Terminologies were used, the meaning of which the conveyancers were ignorant. The problem of uncertainty of titles in Nigeria today can be traced to this development. The primary object of the British in the regulation of land rights in Nigeria was the enhancement of their territorial control over the country. They were quick to see the power which land rights evinced. By the time of their arrival, they found that the land in the North had already been taken from the natives by the Fulanis under Dan Fodio. The British soldiers led by Lugard having conquered the Fulanis imposed the Proclamation of 1900 by which the control of land in the North was taken from the Fulanis and vested in the Government which of course was controlled by the British themselves. This was followed in 1910 and 1916 by other Proclamations to the same effect. Lord Lugard, criticized the Land and Native Rights (Act) 1916 in his Dual Mandate.⁸ The reasons for his objection were that land in the Northern Nigeria could not properly be described as native land. He argued that the absolute powers given to the governor by these legislation were in the nature of expropriation.⁹

The Land and Native Rights Act had declared all land in Northern Nigeria as 'native land' and put the land under the control and subject to disposition of the colonial governor¹⁰ to be administered for the use and common benefit of natives of Northern Nigeria and no title to the occupation and use of any such lands shall be valid without the consent of the governor. The Governor had the power to grant rights of occupancy to natives as well as non-natives, to demand rents for such grants and to revoke the grants to occupiers for good cause. As said earlier, the main motive behind this statute was to seize the Northern lands from the Fulanis and vest the same in the British as part of their colonization scheme. There was, however, a bait for the people of the North in the

protection given by the statute under which the governor was said to hold the land for the benefit of the natives who were defined as 'persons whose fathers were indigenous to Northern Nigeria'. This means that all other persons who were not so indigenous were non-natives. There were regulatory provisions for the acquisition of land rights by such non-natives. In view of the protective bait in the Land and Native Rights Act and especially the political climate then prevailing in Nigeria which depicted a rivalry between the North and South in the struggle for political power, the Land Tenure Law in 1962, though repealed the 1916 Act, re-enacted substantially its provisions. It is against this background that we question, as will appear later, the rationale in adopting this law for the whole country through the Land Use Act.

In relation to the Southern part, the British gradually obtained control of the land by a series of piecemeal treaties initiated by the Treaty of Cession of 1861, signed by King Decemo in respect of the territory of Lagos. For the purpose of British rule, the territory was constituted into the Colony of Lagos, Oil River Protectorate over the Eastern Zone and the Niger Coast Protectorate to the West. These were in 1906 amalgamated and declared into the protectorate of Lagos and the Protectorate of Southern Nigeria to establish land right over the entire area,¹¹ which was again in 1914 amalgamated with the Protectorate of the North to produce modern Nigeria under one governance. Later, they introduced a scheme of control of land rights in the South by the enactment of the Native Land Acquisition Act 1917. This Act, instead of regulating acquisition of 'native land' as was the Northern experience, merely regulated transfer of land to aliens by Southerners. This statute has since been adopted in the form of Native Land Acquisition Law or Acquisition of Land by Aliens Law. It provides that no alien shall acquire any interest or right in any land within the protectorate from a native except under an instrument which shall receive the approval in writing of the governor. Any such instrument

executed without the approval of the governor was rendered null and void.¹² Section 2 of the Act defines an alien as any person who is not a native of Nigeria. All that an alien could acquire was a lease for a maximum period of 99 years. Again, because of the protective bait offered by this legislation, it was adopted in the then Western Nigeria by the Native Land Acquisition Law 1952 and in the Eastern Nigeria by the Acquisition of Land by Native Law 1956. In the case of Lagos State, the maximum interest which an alien could acquire is 25 years including any option.¹³ What is interesting about these laws is that, although they were enacted by the British some seventy years ago to protect British interest in enhancing her control in Nigeria, they are still being retained as part of our law. Leslie Buell lamenting this situation wrote in his book. *The Native Problem in Africa*.¹⁴

and I quote-

"The Western World worked out its own destiny, unimpeded by an impatient task master from without. The people of Africa, however, do not have the same opportunity. Their destinies are in the rigid hands of relatively advanced European people who are tempted to use the blacks for selfish ends."

The Land Use Act

Vice-Chancellor Sir, this statute is the most dramatised law on land rights in this country. Before its promulgation, Laws relating to land rights were criticised on three main grounds. Firstly, they did not guarantee security of title, secondly, they made difficult and cumbersome acquisition of land for private and public use and thirdly the cost of obtaining land for public purpose was prohibitive. In 1977, government set up a special panel of eleven members referred to as 'the Land Use Panel' to examine the position. The

panel membership was drawn somehow from different parts of the country and was given three months to submit its report. The main report rejected nationalisation of land. One member of the panel, however, in his minority report supported nationalisation. The land Use Decree was produced immediately. It leaned more or less towards nationalisation but retains essentially private ownership. The Decree was renamed an Act by the subsequent Civilian Government.¹⁶ It copied the Land Tenure Law and added new provisions such as sections 1 to 4 and 34 to 39. Its scheme differs however from the Land Tenure Law.

In view of the complexity of this statute and the general controversy which its birth has generated, I propose first to examine those aspects which I believe have created serious problems.

Interpretative Problems

It must be admitted that if there be any award for bad drafting, the draftsman of the Land Use Act will easily win the first prize. For in my little experience of twenty years of continuous research, I cannot think of any Statute which has produced so much ambiguities, contradictions, absurdities, invalidities and confusions as this Act has done. The judges who have to give meaning to its provisions therefore deserve my sympathy. The impossibility of the Statute has led to many of them not bothering to interpret its provisions. Some judges at best state its Section 1 and seek shelter in its preamble and what they conceive as its general intentment. Others have admitted publicly that the Act defies their comprehension. The result is that ten years after commencement, the provisions of the Act remain largely uninterpreted.

Issue of Validity

The very existence of the Act was questioned in our courts. It was even said that the Civilian Governors could not operate it. There were conflicting judicial views.¹⁷ Eventually,

ly, Supreme Court settled the disputes when it decided in *Chief R. O. Nkwocha v. Governor of Anambra State*¹⁸ that the civilian governor succeeded to the powers of the Military Governors under the Act and being a law in force immediately before the 1979 Constitution came into effect, it became an existing law as a special Federal enactment which has been accorded an extra-ordinary status. It is not an integral part of the Constitution even though it is entrenched therein. The Supreme Court, however, declined to decide the next issue which is what happens where any of the provisions of the Land Use Act conflicts with those of the Constitution. Ordinarily, since the Act is an existing Law, the Constitution prevails over its provisions¹⁹ thus throwing into jeopardy such provisions as in Sections 28, 29 and 47 of the Act. However from the views expressed of the special nature of the Land Use Act by their Lordship in *Nkwocha's case*, it would appear that this may not be so and that its provisions may prevail over those of the Constitution itself. The Court of Appeal sitting in Kaduna, did not agree with this view. It held in *Kanada v. Governor of Kaduna State & Anor.*^{19a} and *Dada v. Governor of Kaduna State*²⁰ that any provision of the Act which is in conflict with those of the Constitution is void. In thus holding the court relied on the inference which it drew from the comments of their Lordship in *Nkwocha's case*. Recently, Adenekan Ademola, J.C.A. sitting in the Court of Appeal in Lagos in an obiter dictum²¹ gave precedence to the Act over the Constitution. When *Dada's case* reached the Supreme Court on appeal, the Court again declined to give any view on this aspect considering it to be superfluous. Balogun, J. sitting in the Lagos High Court in *Bola Adewunmi v. Ogunbowale*²² has also very much earlier decided that the Constitution prevails over the Land Use Act. The issue remains unsettled.

The resolution of this debate may lie in section 274 subsection 5 of the Constitution which provides that nothing in the Constitution shall invalidate the Land Use Act among others, and that the provisions of the Act shall continue to apply and have full effect. This, it is submitted, may have the effect of saving all the provisions of the Act even where they appear to conflict with those of the Constitution.

Effect of the Act on Existing Land Rights

I now turn to the effect of this Act on existing land rights. Bello, J S C (as he then was) once noted²³ that the Land Use Act virtually confiscated all the undeveloped lands in Nigeria from its community and private owners. More recently, Obaseki, J S C²⁴ stated that it is an understatement to say that the Act abrogated the right of ownership hitherto enjoyed by all Nigerians. The Act, he said, took away from every Nigerian the right of ownership. Eso, J S C in *Nkwocha's case* also observed obiter that the tenor of the Act as a single piece of legislation is the nationalisation of all lands in the country. In *Tijani Akinloye v. Chief Oyejide*²⁵ Ogundare, J (as he then was) remarked that the use of the word "vested" in Section 1 has the effect of transferring to the Governor of a state the ownership of the land in that State. "The intelligible result", he observed, 'was to deprive citizens of this country of their ownership in land and vest same in the respective State Governor'. However, later at the Court of Appeal the same judge took a U-turn when he said in *Kasali v. Lawal*²⁶ that 'he should not be understood as saying that the Act has swept away all notions of customary law dealing with land. Far from it' In *Salami v. Oke*,²⁷ Kawa, J.S.C. in delivering the judgment of the Supreme Court observed that absolute ownership of land is no longer possible since section 1 has vested all land rights in the state in the Governor of the State. He added, however, that there is nothing in the Act which precludes the Court from making orders of forfeiture of a customary tenant's interest, especially where the customary tenant has incurred forfeiture as a result of a breach of a vital condition of the tenancy or where the land was not being used for agricultural purpose.²⁸ Obaseki, J.S.C., in the same case agreed that there still resides in the overlord the power to forfeit the customary tenants' interest even where the land is in a non-urban area and comes within section 36 since, according to him, the Land Use Act was not intended to transfer the possession of the land from the owner to the tenant.

My view is that the Act did not destroy existing land rights. This view, I have expressed elsewhere.²⁹ It is true

that section 1 of the Act vests the land within a state in the Governor of the state, the same Act however expressly preserves existing rights in land in sections 34 and 36.

The Right of Occupancy

The scheme of the Act is to distinguish between urban and non-urban land. The governor is empowered in section 3 to declare parts of the land in his state as urban area and he has power of control over such land. The Local Government is also expected to manage land in non-urban area of the state. It must be emphasised that a Governor under section 3 is only empowered to declare parts and not the whole of his state as urban area. It will, therefore, be an improper exercise of power under this section for a Governor to declare the whole of his state as urban area.

The Act gives the Governor of a State power to grant rights of occupancy which it describes as statutory rights of occupancy.³⁰ It also confers similar power on local government to grant customary right of occupancy in non-urban area of the state.³¹

The Act did not stop at express grants. In sections 34 and 36 it converts existing interests in land to rights of occupancy to be held as if it had been granted by the governor or the Local Government as the case may be. Where the rights existed in Urban area as declared by the Governor under section 3, it will come under section 34 as statutory rights of occupancy. If it is in non-urban area then it will be treated as customary right of occupancy within section 36. The latter categories of rights of occupancy are deemed granted as opposed to those which are actually granted under sections 5 and 6. A grant by Governor under section 5 is required to be for a fixed period. This is provided in section 8. As this section refers only to the right which is granted under section 5, it is submitted that it cannot apply to other cases such as those granted under section 6 by the Local Government or those deemed granted under sections 34 and 36. It follows that these categories which are not affected by section 8 can exist *ad infinitum*.

Liability for Rent

Where a right of occupancy is granted by the governor, such right may be liable to the payment of ground rent. It must be noted that apart from this type of grant no other right of occupancy is chargeable for rent under the Act. The power of governor to impose rent is to be found in section 5(1) (c) and this relates only to grants made by him under section 5(1) (a). A governor will therefore be acting *ultra vires* if he imposes rent on a right of occupancy granted under section 6 or deemed granted under sections 34 and 36

Consent Provisions

An important feature of the Land Use Act is its consent provisions. The consent of the Governor is required for the transfer of a statutory right of occupancy³². Local government's consent or that of the Governor in appropriate cases must also be obtained for the transfer of customary right of occupancy.³³ There are, of course, certain exceptions which are expressly provided for in the Act. These are contained in the proviso to Section 22(1). In addition to these express exceptions, there is that which is implied. This occurs where the transfer relates to a right of occupancy which is deemed granted and which exists over a land within an urban area of the state provided also that the land in question is a developed land within the meaning of the statute. Section 26 provides that any transaction which does not comply with the provisions of the Act is null and void. It is submitted that this section will be violated only when a holder transfers his right without consent where consent is required in the Act.

The claim that no consent is required to an alienation of a Statutory Right of Occupancy over developed land that is deemed granted under section 34 is based firstly on the fact that the ban on alienation without consent contained in the section is limited only to undeveloped land. Secondly, section 22 which bars alienation of a Statutory Right of Occupancy, although does not distinguish whether the same is held over developed or undeveloped land, requires that for the right to come within the section, it must be one that is

granted by the Governor as opposed to being deemed granted. Support for the view that the distinction between actual grant and deemed grant within the Act is not academic can be found in Section 39 where the Act in defining proceedings which can be brought before the High Court, states in subsection 1 of the section thus:

"proceeding in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act".

It is clear from this provision that the Act recognises the distinction, hence the express mention of the two categories.

This point requires further elaboration since it has been attacked recently by the Court of Appeal in three of its judgments. In *Obikoya v. Governor of Lagos State*,³⁴ *L.S.D.P.C. v. Foreign Finance Corporation*³⁵ and *Savannah Bank Ltd. v. Ajilo*³⁶ the Justices of the Court, Adenekan Ademola, Nnaemeka Agu (as he then was) and Kolawole, rejected the concept of deemed grant as a distinct form of right. They observed that the distinction which I have made did not exist under the Act. They ignored sections 9(3), 38 and 39(1) which assume its existence. They argued that no right under Part VI is supposed to have a permanent status. They overlooked the fact that no time limit is set under that part for the termination of the right.

That this distinction is drawn in the Act can be further illustrated by setting out the provision of section 9, subsection 1 thus.

"It shall be lawful for the Military Governor

- (a) When granting a statutory right of occupancy to any person; or
- (b) when any person is in occupation of land under a customary right of occupancy and applies in the prescribed manner; or
- (c) When any person is entitled to a statutory right of occupancy, to issue a certificate under his hand in evidence of such right of occupancy".

The various paragraphs refer to the different rights of occupancy in the Act. Paragraph (a) refers to actual grant of statutory right of occupancy by the Governor under Section 5(1)(a), paragraph (b) refers to customary right of occupancy deemed granted and paragraph (c) relates to statutory rights of occupancy deemed granted.

Again subsection 3 of the section draws the distinction when it provides:

"If the person in whose name a certificate of occupancy is issued, without lawful excuse, refuses, or neglects to accept and pay for the certificate, the Military Governor, may cancel the certificate and recover from such person any expenses incidental thereto, and in the case of a certificate evidencing a statutory right of occupancy to be granted under paragraph (a) of subsection (1) the Military Governor may revoke the statutory right of occupancy".

Here the subsection distinguishes between cases of actual grant and cases where the grant is deemed to exist even though not actually granted.

It is interesting to note that this subsection which is lifted from sub-section 1 of section 10 of the Land Tenure Law is more specific. Whereas the Land Tenure Law provisions did not distinguish between statutory and customary rights of occupancy, the provisions of the Land Use Act just referred to consciously draws this distinction. The difference in the two approaches can only be explained on the ground that, although the Land Use Act has to take care of the deemed grants, the Land Tenure Law did not have this problem.

In *Ajilo V. Savannah Bank Ltd.*,³⁷ Chief Rotimi Williams, SAN, relying on my reasoning urged the Court to recognise this exception. Hotonu, J. at the High Court disagreed. The court of Appeal also rejected the argument. Now, are these Judges saying in this case that the Land which I bought before the commencement of the Land Use Act and

upon which I now reside is no longer mine? Do I have to apply to the Governor to grant the same land to me? If not what rule governs the transfer of this land if I decide to dispose of it? These are the issues which must be settled by interpreting the relevant sections of the Act. It is unhelpful to engage in the enquiry whether absolute ownership has passed to the Governor or not since what matters to me now is the rule which regulates my enjoyment of this right which can only be found in the statute itself. It is true that the interest preserved under Part VI by sections 34 and 36 are to be held as if a right of occupancy has been granted to the holder by the Governor or Local Government, as the case may be. This is merely to emphasise that the right is part of the new scheme. It has however been argued that the expression "as if" is intended to equate this type of right of occupancy with those granted by the governor under section 5. This argument must be rejected since it does not take into account specific provisions in the Act. The argument amounts to saying that because we are all human beings we should not distinguish between a man and a woman, or between a tall person and a short one. Nature has created these differences in us and they must be recognised. Similarly, although all rights of occupancy are held of the Governor under the Act and are in general subject to his control, we must still give effect to its different provisions on each type of right of occupancy.

Happily, in a recent lecture, Obaseki J.S.C.³⁸, accepted the existence of a deemed right of occupancy in the Act. For he said:

"persons who have title to their parcels of land vested in them before the Land Use Act came into force are "deemed" to be holders of rights of occupancy — statutory rights of occupancy for those in urban areas. See section 34(2), (3) and (6) and customary rights of occupancy for those in non-urban areas. see section 36(2), (3) and (4).

"Of immense interest to every Nigerian in the Land Use Act 1978 are the Transitional provisions in

Part VI of the Act (i.e. sections 34, 35, 36, 37 and 38). These sections have helped in no small way to cushion off the heavy impact the Act would have had on the life of every man and woman in Nigeria. It is doubtful whether the imposition of the harsh conditions, implied and expressed, a certificate of occupancy may contain would not have excited people who cannot reconcile themselves with the idea of becoming a rent paying tenant on their own land to a cause of action which may amount to general dissaffection and civil disobedience. Sections 34 and 36 give to those in whom land is vested before the coming into operation special treatment to soothe their nerves and showed consideration for their being the persons in whom the land was vested".

The learned Justice in this lecture did not merely recognise the existence of a deemed right but he is saying in this passage that they are in fact deliberately provided to soothen the former owners of the land so as to avoid civil disorder. Hence deliberately also no time limit is set for the enjoyment of this right. Such land is freed from payment of rent and no consent is required for its transfer where developed. Indeed a look at section 41 of the Land Tenure Law 1962 from where the provision of section 39 is lifted will disclose that the original section did not include the expression deemed grant as we find in the new provision. It was deliberately added to cover cases coming under sections 34 and 36. This confirms that they are different from cases of actual grant provided for in Part II.

Certificate of Occupancy

The Act also provides that a certificate of occupancy shall be issued in evidence of a right of occupancy in accordance with section 9, if the Governor is satisfied that the applicant is the person entitled to the right of occupancy. The section, however, did not state what will satisfy the Governor. He has no means of finding out. Thus all sorts of documents are being accepted in evidence of such

claim. Purchase receipts which are ineffectual in law to transfer interests in land are also being accepted. Many of the documents tendered in support of applications are forgeries. I have elsewhere observed that such a certificate is not a conclusive evidence of the title of the holder of the right and does not improve his title. This view is now being accepted by the Courts.³⁹ Initially, the banks, in ignorance of the statutory provisions and in the belief that a certificate of occupancy would be a conclusive proof of title, insisted on the production of this document before the right could be accepted as security in an application for loan. They refused to entertain conveyances even those which were executed before the Land Use Act came into effect.

This approach of the bank appears most interesting. Take for an example. A sells land to B and executes a conveyance in his favour. B tenders this conveyance to the Bank as security for a loan. The Bank refuses and requests B to obtain a certificate of occupancy from the Governor who is not a party to the transaction between A and B. B approaches the Governor who requests B to produce evidence of his title. B produces the conveyance. The Governor issues the certificate relying on B's conveyance. It is most unimaginable that the Governor's certificate can be expected to have improved B's title. The attitude of the Bank has now changed. There is of course no obligation to apply for a certificate of occupancy. This is made clear in sections 9(1), 34(3) and (9) though the governor must issue a certificate to the applicant if he is satisfied that such applicant is entitled to the right of occupancy in evidence of which the certificate is to be issued. A rather interesting issue relates to the provision in respect of certificate of occupancy being issued by the Governor which imposes rent. As I said earlier, unless a grant is made by the governor under section 5(1)(a), he cannot impose rent on any tenure. So there can be no warrant for including any such provision in a certificate of occupancy where no grant has been made. It has been argued that section 4 of the Act gives him this power. The section provides that until provisions are made by the National Council of States for the purpose of carrying the Act into effect, land under the control

and management of the Governor shall be administered in the case of States which were subject to the Land Tenure Law in accordance with the provisions of the Law and that the State Land Laws should be applied in other States not so subject. Two facts emerge from these provisions. The first is that it is a bridging provision. It is meant to be interim, to apply pending the time the National Council of States will make its provisions on a national level to suite the posture of the Act. Unfortunately no such provisions have been made ten years after the commencement of the Act. Secondly the Laws referred to in the Act are to be used in *administering* the land which has already been vested in the Governor and citizens (see sections 1, 34 / 36) as the case may be. It is therefore not expected that these Laws will be used for delimitting the interests which are already vested except where a curtailment is provided in the Act itself as in section 8. It will therefore be improper for a Governor to rely on the Land Tenure Law or the State Land Law to cut the interests which are preserved by the Act or to impose rent thereon.

Power to Revoke

It seems clear from sections 6, 28 and 38 that both the Local Government and the governor have power to revoke rights of occupancy. In the case of Local Government, the power is limited to land in non-urban area. The governor, however, can revoke any right of occupancy over land within its state for overriding public interest. Although section 28 sets out clearly the grounds upon which a Governor can validly revoke, there is nothing in the Act to guide the Local Government in the exercise of its power. No procedure or condition has been laid down for such exercise. Indeed, section 6(3) merely gives the local government power to enter any land within its area of jurisdiction and to remain in possession for public purpose. This may lead to arbitrariness. Finally,⁴⁰ in view of the provision in section 28, it is no longer appropriate to invoke the provisions of the Public Lands Acquisition Laws which have been superseded.⁴¹

Jurisdiction

Section 39 gives to the High Court exclusive jurisdiction to determine disputes relating to title to statutory rights of occupancy (deemed or actually granted)⁴² and by section 40 pending cases can still be determined by the courts provided in the end, the courts declare title to rights of occupancy. Section 41 gives similar power to the customary or area courts in respect of customary right of occupancy save that the jurisdiction of these courts under the section is not exclusive. This may mean that it has concurrent jurisdiction with the High Court in this regard since by section 36 of the 1979 Constitution the High Court has unlimited jurisdiction.⁴³ It is doubtful, however, if it is intended that a High Court will now hear cases relating to customary right of occupancy in its original jurisdiction.

Federal and State Relationship

Section 1 of the Land Use Act vests all land within a State in the State Governor. Section 49, however, exempts land held by Federal Government or its agencies from the land so vested. By section 50(2) the Head of the Federal Government has the same power over the land held by the Federal Government as a Governor. This will include the general power of management, power to issue certificate of occupancy. There appears to be a gap here in respect of land belonging to the Federal government Agencies such as National Electric Power Authority, Nigeria Ports Authority, Universities, Federal Housing Authority and the like. Although such land is by section 49(2) excluded from the land which by section 1 is vested in a State governor, it is, not clear who may exercise powers over them as no reference is made to this in section 50(2). Is it the Head of the Federal government or the State Governor? There appears to be no definite answer. I am of the view, however, that since the intention as manifested in section 49(2) is to exclude such land from the control of a state governor, the Head of the Federal Government should be able to assume control over them. Section 28 subsection 4 permits new acquisition of

land by the Federal Government. The subsection provides that the governor shall revoke a right of occupancy in the event of a notice by the Head of the Federal Government that the Government requires the land for public purpose. It is not clear to whom this notice shall be given. Is it to the Governor or to the holder of the right of occupancy in the land? This ambiguity was partly responsible for the near chaos which we had during the civilian rule, the most notorious examples being the *Egbin and Oyo cases*. It is certain, however, that it is not intended by that subsection that the Federal Government shall have power to acquire land directly from members of the public as was hitherto the case.

Assessment of the Statute

The Land Use Act enters its 11th year of existence from 29th March 1988. It is therefore important to find out how it has fared in the past ten years so as to reach a conclusion one way or the other as to its suitability for the future. The first important fact to remember about the Act is that it was hurriedly promulgated. The panel that preceded it was given three months to work and it was enacted against majority views. The issues involved in state control of land was not fully digested. There were no preparations for the huge burden to be imposed on persons whose duty will be to implement it. No base map has been prepared to facilitate its implementation. It is still as difficult for individuals to obtain land today as it was before the Act and it is almost impossible to secure a Certificate of Occupancy. In some states, the Governors are refusing to sign Certificate of Occupancy. They sign for their selected friends and relations. The power given to State Governors under the Act is too wide and because of the socio-cultural problems which were not taken into account at the time the Act was promulgated, its implementation has been rather haphazard. The use made of the Act by some Governors in imposing high rents cannot be justified. The arbitrary manner in which the Governor's powers are being exercised is a matter for concern to many citizens. In many cases an allottee of land waits for years before he can take possession as allotted lands are not usually ready for develop-

ment. The exercise of revocation power is to say the least very frustrating. A situation where a Governor has the power to blow hot and cold, give land today and withdraw it tomorrow or worse still where a grant made by him can be revoked by his successor without assigning reasons for his action save the blanket overriding interest can only be allowed in a backward society. This is why we must congratulate the Court of Appeal which held in *L.S.D.P.C.V. Foreign Finance*^{43a} and *Obikoya & Sons Ltd. V Governor of Lagos State*^{43b} that the specific reason for revocation must be stated. In my view, this is one of the ways of checking the wide abuse by Governors. The decision is therefore commended to the Supreme Court. The Courts must also entrench the principle of reverter. That is where the reason for revocation has failed the land should revert to the original owner^{43c}. There is no statutory provisions on this. It is for the courts to establish as a way of curbing the governor's excesses. In a regime such as ours where land is a major source of obtaining livelihood he who has the power over land receives homage and service from those who wish to live on it. Dominion over things is also imperium over our fellow human-beings. What has happened in this country today is that the Land Use Act by concentrating power over land in the Governor of a State has turned him into a local monster.

The power base appears to have been moved from the Obas and Chiefs to the Governors. In the case of Obas and Chiefs, however, there is a natural link between them and the people within their domain and a traditional way exists for their control. The Governor on the other hand feels free, knowing that he reigns for a while, he is anxious to do all he could within the short period for his own benefit and those of his kith and kin. Any move to dismantle the new empire is resisted by this clique; past, present and future. Professor Denman lucidly summarised the situation when he said;

"Those who wish to see the state as universal landlords do not stop to consider the grave social consequences of what they advocate. One of the arguments often on the lips of

extremists is that land nationalisation will break the suzerainty of the landlords. That may well be, but at what cost? There are bad landlords and good landlords and there always will be. For every bad landlord there is more than one good alternative. Now, a tenant who falls out with a bad landlord can seek a happier day with another, but how would such a one fare when there was only one supreme landlord to whom he could turn for land?"

The point which I am making is that it is totalitarian to confer on governors alone the power to decide who shall utilise our land. It is much better to have this power shared among the Obas and Chiefs or indeed shared by several of us as it was before this Act. Those who at the moment enjoy this dominion over land and are consequently *exercising imperium over all of us* are quite happy with the law since it permits them to keep what they have and acquire more at their will.

The land that was supposed to be made available to the citizens cheaply and easily has now been turned into gold by the Governors, especially in the capital cities. Various forms of charges are being imposed ranging from premium, ground rent and development charges to consent fees. In some States, consent fees are put as high as fifteen percent. Indeed, some States fix their own prices for the parties who are involved in the transactions. They reject the agreed price, revalue the land the subject of the transaction upwards so as to ensure that the fees payable are high. It costs sometimes as much as ₦500 to obtain an application form for a plot of land. It is more depressing when you realise that these application fees, as they call it, are not refundable. Various documents are being asked for before an application can be processed. This include tax clearance, tenement rates and so on. As a result of the various charges imposed by these Governors land is now out of the reach of the masses.

Section 17 of the Act provides that the Governor may grant land to a citizen rent-free. One would expect that this

provision enables those who cannot afford to pay to be granted land free, but this never happens. There is also section 33 which provides that any person whose right of occupancy is revoked by the Governor and who consequently has to be displaced may be offered an alternative land. This provision is hardly implemented in practice. There is no positive provision in the Act for ensuring that land is made available to those who are anxious to have it. The governor has no duty to make a grant. It is clear from available evidence that access to land has not been substantially improved by the Act. Indeed the Act has weakened the open market option since this requires Governor's intervention for its completion. The usual statement from government that the Act is good as a statute and it is the implementation that is defective should be dismissed as misleading. It is to be expected that the structural defects in the Act coupled with poor drafting will lead to bad implementation. The Land Use and Allocation Committees have proved unable to meet the task assigned to them by the governors. They are not free agents. The governor appoints anyone he likes into the committee and removes him at will. In the circumstances the struggle for land continues.

The attitude of our people to land right remains unchanged despite the provisions of the Act. Wars over land continue. A very recent example is the boundary dispute between the people of Akwa-Ibom and Imo States which claimed many lives. Another instance was reported more recently. A violent riot between the Bachama and Hausa Communities in Tinguo and Wadugu Villages in Nucham Local Government area of Gongola State over a piece of land. At least 50 people were said to have died. Today as the lecture is being delivered we are informed of the border conflict between Boma and Lewa villages in Bori Local Government Area of Rivers State. The net effects of this statute has been accurately put by Obaseki, J.S.C. in his recent lecture -

"Land may now be easy for the Government to acquire, but for the average Nigerian or common man, it is almost a lost hope or

objective. The claim for title to land has not diminished. All that has happened in the Southern States is that the claims have shifted from title or claims for declaration of title to claims for entitlement to rights of occupancy. The courts are not less busy than before in trying to sort out the competing claims. There is dire need for reforms in the Law of Property in Nigeria. A total overhaul and re-examination is necessary".

I agree with him.

There appears to be some consensus on the need for a change. What we seem not to agree on is whether the change should be by way of amendment to the Act or whether we should do away with it completely. One is therefore surprised to note that the Constitution Review Committee left the Act intact in the draft Constitution submitted to the Constituent Assembly. The Committee which took so long to deliberate did not see any part of this Act which requires amendment, though it strongly recommended that Decrees and Statutes should not be entrenched in the Constitution because of the Constitutional difficulties of making necessary amendment when the need arises. The President, in his address to the Constituent Assembly appears to have found favour in the continued retention and entrenchment of the Act in the Constitution. This is evident from the relevant portion of the address as carried in the *Daily Times* of May 12th 1988 thus:-

"You may find that the Draft Constitution is too long and contains sections that should normally be moved to the level of statutes. On the other hand, you might also find that some of the statutes (laws, decrees and Edicts) which successive governments have promulgated might be considered fundamental and ramnifying that you might think they should be incorporated in the Constitution just as the Land Use Decree became part of the 1979 Consitution."

May I stress that a statute which has brought so much hardship and uncertainties and which is responsible for the near-stagnation in our socio-economic development deserves the most critical examination now that a new Constitution is on the way. The choice of whether to amend or repeal the Land Use Act must depend ultimately on some guiding principles to which I now turn.

Guiding Principles

In formulating a land policy, certain matters must be taken into consideration. Any policy on land must take into account sociological, traditional, governmental and other considerations. With particular reference to this country, it must be borne in mind that the North and South do not share common history on land rights. Any policy therefore that overlooks this important fact is not likely to succeed. Professor McAuslan probably had this situation in mind when he observed a year ago that "policies about land are policies about society. How it shall be organised, and governed and what relationship there shall be between the different groups and people in society. Land Policy then must be all embracing and cannot be based on any assumption that some land relations are of little or no account and others are "correct ones" because this is tantamount to saying that some groups of people are of little or no account and others are the preferred ones".⁴⁵

There is no doubt that land is the area where indigenous population show the greatest attachment to their tradition. Blac-jouvan⁴⁶ warned a few years ago that 'some traditional values are certainly worth safe-guarding. It is therefore essential that our law is not simply an adaptation of British imposed law, without reference to local customs and practices. It must be deeply rooted in the tradition of the people. Benjamin Cardoso⁴⁷ gave similar warning when he said "Let me speak first of those fields where there can be no progress without history. I think the Law of Real Property supplies the readiest example' Even the British, were very careful in their dealing with land when they arrived in this

country. Where there was expropriation they were liberal in its implementation. This is true of the Land and Native Rights Act, the Cession and the Public Lands Act. The attitude of the British Government in leaving the Southern Lands largely unacquired is sometimes explained on the ground that the political take-over of Southern Nigeria was by treaty not by conquest. France followed the British policy in Africa based on the idea that the indigenous population should remain subject as much as possible to their traditional customs and practices.⁴⁸ There is no conclusive evidence that a wholesale sweeping away of customary land law and its replacement with statutory regime will result in a marked increase in efficient allocation and use of land.⁴⁹ Our recent experience suggests the contrary.

Obaseki, J.S.C. was therefore right, when he said:—
(Permit me to quote once more this great thinker) —

“The recent attempt by the Obasanjo Military government by means of legislation to forge uniformity in the land law of Nigeria cannot but highlight the importance of land to the economic and social well-being of Nigerians. Whatever the motive behind the promulgation of the Act might have been, it appears the Government did not appreciate the magnitude of the task it was undertaking and the intractable problems it was bound to create.”⁵⁰

The new policy must bear in mind efficiency, equity, certainty, state and federal patrimony and legitimacy of difference. A community's relationship with land creates a number of property rights which are sometimes complex and unintelligible and may not be responsive to society's planned development. In that circumstance, it is not unusual for policy makers to be tempted to believe that land nationalisation would provide the necessary recipe for the inadequacies of their land tenure law. They conceive of land as an ordinary piece of property which once acquired can be manipulated to achieve their stated objectives. They do not seem

to appreciate the complexity of the inter-connecting rights in land. Land nationalisation does no more than a re-arrangement of property rights. It does not destroy property rights in land. Again, based on a number of assumptions, such a re-arrangement may or may not achieve the planned development.⁵² Naked and unadorned expropriation is advocated, not to feed the hungry or help the poor, lower land values or enhance efficiency of management, but to take from those who hold title in the land and transfer that title to hands that cannot hold it.⁵³

Two factors clearly stand in the way of land nationalisation in Nigeria. One is the barrier of poverty. It is admitted by all socialists that it needs a level of capital for socialist theory to operate effectively. This is not present in today Nigeria. Secondly, there is the barrier of inefficiency. This society is still behind technologically and efficiency is very much at its lowest ebb. For state apparatus to operate successfully, there must be a level of efficiency otherwise waste and decadence will result. Policies with no means or extremely ineffective means of implementing them are useless, one might as well have no policies at all. That is the position we have regrettably reached now in such bodies as the Nigeria Ports Authority, National Electric Power Authority, Nigerian Airways and all government agencies which are state controlled.

Another aspect of the nationalisation call is that it has the consequence of vesting in a group of people power which may never be used for its aim. This is evidenced by the happenings since our attainment of political independence whereby virtually all the choice areas of our country are under the control of those who have had the opportunity to govern us at one time or the other. The scheme seemed to have been first to reduce land to state ownership and the sharing process commences. The problem is compounded in this country which leans in favour of capitalism. The pre-land Use Act system could be said to be largely reflective of the capitalist

approach. It has its own peculiar draw-backs. It was against this background that the Land Use Act was enacted. Hence the socialist twist given to the Act in its preamble and commencement.

Four categories of citizens can be gleaned in this country today in relation to the enjoyment of land rights. These are.—

1. Those who benefit under the pre-Land Use Act arrangement and therefore do not want a change. Obas, Chiefs, land owning families. etc.
2. Those who are enjoying the new opportunity created by the Land Use Act and are therefore not interested in its repeal. Governors and their kith and kin.
3. Those who do not come under either (1) or (2) above but support the Act because, although they do not benefit thereunder, they are psychologically happy to see those in category (1) lose their power over land.
4. The fourth category are those who will always benefit under any circumstance. They cut across (1) and (2) above.

Our position today in relation to land rights reminds me of the story of Satan who wore a cap with two clear colours black on one side and white on the other. He stood between two honest men for a while and left. The two men soon afterwards engaged in serious debate as to the true colour of Satan's cap. A scuffle ensued. Both men died in pursuit of the truth. We should refuse to follow this example. We should therefore work out a plan that will accommodate divergent views.

Now whither Nigeria? In answering this question, it must be borne in mind that the solution to our problem lies in compromise. A mixture of the conflicting views taking the advantages and keeping at a distance all disadvantages. A lasting solution in my view must take account of the conflicting interests, harmonise the divergent views to ensure the

cohesion of our society. A unique formula to be known as the Malgam Formula is hereby proposed.

The Malgam Formula

Vice Chancellor Sir, this formula is based on the merger principle which derives its strength from the give and take theory. The formula is informed by the belief that in a society such as ours with two clearly divergent views, no group should be allowed to force its own view on the other. I have pointed out earlier the danger in any such attempt. Revolutionary change is never achieved by mere enactment. Revolution is never a product of law. You do not enact revolution. For this reason, the Malgam Formula is today put to the nation to form the basis of the proposed Law of Land. The formula contains ten commandments and goes thus

1. Principle of private ownership should be recognised. Freehold to form the basis of such system. This will assuage the feelings of our traditional rulers and others who are opposed to any sudden change. It will also ensure the continuity of our tradition and history. The Political Bureau in its report recommended it for the peasant farmers and government accepted its recommendation. The principle should be extended to all.
2. Consent should be obtained for the transfer of land rights in excess of ten hectares. This could be used to control speculative tendencies which was one of the mischiefs of the old system. The consent should not be given by the Governor and should exclude land with substantial development. No charge should be made for the giving of consent. A national fee should be fixed for processing application for consent.
3. A National Land Commission should be established with Land Committees in the state local government offices which will process requests for consent and keep proper records of them. A Ministry of Land Matters should be established to supervise the affairs of the Commission.
4. The provision relating to Revocation should be retained so as to ensure that Government is able to acquire land for public purpose with the desired ease. But the power is to be exercised by the Commission.

5. A national base map must be prepared. This will facilitate records of Land Rights and thus enhance security of title.
6. Compensation provision should be those which are contained in the Public Land Acquisition (Miscellaneous) Provisions Act 1976 which quantifies the amount payable in respect of land acquired for public purpose. This will ensure a midway approach between what obtained before the Act when the level of compensation was too high and the present position which makes provision for unexhausted improvements only.
7. The Registration of interest such as was attempted in section 36(3) of the Land Use Act with respect to agricultural land in non-urban areas should be developed. In this regard, the provision of the Registration of Titles Law, Registration of Instrument Law and the Registered Land Act 1965, should serve as a basis. All these, should be taken together for a thorough revision as a way of ensuring security of title. The Torrens System in Australia is recommended.
8. Land owning families should be made to register the names of their representatives in the Land Registry in the same way as companies do in Company Registry.
9. No ground rent should be charged. Nigerians should not be required to pay rent for occupying their father's land. That was a colonial idea which we should reject. It connotes servitude and makes land too expensive for the common man.
10. Issuance of certificate of occupancy should be discontinued so also is the distinction drawn between urban and non-urban areas.

The most important thing in adopting this formula and in reviewing our law, is that every sector of the society must be involved. We must stop thinking that because we are in Government today, we have the divine right to take decisions for others on the basis that might is right. We must admit that throughout our history we have not had any statute on Land Rights that we can call ours. Nigeria has been so subjected to the influence of the British that even when it con-

ceived of a National control of land rights, the best it could do was to follow a British law that existed in a part of the country, a law that was enacted in circumstances quite different from those prevailing now and with clearly different objectives.

An Inaugural Lecture cannot be the means of settling all the issues involved in land rights. The foundation has, however, been laid for further discussion. The Malgam Formula is therefore commended to the nation. I must warn that this formula cannot be executed by way of amendments to the Land Use Act, as its ill-bred bureaucratic culture will spill over to continue to rule us from the grave. The solution lies in a *tabula rasa* so that a new attitude can evolve to bring to pass the new ideals. I conclude and you continue.

Vice-Chancellor Sir, may I seize this opportunity to acknowledge the contribution of Alhaji R.A. Balogun a former Principal of Ahmadiyya Grammar School, Ibadan, my *alma mater* who is sitting in the audience. He gave me a solid foundation. I will also like to acknowledge the contribution of Professor E.C. Ryder, now Emeritus Professor at University of London. I keep rich memories of his assistance during my research work for the Ph.D and since then.

Finally, this Inaugural Lecture is dedicated to the memory of my late mother, Alhaja Saratu Ayanyinka Ajibewaji Ebunola Omotola. To her and to God I owe everything in my life. May her soul Rest In Perfect Peace.

Vice-Chancellor Sir, this is my Inaugural Lecture.

Thank you.

1. D.R. Denman, *The Place of Property Studies in Land Economy*: Geographical Publications Limited, London (1978) p. 20.
2. See N.A. Ollennu in his *Principles of Customary Land Law in Ghana* Second Edition, 1985. Cal. Press, Birmingham at P. 7.
3. Obi *Ibo Law of Property*, Butterworths (1962) p. 31.
4. See *Akpan Awo v. Cookery-Gam* (1913) 2 NLR 97.
5. See *Grégoria Da Costa v. Omowale Ikomi* (1968) 1 ALL NLR p. 394.
6. *Land Ownership and Use* (2nd Edition) p. 4.
7. See Obi, *Ibo Law of Property* page 139, G.B.A. Coker, *Family Property Among the Yorubas* 2nd Edition (1965). P.94 etc seq *Lewis V. Bankole* 1 MLR p. 84 per Speed Ag. C. J.
8. See the Political Memorandum 1918 page 347 348. See also Sir V. Gierrey, *Nigeria Under British Rule* page 266.
9. See *Elias Nigerian Land Law* published by Sweet & Maxwell, p. 22 4th edition.
10. See section 5.
11. See *Amodu Tijani v. Sec. of Southern Nigeria* (1921) A. C. 339 at 402-414. *Att. Gen. of Southern Nigeria v. John Holt* (1910) 2 NLR p. 1.
12. See section 3 of the Act.
13. See Cap. 80 of 1969 Edition of the Laws of the Western Nigerian. Also the Acquisition of Lands by Aliens Law. See Cap. 1973 Laws of Lagos State.
14. See Raymond Leslie Buell *The Native Problem In Africa* (Second Impression (1965) p. 750.
16. The Adaptation of Law (Redesignation of Decrees, Edict) Order No 13 1980.
17. See *Umar Ali & Co. Ltd. v. Commissioner for Lands & Survey & Ors.* Suit No. BOM/62 or 4/3/82; *Attorney General of Lagos State v. National Electric Power Suit No. LD/372/81 on 5/7/82*; *J.S.P.C. Nwokolo v. Government of Anambra State & Ors.* Suit No. E/155/81 on 27/7/81; *Chief R. O. Nkwocha v. Governor of Anambra State & Ors.* Suit No. E/167/81 on 28/5/82; *Otunba Chief Bola Adewunmi v. Mike Ogunbowale & Ors.* SC/ID/115/81 on 28/5/82; *John Imade v. Lt. Col. (Mrs) R.A.F. Finnih* Suit No. B/98/79.
18. (1984) 6 S.C. 362.
19. Section 1(3) of the Constitution of the Federal of Nigeria, 1979.
- 19a. (1986) 4 NWLR Part 35 at p. 36 per Wali, OFR, JCA at p. 378.
20. FCA/K/12/ 3 of 30/11/84
21. *LSDPC V. Foreign Finance Corporation* (1987) 1 NWLR (Pt. 650) p. 413 at 445.
22. ID/115/~/ of 28/5/82.
23. In the Foreword to a book titled. *Land Law in Nigeria 1985* by M.G. Yakubu
24. In a lecture titled 'The Judicial Impression of the Nigeria Law of Property'
25. Suit No HCJ/9A/83 of 17/9/81.
26. (1986) 3 NWLR (Pt. 28) P, 286
27. (1987) 4 NWLR (Pt. 63) P. 1 at 321.

28. (1987) 4 NWLR 1 at pages 7-8.
29. See for example Omotola — *Does the Land Use act Expropriate?* 1985 Vol. 3 *Journal of Private & Property Law* p.1
30. Section 5
31. Section 6
32. See sections 22, 23 and 34 (7) and (.)
33. Section 21
34. (1987) 1 NWLR P. 385.
35. (1987) 1 NWLR (Pt. 50) p. 413.
36. (1987) 2 NWLR p. 121
37. Unreported Suit No. ID/442/85.
38. See his lecture titled The Judicial Impression of the Nigerian Law of Property Any Need for Reform? Delivered at the 26th Annual Conference of the Nigerian Association of Law Teachers 28th March, 1988. I agree with this assessment.
39. *Prince Elijah A. Oke & Anor. v. Phillip Adalemo & Ors*; Professor Omotola: Cases on the Land Use Act (1983) p. 123; *Comm. of Lands & Housing v. Alhaji G.K. Savage*; Professor Omotola' Cases on the Land Use Act (1983) p. 124; *Adetokunbo Ademola v. John Amo & Ors*. Professor Omotola: Cases on the Land Use Act (1983) p. 131; *Dzungwe v. Gbishe* (1985) 2 NWLR (Pt. 8) p. 528, *Dantumbu v. Adene* (1987) 4 NWLR (Pt. 65) p. 315) *Chiroma v. Suwa* (1986) 1 NWLR p. 86.
40. *Attorney-General, Kaduna State v. Dada* (1986) 4 NWLR (Pt. 38) 687.
41. Section 48 of the Land Use Act.
42. *Salati v. Shehu* (1986) 1 NWLR (Pt. 15) p. 198.
43. *Savannah Bank Ltd. v. Pan Atlantic Ltd.* (1987) 1 NWLR (Pt. 49)
- 43a. (1987) 1 NWLR (Pt. 50) p. 415.
- 43b. (1987) 1 NWLR (Pt. 50) p. 385
- 43c. *Akintola Oloto v. Victor William* 17 NLR p. 27, *Ukwa v. Akwa Local Government Council* (1966) N.M.L.R. p. 41, *Ajao v. Sole Administrator for Ibadan City Council* (1971) 1 NMLR p. 74 *Obikoya & Sons Ltd. v. Governor of Lagos State* (1987) 1 NMLR (Pt. 50) p. 415.
44. D. R. Denman: The Place of Property (1978) op.cit. page 135.
45. Patrick McAuslan 1987 — Silver Jubilee Lecture, Faculty of Law, University of Lagos Land Policy and Public Interest.
46. Xaveer Blanc-Jouvan 'problems of Haronisation of Traditional and Modern Concepts in Land Law of French speaking Africa and the Madagascar'' published in Integrations of Customary and Modern Legal System in Africa. Ife University Press 1964 page 2161.
47. Storrs lectures delivered at Yale University in 1921.
48. Integration of Customary and Modern Legal Systems in Africa. Ife University Press (1964) at page 217.
49. McAuslan op. cit.
50. (See his lecture to the 26th Annual Conference of the Association of Law Teachers 28/4/88
51. (McAuslan op. cit.)
52. D R Denman, Land Use and the Constitution of property (1969) page 17
53. D.R. Denman *The Place of Property* (1978) p. 64.