

Right To Property

The right to own and acquire acquire and own immovable property is one of the earliest and most important rights known to man. According to John Locke, one of the reasons why man gave up his liberty under a social contract with the rulers was to secure his property. Property in the widest sense means all legal rights a person has over a thing.

Internationally, the right to property is guaranteed in Article 17 of the UDHR which provides that:

"Everyone has the right to own property alone as well as in association with others."

No one shall be arbitrarily deprived of his property.

Regionally, it is guaranteed under Article 14 of the ACHPR.

In Nigeria, this right is protected under Section 43 of the CFRN'99 thus:

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

The implication of this section of the Constitution is that once a person satisfies all the requirements for acquisition, ownership of property cannot be refused and can be legally enforced.

In a democratic Nigeria, our fundamental rights including right to property are constitutionally guaranteed and enforceable ~~without respect~~ without discrimination of any kind. Thus, the Constitution allows it allows women and other previously disentitled persons to acquire and own immovable property anywhere in Nigeria.

In Timothy v Ofora, the Court held inter alia that the Oraifite native law and custom which does not allow women to deal in land is not only unconstitutional but repugnant to natural justice, equity and good conscience.

- This right, like other rights, is not absolute and cannot be absolute ~~and~~ and there is recognition under International and national instruments to the effect that there may be compulsory acquisition of property for public use. By virtue of the provision of Section 44 (1) CFRN '99, the right to interest in property is recognized subject to the power of the government to compulsorily acquire or take possession of it in accordance with the manner and for the purposes prescribed in a law which makes provisions for payment of ~~an~~ prompt adequate compensation. The law must also allow access to court in cases of dispute as to the amount of compensation payable. In pursuance of the above constitutional provisions, the Land Use Act by virtue of its Section 28 (1) provides that:
"It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest." In other words, the Governor of a state can lawfully ~~acquire~~ ~~buy~~ land ~~within his~~ ~~territory~~ compulsorily any land within his territory for overriding public interest. By the combined effect of Sections 28 (2) & (3), overriding public interest means acquisition on the following grounds:
1) Where the occupier alienates his right of occupancy in the property or any part thereof contrary to the provisions of the LUA or of any

regulations made under the LUA, or alienation without the requisite consent or approval.

2) Requirement of the land by the State Government or Local Council in the state or by the FG for public purposes of the state or of the federation as the case may be.

3) Acquisition for mining purposes or oil pipelines or for any purpose connected with it.

4) for extraction of building materials.

→ A notice declaring such land to be required by the Government for public purposes shall be issued by the Governor (Section 28(4) LUA), and on receipt of the notice, the title of the holder of a right of occupancy shall be extinguished by virtue of Section 28(5) LUA.

→ Provision for the payment of Compensation is also further contained in Section 29 LUA.

Case: involved the government delay in paying compensation after the compulsory acquisition.

A-G Lagos & Ors v Zaven Verstap & Co Nig Ltd & Ors (2016)

Case: In Tano v Governor of Adamawa State, it was held that Lott under Sec. 44 of the CFRN 1999 and the Land Use Act, payment of compensation is compulsory in all cases in which the govt acquires the property for overriding public interest.

Case: In Sokoto Local Govt and Ors v Alhaji Galaxy S22+ Amah, the Court held that compulsory

acquisition of a property by a local govt for the purpose of expanding a cattle market was valid within the contemplation of the Constitution.

Case: In ~~Honda~~ Ibadan Company Ltd v Nigerian Post Authority, it was held that the alienation of land acquired compulsorily for ~~any~~ public purposes to persons ~~it~~ who used it for private business was illegal, null and void, and such did not constitute public purposes under the law.

Case: In A-G Bendel State v Aideyeon (1989), Nugentco JSC held that a compulsory acquisition of property in manner contrary to the provisions of ~~to~~ the law is illegal, null and void.

Case: In Bellow v Diocesan (1973), it was noted that there must be strict adherence to the formalities or ~~for~~ procedures prescribed by law.

Case: In Amord v Majasan, Oyeola JA submitted:

"Acquisition of land for any purpose must strictly follow the relevant statutory provisions ... Consequently, any provision of the law which gives or governs Compulsory acquisition of a persons property must be construed strictly against the acquiring authority and sympathetically in favour of the owner, occupier or possessor of the property against any irregularity in the procedure of acquisition of ~~land~~ as laid down by the enabling statute."

Case: In Saudi v Abdullahi, the SC per Obaseki JSC (as he then was) stated:

"the express power of revocation a military Governor has under the Land Use Act of 1978 is confined to revocation for overriding public interest as spelt out in Sec. 28(2)(3) LUA."

Apart from Compulsory acquisition of property for public use, there are other limitations on the right to property ~~not~~ under Section 44(2) of the CFRN Act (as amended). Thus, a person's right to property may be taken away under any general law relating to:

- 1) Imposition of tax, rate, duty
- 2) Imposition of penalties or forfeitures for the breach of any law (whether civil or criminal)
- 3) tenancies, mortgages, leases, charges or other rights or obligations arising out of contracts
- 4) vesting and administration of property of persons adjudged or declared bankrupt or insolvent, persons of unsound mind, deceased or companies that are wound-up.
- 5) Execution and judgement of a court
- 6) temporary taking possession of property in a dangerous state or property injurious to the health of human beings, plants or animals
- 7) ~~or~~ Enemy property
- 8) trust and trustees
- 9) Limitation of actions

10) Relating to properties vested in Corporate bodies directly established by law

11) Temporary taking possession of property for the purpose of ~~&~~ any examination, investigation or inquiry.

The essence of these exceptions is to ~~&~~ ensure that public order, public good and public safety is achieved. ~~through~~