

THE LAND USE ACT 1978 IN THE CONTEXT OF THE 1999 CONSTITUTION IN NIGERIA

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Abstract

The Land Use Act of 1978 is deemed a Federal enactment and as such sets out the national policies on the utilization of the enjoyment of land. However, while the land policy facilitated the implementation of some objectives of state policy, it also offended against many provisions of the “fundamental rights’ provisions of the constitution. The argument precedes that legislature to implement the principles of state policy must be in conformity with the fundamental rights provisions of the constitution. The general principle is that the constitution is the supreme law of the land and any statute or other enactment that conflicts with it, is to the extent of the conflict invalid. In all, this paper will be generally be way of content analysis.

Supremacy of The Constitution

Section 1 (1) of the constitution provides that the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria¹.

The constitution further proclaims itself as the organic law or Ham Kelson would put it, the ground norm in the following terms. If any other law is inconsistent with the following provisions of this constitution, the constitution shall prevail and that other law shall to the extent of the inconsistency be void². It cannot, therefore, be gainsaid that in view of its supremacy, all other laws, whether enacted by the Federal or State Governments must be consistent with the provisions of the constitution because of its supremacy. Faced with the harmonization or resolution of the conflict between the express provisions of Section 44 (1) of the 1999 Constitution and Section 47 (2) of the 1978 Land Use Act, the Kaduna Judiciary Division of the Court of Appeal proclaimed the supremacy in a language indicative of the preparedness to uphold the supremacy of the constitution. The court held that: Any provisions of the Land Use Act which is in conflict or inconsistent with the 1999 constitution is void to the extent of such conflict or inconsistency³.

The court further stated that by the combined effect of sections 6 (1) and 272 of the 1999 constitution, the High court of each state is vested with unlimited jurisdiction to hear and determine any civil proceedings to which the existence of legal right, interest or claim is in issue. There is, therefore, apparent antithesis between the provisions of the Land Use Act which seems to oust the jurisdiction of the courts and the provisions of the constitution which confer unlimited jurisdiction on the state High Courts⁴.

The Constitution and The Land Use Act

The Land Use Act is a Federal enactment and sets out the policies on the utilization of land in Nigeria. The new policy though facilitated the implementation of some objectives of state policy, it also offended against some provisions of the constitution. In resolving conflicts which are bound to arise between legislation to implement chapter 2 of the constitution i.e. the fundamental rights provisions, the courts have decided generally in favour of the constitutional provision which advocates that the directive principles must conform to and run as a subsidiary legislation.

The argument proceeds that legislation to implement the principles of state policy must be with the fundamental right provision of the constitution. The general principle is that the constitution is the supreme law of the land and any statute or any enactment that conflicts with it, is to the extent of the conflict, invalid. Statutes which predated the constitution are, as a general rule saved subject to such modifications as may be necessary to bring them into conformity with the provisions of the constitution.

Section 315 (5) of the constitution expressly saves the Land Use Act and provisions. These are required “to apply and have full effect in accordance with their term and to the like extent as any other provisions favouring part of the constitution”⁵.

It is arguable that the import of this statement is to give the provisions of the Act equal status with the provisions of the constitution hereby importing in case of conflict the rule of interpretation applicable to the resolution of the conflicts between the provisions of the Act and the constitution.

However, the supremacy of the Land use Act borne out of section 47 (1) which states that this Act shall have effect notwithstanding anything to the contrary in any law including the constitution. This is certainly an anomaly particularly so in a country that adheres to the concept of the “rule of law”.

Conflicts

Certain provisions of the Act and the Constitution present more conflicts which are more imaginary than real. For example, a conflict exists between the confiscatory provisions of the Act and the Constitutional guarantee on property right.

The provisions of the Act limit the individual land holdings in excess of specified hectares of undeveloped land. It confiscates and transfers the excess of such land to the government. Ordinarily, such confiscatory provisions of the Act conflict with the property rights guaranteed by the constitution.

A fundamental conflict between the provisions of the Act and the constitution relates to the determination of the quantum of compensation payable to by the government for unexhausted improvement. It is argued on the basis of Section 44 of the 1999 Constitution and by implication of the right of occupancy system that the outgoing rights holder has entitlement to the compensation payment. Also in contrast to the constitution, the Act expressly sets out the formula for the payment of compensation which could fall short of the market value of the property.

As provided in the Land Use Act that no court shall have jurisdiction to enquire into the quantum or adequacy of compensation as determined by the Land Use Act and Allocation Committee. The Land Use and Allocation Committee being an agency of the executive does not meet the constitutional requirements of an independent tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

Section 47 of the Land Use Act violates Sections 46 and 6 (6) of the 1999 constitution. There are clear violations of the civil rights and obligation of the individual as guaranteed in the constitution.

Another relevant fundamental right guaranteed by the constitution is the right to fair hearing by an independent tribunal or court in the determination of civil right and obligations including any question or determination by or against government or authority. On its part, the Act contains some restrictive provisions with respect to quantum of compensation payable and on account of properties compulsorily acquired. It also restricts the yardstick for the determination of the quantum of compensation payable on account of compulsory acquisition.

In *Alhaji Kanada V. The Governor of Kaduna State*, it was held that S.47 (2) of the Land Use Act is in apparent conflict with S.256 of the 1999 constitution and is therefore to that extent null and void.

Section 47 (2) of the Act clearly ousts the jurisdiction of the court to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act. This ouster or jurisdiction clause in the above-provision conflicts with the jurisdiction vested in the High Court to determine disputes between citizens and all levels of government in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

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Also S.47 of the Land Use Act is void to the extent that it purports to deny any person in Nigeria claiming compensation in respect of compulsory acquisition of his property the right to sue for the determination of his interest in property having jurisdiction in that part of Nigeria. In *Ori and Ors. V. Uche and Ors*, it was held that the right of occupancy in respect of appropriated land as in S. 40 of the 1999 constitution is eroded by S.47 (2) of the Land Use Act.

Conclusion

Whatever conflicts that exist between the provision of the Act and the Constitution, such conflicts are however resolved by some sections of the Act. For example, the provision dealing with fair hearing will suffice.

The conflicts that exist between the provisions of the Act and the Fair hearing provision of S.36(1) of the 1999 constitution⁹, such conflict are resolved by the subsequent provisions of S.40 of the Act on one hand and S.4 (8) and S.272(1) of the 1999 constitution.

Again, the maxim *generalia Specialus* i.e. (where a general intention is shown and other intention shown in the same statute which is incompatible with the general intention, the particular must be construed as an exception to the general), has the advantage of validating the provisions of the Act. The provisions of the constitution dealing with fair hearing and access to court are general provisions. They are subject to exceptions created by the specific provisions of the constitution. Therefore, where there is a subsequent provision in the constitution, which curtails or delimits the scope of the access to courts as well as the jurisdiction of the courts, effect must be given to such delimiting provisions. This is precisely, the legislative effect of the S.315 (5) (d) of the constitution, it is contended that this Section of the Constitution delimits the jurisdiction of the State High Courts and confers constitutional validity to the conflicting provisions of the Act.

It is therefore contended that what the above provisions does is to confer a constitutional validity on all conflicting provisions of the Land Use Act. The constitution therefore provides an adequate safety valve for provisions of the Act which are in apparent or real conflict with the provisions of the constitution.

In so far as the constitution provides that nothing in the constitution can invalidate the provisions of the Act, it follows that effect must always be given to the above validating provisions of the constitution.

References

Section 1 (1) of the 1999 Constitution

Section 1 (3) of the 1999 Constitution.

Kanada V. Governor of Kaduna State and Anor. (1986). (1986) 4 NWLR Pt. 38 P. 361

F.O. Adeoye, The Land Use Act 1978 and the 1999 Constitution 1988/89, 10 and 11 J. P. P.L., 33.

S.315 (1) and (2) of the 1999 Constitution

S.44 (1) of the 1999 Constitution.

Niki Tobi, Existing Law and The New Constitution, 1977-1980 Nigeria L.L.101.

S.47 (2) 30 and 2 (2) of the Land Use Act, 1978.

S. 36 of The Land Use Act, 1978

S.272 (1) of the 1999 Constitution.